

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 : 4 /2009 in O.A. No. 15 of 2009
6. Execution Petition No : -----/2009 in O.A. No.-----

Applicant (S) : Zakite Hanain Borbhuyan & Ors

Respondent (S) : M. O. D. and Ors

Advocate for the : Mrs. J. L. Sarthak  
{Applicant (S)}

Advocate for the : Mr. Kankan Das add. case, Mr. U.K. Mair  
{Respondent (S)} for Private Respondents

Notes of the Registry	Date	Order of the Tribunal
<p>An application praying for review of the judgement dated 11.9.2009 of this Honble Tribunal in O.A No. 15/09 (Common Judgement with O.A No. 81/2009) under Section 22 (f) of the A.T. Act, 1985 read with Rule 17 of the CAT (Procedure) Rules, 1987 and Rule 49 of the CAT Rules &amp; Practice 1993. Copy served to Sri K.K. Das <u>all case</u>.</p> <p>Laid before the Honble V.C. and Honble Member (A) for <u>check</u>.</p>	<p>16.10.2009</p> <p>/bb/</p>	<p>For the reasons recorded <sup>by a Common Order</sup> separately, the R.A. stands dismissed/ No costs.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">               (M.K. Chaturvedi)              Member (A)           </div> <div style="text-align: center;">               (M.R. Mohanty)              Vice-Chairman           </div> </div>

Put to circulation  
12/10/09

Section Officer (J)  
12/10/09

19/10/09

Common ~~Copy of~~ judgment  
order dtd 16/10/2009  
prepared for send to  
the D/section for  
issuing to the both  
side standing counsel  
by hand.

original judgment  
kept in the R.A. 4/09  
(O.A. 15/09)

D/No \_\_\_\_\_ <sup>19/10/09</sup>

Dtd. \_\_\_\_\_

copy received  
@  
19/10/09

for the reasons recorded  
in the order dtd 16/10/09

[Signature]

For Dr. J.L. Sarkar

20/10/09

Vice-Chancellor

Member

*[Faint, mostly illegible handwritten notes on the right side of the page]*

[Signature]  
16/10/09

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

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

&

R.A. No. 05 of 2009 (O.A.<sup>142</sup>2009) (OA-142/09)

DATE OF DECISION: 16.10.2009

Zakir Hussain Barbhuiya & Others

.....Applicant/s.

Dr.J.L.Sarkar

..... Advocate for the  
Applicant/s.

- Versus -

U.O.I. & Ors

..... Respondent/s

Mr.Kankan Das, Addl. C.G.S.C. (in R.A.04/2009) &

Mr.M.U.Ahmed, Addl.C.G.S.C. (in R.A.05/2009)

..... Advocate for the  
Respondents

**CORAM**

**THE HON'BLE MR.MANORANJAN MOHANTY, VICE CHAIRMAN  
THE HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)**

- |    |   |          |
|----|---|----------|
| 1. | Whether Reporters of local newspapers may be allowed to see the Judgment? | Yes/No ✓ |
| 2. | Whether to be referred to the Reporter or not?                            | Yes/No ✓ |
| 3. | Whether copies to be circulated to other Benches?                         | Yes/No ✓ |
| 4. | Whether their Lordships wish to see the fair copy of the Judgment?        | Yes/No ✓ |

Judgment delivered by

  
 Vice-Chairman/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 16<sup>th</sup> 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 Sadiq

... 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

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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 11<sup>th</sup> Day of September, 2009 and OA No. 142/09 was disposed of by another order on the same day / 11<sup>th</sup> 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 CENTRAL ADMINISTRATIVE TRIBUNAL

**GUWAHATI BENCH**  
**REVIEW APPLICATION NO .....4.**  
**In O. A. No 15 of 2009**

**Shri Zakir Hussain Borbhuyan & others** .....Applicant

- versus -

**Union of India & others** .....Respondents

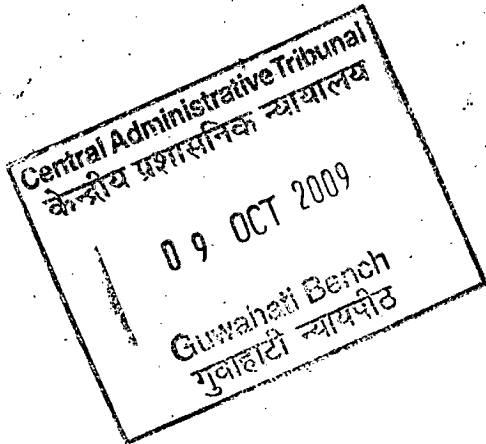
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2.	Affidavit	22
3.	Copy of Index (1 <sup>st</sup> page) of W/S in OA No 15/2009	Annexure - 1 23.
4.	Copy of advertisement in Dainik Jugasankha dated 04.12.2005 for cancellation of 1 <sup>st</sup> advertisement	Annexure - 2 24 - 24 A.
5.	Copy of advertisement dated 10.01.2007 of the fresh re-advertisement (enclosed with W/S annexure V) This is Annexure M in OA No 15/2009 as advertisement dated 13.12.2006	Annexure - 3 25
6.	Copy of the advertisement dated 15.04.2007 Which is a corrigendum	Annexure - 4 26.

  
Advocate

copy served  
on Mr. Karan Sen,  
Asst. CG. Sec. on 9.10.2009.  
N.S.  
9/10/2009.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,  
GUWAHATI.



R. A. No. ....4..../2009

In

O. A. No. 15/2009

Shri Zakir Hussain Barbhuiya  
& Others.

... Applicants.

- Vs -

Union of India & Ors.

... Respondents.

In the matter of :

An application praying for review of the Judgement dated 11.9.2009 of this Hon'ble Tribunal in O.A. No. 15/2009 (Common judgment with O.A. No. 81/2009) under Section 22(f) 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.

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Zakir Hussain Barbhuiya

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filed by the applicant  
Dr. J. J. Sarika  
Advocate

09 OCT 2009

Guwahati Bench  
गुवाहाटी न्यायपीठ

-: 2 :-

The applicants most humbly and respectfully beg to state as under :

1. The judgment dated 11.9.2009 was received by the applicants on 17.9.2009 from their counsel who received the same on 14.9.2009. Being aggrieved the applicants respectfully files this application for review on grounds of error apparent on the face of the records amongst other grounds, viz. patent mistake, error of fact, error of law, not looking to decision of the Hon'ble Supreme Court which is law of the land etc.

2. That the advertisement in connection with the recruitment of 64 vacancies were published in different papers. These are as under :

S.No.	Advertisement particulars	Date of Advertisement with davn Number.
1.	Advertisement for 64 vacancies of Fireman.	Employment News dated 19.11.05 davn 7101(153) 2005.
2.	Advertisement for cancellation of the notification for the above 64 vacancies.	Dainik Yugasankha dated 4.12.2005. davn 7101/164/ 2005.
3.	Re-advertisement for 48 vacancies of Fireman	Dainik Yugasankha dated 13.12.2005 also 10.1.2007 in Indian Express davn 7101 (200) 2006

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*Lalini Anand Baruah*

Central Adm. Bd.  
 केन्द्रीय प्रशासनिक न्यायालय  
 : OCT  
 Guwahati Bench  
 गुवाहाटी न्यायपीठ

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-: 3 :-

Sl.No.	Advertisement particulars	Date of Advertisement with day Number.
4.	Corrigendum giving fresh date of <sup>screening</sup> <del>screening</del> , other particulars, fresh application only from physically handicapped.	Sunday Express 15.12.2007 dayp 7101/2/ 2007.

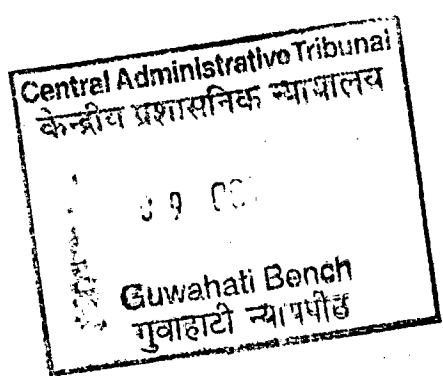
3. That the applicants humbly states that there is glaring omission of the advertisement dated 4.12.2005 cancelling the advertisement for 64 vacancies, in the judgment dated 11.9.2009, and this patent error has caused miscarriage of justice. There is no reason in the judgment for which this date 4.12.2005 and the record in pleading has been omitted in the judgment. It is stated that the official respondents have enclosed the advertisement for the said cancellation as Annexure-IV of their Written Statement, and the fact is, therefore, in the pleadings supported by records.

4. That the written statement para 6(b) interalia unambiguously stats, in this context, as under :

".... the earlier advertisement was cancelled vide No. DAVP 7101/ 164/2005 (Annexure-IV) and re-advertised vide No. DAVP 7101 (200) 2006 dated 10th January, 2007 (Copy enclosed as Annexure-V".

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*Zakir Hussain Borker*



The cancellation DAVP is dated 4.12.2005. The omission in the judgment of these records and dates of cancellation i.e. 4.12.2005 and factual readvertisement for 48 vacancies on 13.12.2006/10.01.2007 is a grave error rendering the judgment to be reviewed and set aside, for allowing the O.A. or for fresh hearing.

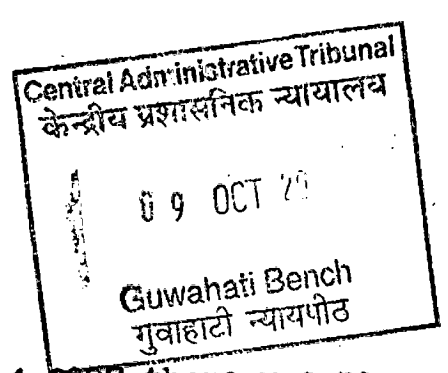
5. That the judgment dated 11.9.2009 in para 4.14 states as under :

"4.14 Before any recruitment was taken up, pursuant to the above said advertisement dated 19.11.2005, the same (Advertisement dated 19.11.2005) was cancelled on 10.01.2007 and a fresh advertisement was issued on 15.04.2007 for recruitment for posts of Fireman in the said 57 Mtn. Div. Ord. Unit and, in the said advertisement dated 15.04.2007, it was stated that the required educational qualification to be only Matriculation. The advertisement was consistent with the new Rules of 2006"

It is respectfully submitted that grave error crept into the judgment by stating that earlier advertisement dated 19.11.05 "was cancelled on 10.01.2007" and "a fresh advertisement issued on 15.4.2007" stating required qualification to be matriculates only. These two dates are non-existent and extraneous in the context. The cancellation was on 4.12.2005,

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Zakir Ansari B.A. B.L. B.P.



when Rules, 2003 was in force. On 15.4.2007 there was no fresh advertisement stating minimum qualification as stated in the judgment. The advertisement dated 15.4.2007 is a corrigendum.

6. That again in para 9 of the judgment writes :

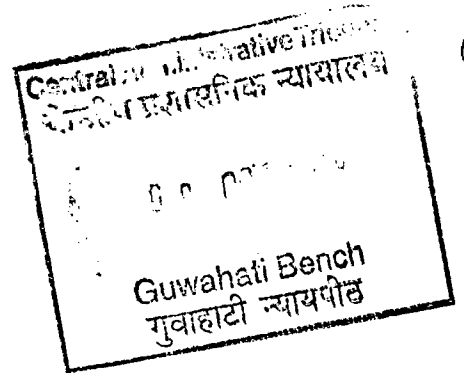
"As has been seen, 1st advertisement was issued on 19.11.2005 in accordance with the old Recruitment Rules of 2003. But before recruitment, the new recruitment Rules of 2006 were notified on 05.07.2006 and the 1st Advertisement dated 19.11.2005 was cancelled on 10.01.2007. A fresh advertisement was however, issued on 15.4.2007 with stipulations consistent with the new Rules of 2006...."

It is stated that with the wrong premises that cancellation was on 10.01.2007 the judgment has been given and this has caused patent mistake and grave error. The applicants could not find anywhere in the judgment as to the reason for omission by the Hon'ble Tribunal of the date of actual cancellation i.e. 4.12.2005. This in the humble submission of the applicant is a good ground for review of the judgment and fresh hearing after setting aside the judgment dated 12.9.2009.

It is humbly submitted that on the wrong facts the Hon'ble Tribunal has come to the finding in para 10 of the

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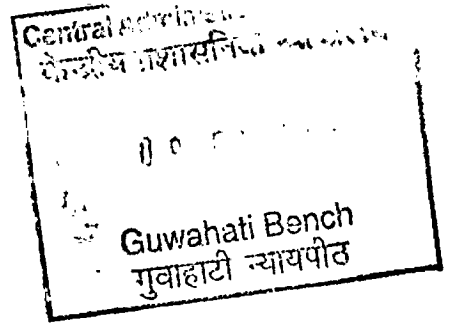


judgment which deserves to be set aside by review, and O.A. allowed or fresh hearing ordered.

7. That para 3.3 records that copy of a Rules, 2006 had been served i.e. served on the counsel for applicants on 7.08.2009 and produced on 7.08.2009 itself with a departmental file. On 7.8.2009 the O.A. was listed along with other O.As under head <sup>For</sup> "Admission". Counsel for the applicants submitted against vacation of the interim order, Applicants side argued on M.P. 36/2009 and M.P. 75/2009 for discovering of records. The applicants have no knowledge of the departmental file produced and are in darkness as to whether the omission of the date of cancellation i.e. 4.12.2005, and the non-existent dates in the context of para 4.14 and para 9 i.e. alleged cancellation on 10.01.2007 and alleged fresh advertisement dated 15.4.2007 have any nexus with the said departmental file. On 7.8.2009 for the first time Rules, 2006 was mentioned and immediately after production of the same the proceedings in the Hon'ble Tribunal on the case and linked cases were closed for that day. The applicants were waiting for decision in M.P. 36/2009 by the private respondents and M.P. 75/2009 filed by applicants for discovery of records. But most unfortunately, as stated in para 3.3 of the judgment the proceedings on 7.8.2009 was treated as final hearing without any notice. The Rules, 2006 was mentioned on that day only, no scope was given to submit on that Rules, 2006 regarding its applicability or real existence. The counsel for the applicants could not submit in detail about the said Rules, 2006 without study, but it was submitted that this produced Rule has no application.

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Zakir Hussain Barbhuiya



The cancellation was on 4.12.2005 i.e. before 2006 Rules.

Moreover, the M.P. No. 75/2009 which was pending, and remained non-traversed by respondents was not decided/ no order passed, and after the judgment dated 11.9.2009 an order in M.P. No. 75/2009 has been passed disposing the same in view of the judgment in the O.A. Such procedure is violative of judicial procedure. Moreover, the procedure of listing of cases for hearing/warning list has been abandoned <sup>by the Hon'ble Tribunal</sup> causing prejudice to the applicants. This is glaring <sup>an</sup> omission of procedural law.

8. That the fact of cancellation of the 1st Advertisement has been clearly and unambiguously stated by the respondents in the written statement. Respondents case is as under :

The Qualification was amended by letter dated 11.11.2005 to remove the requirement of fire fighting.

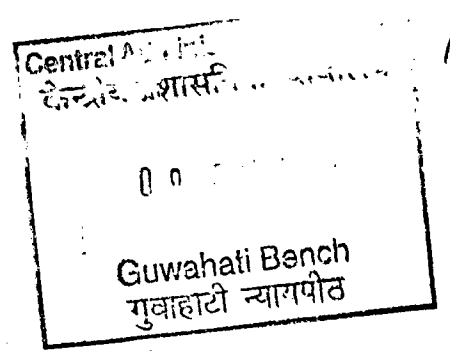
The respondents acted on this promise only i.e. letter dated 11.11.2005. The applicants' case has been as under :

The Rules 2003 shall prevail over the letter dated 11.11.2005. Laws laid down by Hon'ble Supreme Court have been cited.

Some relevant extracts in the Written Statement are as under :

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Zaki Ansari Barbhuiya

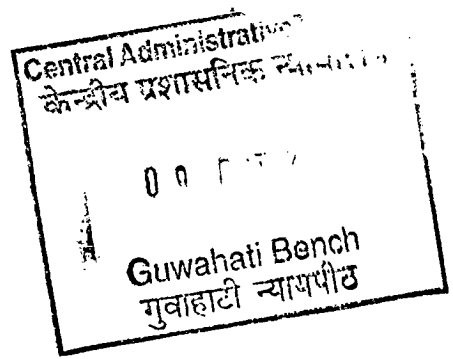


- (i) Para 5 of W.S. : The Qualification requirement was later amended to remove the requirement of firefighting training and only Matriculation was required vide Govt. of India Ministry of Defence letter No. A/26576/Fire Staff/OS-20/1286/D(0-11) 2005 dated 11 November 2005(copy enclosed as Annexure-II).
- (ii) Para 6(b) W.S. : Qualification requirement was later amended and only matriculation was required vide ..... letter ..... dated 11 November 2005.....
- (iii) Para 9(c) of W.S. : ..... Qualification for recruitment for Fireman are fixed by the Govt. of India and Army Head Quarters from time to time. Therefore, exercising their rights to amend the Qualification requirements, the Govt. of India has amended the Qualification ..... as envisaged in paragraph No. 7(8) of SRO 180 dated 13 November 2003..... to remove the requirement of fire fighting training and kept the qualification as only Matriculation vide..... letter..... dated 11 November 2005.

From the above it is humbly submitted that Respondents'

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Zakir Hussain Borahin



avowed statement and clear stand is that they acted on  
the amendment by letter dated 11.11.2005. No mention of  
Rules, 2006 is there anywhere in written statement or  
any statement. The respondents have made faithful state-  
ments because the cancellation of 1st advertisement was  
made by advertisement on 4.12.2005 i.e. before the Rules,  
2006. The judgment dated 9.11.2009 omits this date of <sup>cancellation</sup>  
ation which is glaring.

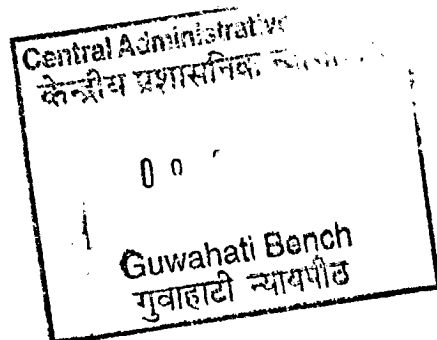
9. That it is stated that the judgment of the learned  
single Judge in W.P. (c) No. 2557/2007 of Hon'ble Gauhati  
High Court was set aside by the Hon'ble Division Bench of  
the said High Court. The Hon'ble Tribunal has mentioned  
from the said W.P.(c) also. The applicants, therefore,  
bring to notice the stand of the official respondents in  
the affidavit-in-opposition as regards the Amendment as  
under :

Para 4, sub para 3 : The Qualitative requirement  
was later amended to remove the  
requirement of firefighting  
training and only matriculation  
was required vide Government  
of India, Ministry of Defence  
letter No. A/26576/Fire Staff/  
OS-20/1286/D(O-II)/2005 dated  
11th November, 2005.

It is respectfully stated that before the Hon'ble Gauhati  
High Court also the respondents case was not on Rules, 2006

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Zaki Hussain Barokhuj



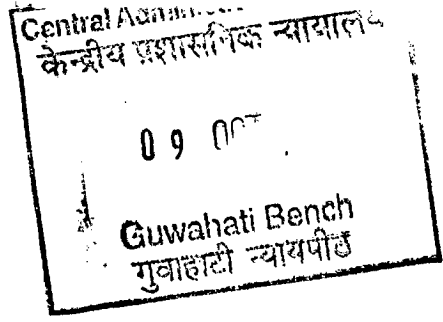
and no where the said Rule was mentioned or relied upon by respondents. The reliance of Rules, 2006 by the Hon'ble Tribunal on the face of the statements made in the preceeding para and this para, in the humble submission of the applicants is error apparent on the face of records, error of fact and error of law, and is patent migtake and grave error for which the judgment dated 11.9.2009 of this Hon'ble Tribunal deserves to be reviewed, set aside, and O.A. allowed or fresh hearing ordered.

10. That Hon'ble Tribunal in the judgment dated 11.9.09 has made grave error in relying on the alleged Rules, 2006, first, when the same was produced on 7.8.2009, (taken by surprise), unsupported by any statement of the respondents, secondly without requiring the respondents to clarify the factual position as to the said projected Rules, 2006 suddenly in view of the statements of the respondents mentioned in the preceeding paras, and their stand in W.S. that the letter dated 11.11.2005 is the amendment on which they acted and thereafter there has not been any amendment. Thirdly the applicants side was also denied scope to examine projected Rules 2006 because hearing (which was for interim relief) was closed on the same day i.e. 11.9.2009, and treated as final hearing.

11. That Rule 12 of the CAT procedure Rules, 1987, subrule (1) mandates filing of reply by respondents with documents relied upon.

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Zakir Hussain Borthwick



(i) The Rules, 2003, and letter dated 11.11.2005 have been filed. Rules 2006 have not been filed as relied upon document.

(ii) The cancellation of first advertisement by DAVP: 7101/164/2005 has been enclosed as Annexure-IV This was published in Dainik Yugasankha of 4.12.2005.

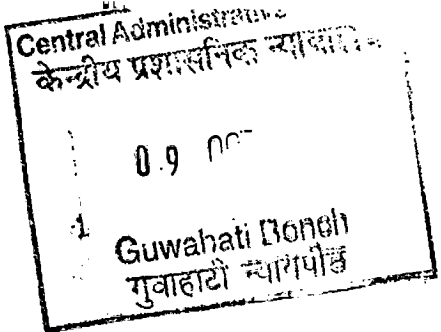
It is respectfully submitted that a grave and palpable error has crept into the judgment because there has been glaring omission of the cancellation dated 4.12.2005 (Annexure-IV of the W.S.), and reliance on the Rules 2006 (not relied upon by respondents in the facts of the case). In the respectful submission this is a patent mistake for which the judgment dated 11.9.2009 deserves to be reviewed.

12. That the Hon'ble Tribunal has made an error in holding that the O.A. has been taken up for final hearing, because such process has been in non-compliance of mandates of Rule 13 of the CAT procedure Rules, 1987 mandating notifying date of hearing. On 7.8.2009 the O.As were listed under head "For Admission" and came for consideration of interim relief.

13. That under CAT Rules of practice 1993, the cases ready for hearing are to be included in the ready list for final hearing, warning list, (Rules 31, 39, 40 and 41). Accordingly the weekly/supplimentary cause lists are published showing cases for hearing under the Head "For Hearing".

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Zalim Ansari Borah



The O.A./O.As were listed under Head "For Admission" in juxtaposition of "For Hearing" that is the O.As were deliberately under procedure established by law excluded from hearing list. The cases in humble submission of the applicants ought not to have been taken as final hearing in haste, with all regards to the age old adage justice hurried may occasion injustice buried. The hurry in the instant case has resulted in the omission of consideration of cancellation advertisement dated 4.12.2005 and other errors, of dates occasioning error of fact and error of law, and omission of compliance of CAT Rules.

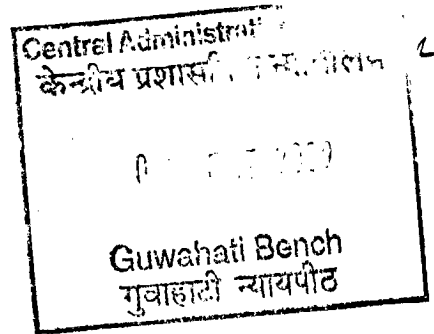
14. That there is error apparent when the Hon'ble Tribunal ignored the qualification requirement in Rules, 2003 as Matriculation plus Training in firefighting from an institute of repute. There is no period mentioned in the said Rules, 2003. The period of 6 (six) months in the advertisement is in derogation of the Rules, 2003 and as such the applicants are eligible under the Rules, and were called.

15. The Hon'ble Tribunal has made a patent mistake of fact by holding that by approaching the Court/Tribunal; they have sufficiently hindered the appointment of the selected candidates. This is not an objective assessment of the Hon'ble Tribunal, as would be seen from the following facts:

- (i) The screening test was held in May, 2007.
- (ii) No select list was published.
- (iii) Applicants in O.A. 15/2009 was filed on 6.2.2009 and interim order was passed on 9.2.2009.

Contd.....13

Zafar Hussain Sarkar

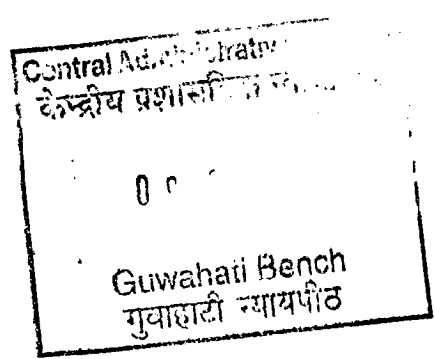


From May, 2007 to 9.2.2009, that during about 21 (twenty one) months (about 8 months of 2007, one full year i.e. 12 months of 2008 and one month in 2009) no select list was published and no appointment was made. Applicants approached the Hon'ble Tribunal for enforcement of their Rights in section 14 of the Act, Clause(a) for recruitment, for peaceful redressal of their grievance. The interim order was dated 9.2.2009 under the A.T. Act, 1985. The Hon'ble Tribunal has made an error of fact in their assessment of causing hindrance of appointment by approaching the Hon'ble Tribunal. This has been done without hearing on this aspect, this is violative of the Due process of law, and principles of natural justice. Error of fact and error of law is glaring and patent and the judgment dated 11.9.2009 deserves to be reviewed on this ground alone.

16. That in para 13 of the judgment the Hon'ble Tribunal has mentioned of affidavit-in-opposition before the Hon'ble High Court, and held that "knowing that well the applicants did not disclose (in the body of the original Application) about the cancellation dated 10.01.2007". (underlines added) It is respectfully stated and submitted that the applicants in O.A. 15/2009 were not applicants (parties) before the Hon'ble High Court in the subject. The non-application of mind, and forming opinion against the applicants for judgment, and in judgment beyond objectivity has denied justice, because it is humbly submitted that the applicants in O.A. 15/2009 did not know of such cancellation dated 10.01.2007 as alleged in para 13 of the judgment. And they

Contd.....14

Zakir Ansari Barbhui



have come to know that there was no cancellation on the said date i.e. 10.01.2007.

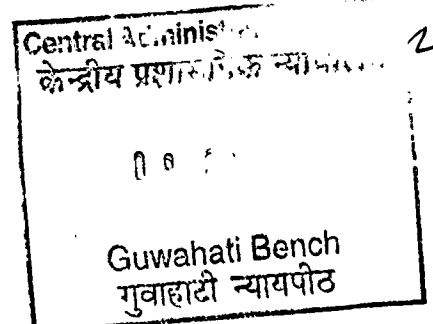
17. That the applicants beg to state that the judgment in W.P.(C) No. 2557/2007 before the Hon'ble High Court has been set aside in Appeal in W.A. No. 51/2009. In the humble submission of the applicants nothing in the said W.P.(C) ought to be relied upon without giving any scope of explanation/submission by the applicants, behind their back. In the affidavit-in-opposition relied on in the judgment of dated 11.9.2009, the respondents have made concocted/fictitious statement as to cancellation by an order dated 10.01.2007. No supporting document was annexed, and the annexures were given in camouflaged and in ambiguous manner beyond scope of easy identification.

The error in fact has crept in the judgment dated 11.9.2009 for the above reason. In the W.S. before this Hon'ble Tribunal, the advertisement dated 4.12.2005 for the cancellation has been enclosed as Annexure-IV. Cancellation in fact was by advertisement on 4.12.2005 not 10.01.2007. This error of fact has led to error of law. These errors are error apparent on the face of the record.

18. That the holding of the Hon'ble Tribunal that applicants got firefighter training by sufficiently misleading Assam Govt. authorities is not objective assessment, is behind the back of the applicants and is not correct. It is also not correct that they are not qualified under Rules, 2003. Such mistakes occurred for violating principles of natural

Contd.....15

Zakir Hussain Basha



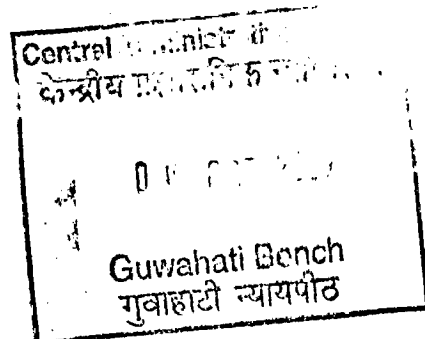
justice and not giving proper hearing. This is patent mistake and error of law.

19. That the depreciating observations in para 12 of the judgment regarding training of wards of civilians have been made. The applicants were not given any scope to explain the same and no body challenged the same before the Tribunal. The advertisement was very clear and open to all in the country. The Hon'ble Tribunal has made an error of fact and error of law in not expressing their mind of alleged discrimination, and unfounded allegation of violation of law of equality, and not inquiring the real position from the Respondents and State Govt. of Assam. The State of Assam is not a party in the O.A. and it is an error of fact and law to pass observations regarding authorities of Assam State Govt. in their absence any official in the respondent organisation and without hearing them. The Hon'ble Tribunal erred in fact in coming to the conclusion of verification of physical standard, without making any inquiry. The Hon'ble Supreme Court in Asish Mathur -V- Oil and Natural Gas Commission(1991 STPL(LE) 16623SC) up held the decision to give training to the wards of the employees of the ONGC. The Hon'ble Tribunal has erred in not looking to the law of the land regarding passing of disparaging remarks without giving notice, as laid down by Hon'ble Supreme Court and the law laid down in the ONGC case mentioned above.

20. That the select list has never been published. M.P. No. 75/2009 was filed praying for discovery and production of documents. Under Rule 87 of the CAT Rules of practice, 1993.

Contd.....16

Zakir Hussain Borthwick



The Hon'ble Tribunal ought to have passed necessary orders on the said M.P. before entering into the matter for hearing. But the Hon'ble Tribunal made an error in not passing order on the same, and held the O.A. as having been finally heard, and dismissed the same, and thereafter passed orders in the M.P. 75/2009. The process is reverse and denial of substantive and procedural justice and grave error has entered into the judgment. The judgment dated 11.9.2009 as such deserves to be reviewed and fresh/full hearing ordered. It is respectfully submitted that the procedures under the CAT Rules, is procedure established by law within Article 21 of the Constitution of India.

21. That the Hon'ble Tribunal has made grave error in not taking the records in W.S. of the O.A. 15/2009 in true and factual perspective and relied on the statement in the affidavit-in-opposition in the High Court in the W.P.(C) No. 2557/2007 judgment which was set aside by the Hon'ble Division Bench in W.A. No. 51/2009.

The factual position is written in the INDEX of W.S. in O.A. No. 15/2009 with some mistake in date, and omission of date. Relevant portion is as under :

Ser No.	Particulars	Annexure	Page No.
5.	Photo stat copies of earlier advertisement on 11 November 2005 was cancelled vide No. DAVP 7101/164/2005 and re-advertised vide No. DAVP 7101(200) 2006 dated 10th	III, IV V & VI	13 to 17

-: 17 :-

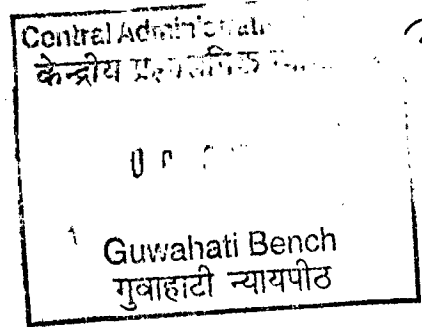
Ser No.	Particulars	Annexure	Page No.
	Jan 2007 and again advertisement and published vide No. DAVP 7101/2/2007 dated 15 Apr. 2007.	III, IV, V & VI	13 to 17

It is stated that earlier advertisement written above, in the Index the date on 11th November; 2005 has been written wrongly which is 19-25 Nov. 2005 as shown in the Annexure-III. The applicants beg to give the actual position from the above index & Annexures as under:

(i) Advertisement of 64 vacancies,	Annexure-III	dated	
		page 13 of W.S.	19-25 Nov 2005.
		S.	
(ii) Cancellation of the advertisement for 64 vacancies, DAVP 7101/164/2005	Annexure-IV	Date not disclosed in W.S. and Annexure (Actual date is 4.12.2005)	
(iii) Readvertisement i.e. fresh advertisement 48 vacancies vide DAVP 7101(200) 2006 stating required educational qualification to be only Matriculation.	Annexure-V	page 15-16 of W.S. Date 10.1.2007	

Contd.....18

Zohin Hussain Barokh



-----  
(iv) Advertisement of Corrigendum & Annexure & page 17 of  
notified fresh date of & -VI & W.S.  
screening on 1.5.2007 and & &  
*Other information.*  
-----

From the above it would be seen that the date of cancellation has been suppressed which the applicants have later discovered as 4.12.2005. Due to this omission of date in the aforesaid INDEX and the W.S., an error of omission of the above date of cancellation i.e. 4.12.2005 has crept into the judgment dated 11.9.2009, and in the confusing and sometime in correct dates in INDEX & W.S. date of cancellation has wrongly crept into the judgment and omission of actual date 4.12.2005 happened, which have vitiated the Judgment, Hon'ble Tribunal was misled in the above process in taking the date of cancellation as 10.01.2007, as if the cancellation was after 2006 Rules, <sup>(which is also not applicable)</sup> The DAVP No. of cancellation advertisement is also of 2005. The respondents knew that Rules 2006 is not applicable in the present case, and, therefore, have not mentioned about the same nor relied on the said Rules, 2006 either in the Hon'ble Gauhati High Court or before this Hon'ble Tribunal. The Rules, 2006 is extraneous in the present case.

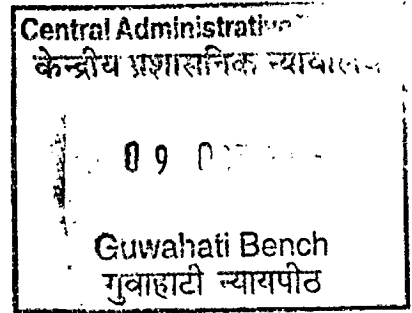
= Copy of the INDEX(1st page)  
of W.S. in O.A. No. 15/2009  
is enclosed as Annexure-I

= Copies of the advertisement  
in Dainik Yugasankha dated  
4.12.2005 for cancellation  
of 1st advertisement is enclosed

Contd....20

Zalim Hussain Barbar

-19-  
-: 20 :-



with translated copy in English,  
as Annexure-2

= Copy of Advertisement dated  
10.01.2007 of the fresh readvertised  
advertisement (enclosed with W.S.  
Annexure-V) is enclosed as  
Annexure-3 (This is Annexure M  
in O.A. No. 15/2009 as advertisement  
dated 13.12.2006)

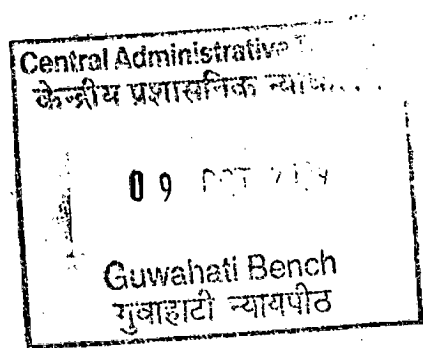
= Copy of the advertisement dated  
15.4.2007 which is corrigendum  
is enclosed as Annexure-4.

22. The Hon'ble Tribunal has made a grave mistake in not looking to the law laid down by the Hon'ble Supreme Court that vacancies occurring during a period shall be governed by the Rules in force during the period (Y.V. Rangaiah V. J. Sreenivasa Rao, AIR 1983 SC 852;) followed in number of cases by the Hon'ble Supreme Court, also in State of Rajasthan V. R. Dayal 1997 STPL(LE) 24088 SC). The Hon'ble Tribunal has also not looked to the law laid down by Hon'ble Supreme Court in case of training given towards of employees.

Hon'ble Supreme Court has been pleased to lay down that when the Tribunal has not looked into decision of the Hon'ble Supreme Court which is the law of the land, the remedy is an application for review. (K.G. Desai v. U.O.I. 2001(10) SCC 496)

Contd.....21

Zahir Hussain Barbati



23. That in the facts and circumstances the applicants most humbly states and submits that, this is fit case for review of the judgment, and that no prejudice shall be caused to any party if the Hon'ble Tribunal is inclined to grant re-hearing of the O.A., if the Hon'ble Tribunal is not inclined to allow the same after review.
24. That this application is made for cause of justice.
25. That this application is made bonafide

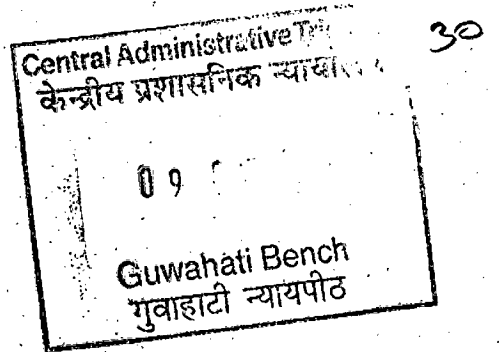
Under the circumstances the Hon'ble Tribunal may be pleased to review the judgment dated 11.9.2009 in O.A. No. 15/2009, as per procedure laid down in the CAT Rules, and be pleased to set aside the said judgment dated 11.9.2009, and be further pleased to pass order/judgment allowing the said O.A., or pass an order for fresh hearing of the O.A. with notice to the parties listing the same in the Hearing list,

- And -

Contd....22

Lalji Hussain Babbar

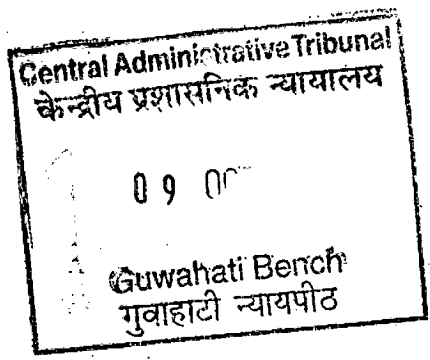
- 21 -  
-: 22 :-



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.

Zaki Hussain Borkher



**A F F I D A V I T.**

I, Zakir Hussain Barbhuyan aged about 30 years, son of Shri. Abdur Rashid, resident of Barjaha Pur, Cachar Assam, do hereby solemnly affirm that I am fully conversant with the case, and that the statements in the para 1 to 25 above are true to my knowledge and legal advice, and that I have not suppressed any material facts.

I swear and sign this affidavit this 5<sup>th</sup> day of October, 2009 at Guwahati

Zakir Hussain Barbhuyan  
Signature.

Identified by me

Kabita Goswami  
Advocate.  
5/10/09

Solemnly affirmed and sworn on before me being identified by Shri Kabita Goswami, this 5<sup>th</sup> day of October, 2009 at Guwahati

Chenakya Shankar Barbhuyan  
Advocate  
Signature.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

IN THE MATTER OF :

Original Application 15/2009

Zakir Hussain Barbhuiya & Others

..... Applicants

Versus

Union of India & others

..... Respondents

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

INDEX

<u>Ser No</u>	<u>Particulars</u>	<u>Annexure</u>	<u>Page No</u>
1.	Written statement		1 to 6
2.	Verification		7
3.	"Photo state copies of the qualification for requirement for the post of Fireman in the defence installation as post of Fireman in the Defence installation as envisaged in paragraph No 7 (8) of S.R.O. 180 dated 13 November 2003 as notified at part II of Section-4 in the Govt of India notification schedule.	I	8 to 11
4.	Only matriculation qualification was required for appointment of the Fireman vide Govt of India Ministry of Defence letter No A/26576/Fire Staff/OS-20/1286/(O-II) /2005 dated 11 November 2005	II	12
5.	Photo state copies of earlier advertisement on 11 November 2005 was cancelled vide No DAVP 7101/164/2005 and re-advertised vide No DAVP 7101/(200)2006 dated 10 Jan 2007 and again advertisement was published vide No DAVP 7101/2/2007 dated 15 Apr 2007	III, IV, V & VI	13 to 17

ALL TO  
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 Admt.

24  
 Central Administrative Tribunal  
 केंद्रीय प्रशासनिक न्यायालय  
 09 OCT 2005  
 Guwahati Bench  
 गुवाहाटी न्यायपीठ  
 ANNEXURE - 2

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

*Handwritten notes:*  
 G.P. → Trans  
 (A. Pannu)  
 22/11/05  
 Atul Pannu



10 Jan 2007 The Indian Express

Annex - V



RURAL  
T:  
E:mo

INVITATI

15

### 57 MTN DIV ORD UNIT

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

- (a) **Age limit:** 25 years as on date of physical test with relaxation to reserved categories as per Govt. orders.
- (b) **Qualification:** Matriculation
- (c) **Physical Standards:** Must be physically fit and capable of performing strenuous duties and must have passed the test specified below:-
  - (i) Height without shoes -- 165 cms provided that a concession 2.5 cms, height shall be allowed for members of the Scheduled Tribes.
  - (ii) Chest (un-expanded) -- 81.5 cms
  - (iii) Chest (on-expansion) -- 85 cms
  - (iv) Weight -- 50 Kgs (Minimum)
  - (v) **Endurance Test :-**
    - (bb) Carrying a man fireman lift of 63.5 Kgs to a distance of 183 meters within 96 seconds.
    - (ab) Clearing 2.7 meters wide ditch landing on both feet (long jump)
    - (ac) Climbing 3 meters vertical rope using hands and feet.

#### APPLICATION:

- 2. Two copies of application should be addressed to Administrative Officer, 57 Mtn Div Ord Unit, Pin -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:

- 4. The candidates are required to bring the supporting documents (in original) as attached to the application form at the time of physical tests.
- 5. Physical tests will be held on **01 March 2007 at 0730 hrs** onwards at Masimpur Military Station, (Assam) No. TA/DA is admissible for physical test. Any injury sustained by the individual during the physical tests will not be responsibility of this organization.

#### NOTES:-

- (i) Requirement subject to change by competent authority. Any change will be intimated through advertisement.
- (ii) Candidates will report to reception point at entry gate at Masimpur Military Station on date of physical tests with original documents, failing which he will not be permitted to undergo physical tests.
- (iii) The decision of the Unit Management will be final.
- (iv) The expenditure incurred on stay/food/transportation/ Medical expenses etc by the candidate at the time of selection test will be borne by the candidates.
- (v) Candidates who get selected will be required to obtain police verification.
- (vi) **Beware of touts. Recruitment is free of cost. Do not pay to any one.**

#### FORMAT OF APPLICATION (TWO COPIES)

The Commanding Officer  
57 Mtn Div Ord Unit  
Pin -909057  
C/O 99 APO  
Sir,

Recent Passport size Photo Attested  
by a Gazetted Officer

1. I want to apply for the post of FIREMAN in your unit. My personal details are as follows

(a) Name of the candidate : .....

(b) Father's Name : .....

(c) Qualification with its Xerox copy : .....

(d) Date of birth with its Proof (Xerox copy) : .....

(e) Employment Exchange : .....

Registration No and date if any : .....

(f) Category in which : Unreserved/Other Backward Class/Schedule Caste/Schedule Tribe/Ex-Serviceman (to be mentioned specifically)

(g) Present Postal address : .....

(h) Permanent Postal address : .....

(i) Citizenship with its Proof (Xerox copy to be enclosed) : .....

(k) Visible Identification marks : .....

(l) Qualification : .....

2. Certified that I do hereby declare that any of the above details submitted by me if are found false at any later stage, I shall be held responsible as per existing rules.

Date \_\_\_\_\_  
Signature of the candidate \_\_\_\_\_

#### CHECK LIST

- (a) Two copies of application (duly signed by the individual)
- (b) Three recent passport size photograph (one affixed on the application duly attested by Gazetted Officer) Rest attached alongwith application.
- (c) Application to be accompanied with self addressed registered envelope with postage stamps.
- (d) Photocopy of educational qualification with its age proof certificate
- (e) Photocopy of employment exchange registration card if any.
- (g) Photocopy of OBC Certificate for OBC Candidate. PPO for Ex-Serviceman.
- (h) Photocopy of proof of citizenship/domicile certificate.

1. The Government of India has towards the cost of Emergency cover eligible payments under open to all bidders from eligible Bidders from India should, how Governments / Government is advised to note the minimum qualify for the award of the contract.
2. On behalf of Governor of Tamil bidders for the construction of work following works, for the package
3. Bidding documents (and additl Implementation Unit, Collector on payment of a non-refundable any Scheduled bank payable interested bidders may obtain it by mail will be dispatched by Rs. 1,000/- The Department can documents or non-recapit of the

Sl. No.	Package No.	Name
1	TNRD/RD/05/ETRP/008	Providing Car pavement to Inter habitations at V Block
2	TNRD/RD/05/ETRP/011	Providing Car pavement to Inter habitations at Pa Block.
3	TNRD/RD/05/ETRP/012	Providing Car pavement to Inter habitations at TI Kollidam Block.
4	TNRD/RD/05/ETRP/014	Providing Car pavement to Inter habitations at The Block.
5	TNRD/RD/05/ETRP/015	Providing Car pavement to Inter habitations at Kollidam Block.
6	TNRD/RD/05/ETRP/010	Providing Car pavement to Inter habitations at Kollidam Block.
7	TNRD/RD/05/ETRP/022	Providing Car pavement to Inter habitations at Pillal Colony, Kuttilyandiyur (M. Sembanerkoll Bloc
8	TNRD/RD/05/ETRP/021	Providing Car pavement to Inter habitations at Sembanerkoll Bloc

4. Bids must be accompanied by so favour of The District Collector, forms as specified in the bidding, the bid.
5. Bids must be delivered to the Dir hours on **02.02.2007** and will be attend. If the office happens to be and opened on the next working.
6. A Pre Bid meeting will be held Implementation Unit, Collector above to clarify the issues and to state in Clause 9.2 of 'Instruction

DIPR/002/TENDER/2007

www.tn.

snvp 7101(200)2000

*[Handwritten signature]*

*[Handwritten signatures and notes]*

15 Apr 2007 The Sunday Express

ANNEXURE

Kusheshwar Astha:

Approx cost (Rs)	Earnest 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 Rty, Mahendraghat, Patna on production of demand draft from any nationalized/scheduled bank in favour of FA & CAO/Con/EC Rty, 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 15.05.2007. In case any tenderer wishes to obtain the tender document by post, Rs. 100 (Hundred) extra should be sent by demand draft in favour of FA & CAO/Con/EC Rty, Mahendraghat, Patna. 3. Tenders can be dropped in prescribed tender boxes placed in offices of the CAO/Con/EC Rty, Mahendraghat, Patna and CAO/Con/Northern Railway, Kashmiri 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 on the stipulated date and time due to some unforeseen holiday, tender will be received upto and opened on the next working day at the same place & time. Tender can also be sent to chief Administrative Officer, EC Rty, Mahendraghat, Patna-4 by registered post/speed post/courier service to reach before 12.00 hrs. of the date of opening. However, Rty. will not be responsible for non receipt or delayed receipt of such tenders. 4. The tender must be submitted with proper amount of Earnest Money in favour of FA & CAO/Con/EC Rty, Mahendraghat, Patna, tender without proper Earnest Money will be summarily rejected. The tender form is not transferable. 5.0 Eligibility criteria:- 5.1 Contractor should have completed in the last three financial years (i.e. current year and three previous financial years), at least one similar work, for minimum value of 35% of Advertised tender value, is 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 no. 3 of 2007-08 (Open) "Construction of any work involving structural concrete." Tender No. 4 of 07-08 (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." Case 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 shall 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 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 original contractor. (d) The original contractor shall be debarred from participating in the tender for getting 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 same 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 unfilled schedule 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.tenderstimes.com> II. The tender documents will also be available on site <http://www.tenderstimes.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 cost of the tender document as detailed above, the tender will be summarily rejected.

#19/272/88C CAO/Construction "SERVING CUSTOMERS WITH A SMILE"

PURCHASE DEPT. IGIA, NEW DELHI

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

Gen. Manager (Stores/Purchase)

15 APR 2007 SUNDAY

57 MTN DIV ORD UNIT CORRIGENDUM

Ref advt. No. 7101/200/2006 published in this newspaper on 10/17 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 davn 7101/2/2007

c/c  
bunul

Handwritten signatures and initials

Central Administrative Tribunal  
 केन्द्रीय प्रशासनिक न्यायालय  
 09 OCT  
 Guwahati Bench  
 गुवाहाटी न्यायालय

27

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R on  
14/9/09

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI  
O.A.No. 15 of 2009**

With  
**O.A.No.81 of 2009**

This the 11<sup>th</sup> day of September 2009

Present: The Hon'ble Mr. Manorjan Mohanty, Vice-Chairman  
The Hon'ble Mr. M.K. Chaturvedi, Administrative Member

O.A.No.15 of 2009

1. Zakir Hussain Barbhuiya  
S/o Abdur Rashid Barbhuiya  
Vill : Barjatrapur  
P.O: Barjatrapur  
P.S.: Barkhala  
Dist. Cachar  
Assam- 788 001
2. Sri Tazim Uddin Mazumdar  
S/o Abdul Jalil Mazumdar  
Vill: : Beladahar  
P.O: Nizjaynagar  
P.S.: Silchar Sadar  
Dist. Cachar  
Assam- 788 025
3. Pranoy Ch.Das  
S/o Sri Paresh Ch.Das  
P.O.: Rajnagar  
Dist. Cachar  
Assam-788 025

Applicants

By Advocate Dr. J.L. Sarkar

Versus

1. Union of India  
Represented by the Secretary  
Ministry of Defence  
Sena Bhawan  
New Delhi

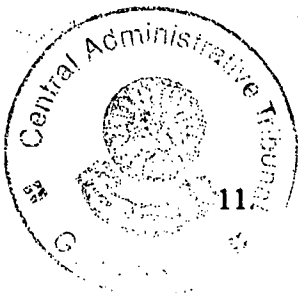
The Director General of  
Ordinance Services  
Army Hqrs. DHQ P.O.  
New Delhi- 110 011

3. The Commanding Officer  
57 Mtn Division Ordinance Unit  
C/o 99 APO-909 057



Attested  
M. K. Chaturvedi  
A.C.


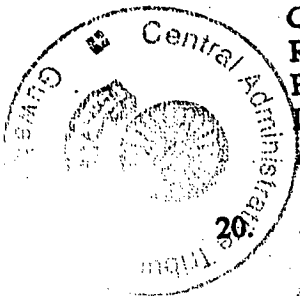
4. Ram Kumar, C/o Ram Gopal,  
resident of Vill-Chak 6H,  
PO-Patroda  
Dist.- Sriganganagar  
Rajasthan-335 701
5. Ravi Prakash,  
C/o Sumer Siongh,  
Resident of Vill-Manpur  
P.O. Manpur  
Dist.-Faridabad,  
Haryana-121 105
6. Anil Kumar,  
C/o Randhir Singh,  
Resident of Vill-Samalkha,  
P.O. Beejna,  
Dist. Karnal,  
Haryana- 132 001
7. Raju Biswas,  
C/o Gopal Chandra Baswas,  
Resident of Vill-Ramnagar Lamagram,  
P.O. Tarapur,  
Dist. Cachar, Assam-788 003
8. Apurba Baruah,  
C/o Horesh Baruah,  
Resident of Vill-Kamargaon,  
PO & PS-Kamargaon,  
Dist. Golaghat,  
Assam 785 619
9. Siva Baruah,  
C/o Jagedranath Baruah,  
Resident of Vill-Gelakey Changmaigaon,  
PO & PS-Gelakey,  
Dist. Sivanagar,  
Assam-785 696
10. Sudarshan Baruah,  
C/o Nityananda Baruah,  
Resident of Vill-Missamari,  
PO & PS-Halem,  
Dist. Sonitpur,  
Assam- 784 170
11. Nabajyoti Baishya,  
C/o Jogendra Nath Baishya,  
Resident of Vill-Dalibari,  
PO-Dadara,  
PS- Hajo,  
Dist. Kamrup, Assam-781 104



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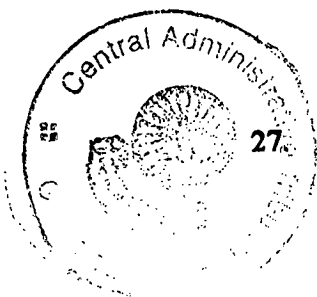
12. Nikhil Basumatary,  
S/o Lt. Longa Basumatary,  
Resident of Vill No.1 Shamukia,  
PO-Khelmati, PS-Tezpur,  
Dist. Sonitpur, Assam 784 152
13. Ranjan Sarkar,  
S/o Raj Kishor Sarkar,  
Resident of Vill-Fulkumari,  
PO-Silikhaguri, PS- Bijni,  
Dist. Chirang, Assam-783 390
14. Md. Laikat Ali Khan,  
S/o Md. Safiur Rahman Khan,  
Resident of Vill-Garoleti,  
PO-Patiladaka,  
Dist. Bongaigaon, Assam 783 391
15. Karuna Kumar,  
S/o Jogeswar Kumar,  
Resident of Vill-Niz-Jhaparabari,  
PO-Bengbori, PS-Paneri,  
Dist.-Udalguri[B.T.A.D.],  
Assam-784 523
16. Dhruba Jyoti Das,  
S/o- Lt. Bharat Das,  
Resident of Vill-Gendhali Gaon,  
PO- Gourmorah, PS-Pulibor,  
Dist. Jorhat, Assam-785 614
17. Bhaskar Pegu,  
S/o Gunadhar Pegu,  
Resident of Vill-Chinaichukgaon,  
PO-Bormukali,  
PS- Pulibor,  
Dist. Jorhat, Assam-785 614
18. Phiju Gogi,  
C/o Biren Gogi,  
Resident of Vill-Rangajan Bongalgaon,  
P.O. Rangajan., PS-Titabor,  
Dist. Jorhat, Assam
19. Ram Bahadur Chetry,  
C/o Sher Bahadur Chetry,  
Resident of Vill-Lakhipather,  
PO & PS-Lakhipather,  
Dist. Tinsukia,  
Assam- 786 171

Amul Singphoo,

C/o Khogen Shyam,  
Resident of Vill-Pather Shyam Gaon,  
PO-Deogharia,  
PS-Titabor,  
Dist. Jorhat, Assam-785 630

21. Bankim Ch. Deka,  
S/o Suchendra Nath Deka,  
Resident of Hindu Japari,  
PO-Taptola,  
Dist. Morigaon, Assam-782 121
22. Prasenjit Sinha,  
C/o Jogesh Ch. Sinha,  
Resident of Vill-Kachubari,  
PO-Tinokhal, PS- Patherkandi,  
Dist-Karimganj, Assam-788 724
23. Raja Miri,  
S/o Taku Miri,  
Resident of Vill No.1 Tokownigaon,  
PO- Samdang,  
Dist. Tinsukia, Assam 786 190
24. Joydip Rajongshi,  
S/o Khagen Rajbongshi,  
Resident of Vill-Alichiga-Mikirkhat,  
PO-Puranigudam,  
Dist. Nagaon, Assam-782 141
25. Rajesh Miri,  
S/o Taku Miri,  
Resident I of Vill No.1  
Tokownigaon, PO Samdang,  
Dist-Tinsukia, Assam-786 190
26. Babul Sinha,  
C/o Khaichouba,  
Resident of Vill. & PO-Tikarburunge,  
Dist. Cachar, Assam
27. Suresh Kumar,  
C/o-Om Prakash,  
Resident of Vill- Mandlana,  
PO-Dharsu,  
Dist. Mohinderarh, Haryana-123 001
28. Vijay Singh,  
C/o Hanumana Ram,  
Resident of Vill-Rajpura,  
PO-Ghardanakalam,  
Dist. Jhunjhunu, Rajasthan.



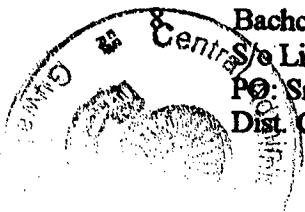
By Advocates Mr Kankan Das, Addl.C.G.S.C.  
Mr U. K.Nair for private Respondents

..Respondents

O.A.No.81 of 2009

1. Rajib Sinha,  
S/o Julian Sinha  
Vill. & PO- Srikona,  
Dist. Cachar[Assam]-788 026
2. Ananta Kumar Das,  
S/o Arun Kumar Das  
Vill: Srikona  
PO- Srikona  
Dist. Cachar[Assam]0 788 026
3. Sujit Paul,  
S/o Sunil Paul  
Vill: Kumarpara  
PO: Arunachal  
Dist.Cachar[Assam]-788 025
4. Sudip Chandra Paul,  
S/o Jyotish Chandra Paul,  
Vill: Kumarpara  
PO: Arunachal  
Dist. Cachar[Assam]-788 025
5. Joydeep Paul,  
S/o Jyotish Chandra Paul,  
Vill: Kumarpara  
PO: Arunachal,  
Dist. Cachar [Assam]-788 025
6. Sujoy Paul,  
S/o Samendra Paul,  
PO: Arunachal  
Dist.Cachar [Assam]- 788 025
7. Nivu Chandra Dey,  
S/o Nirendra Chandra Dey  
Vill: Badarpur Part II  
PO: Niz Joynagar,  
Dist. Cachar [Assam]-788 025

Bachchu Ali Barbhuiya,  
S/o Liakat Ali Barbhuiya,  
PO: Srikona  
Dist. Cachar [Assam]- 788 026



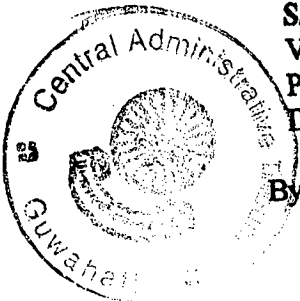
9. **Altaf Hussain Laskar,**  
S/o Lt. Haris Ali  
Vill: Tupkhana Pt.I  
PO: Arunachal  
Dist. Cachar [Assam]-788 025
10. **Lalit Sinha,**  
S/o Julan Sinha,  
Vill: Srikona Pt.I  
PO Srikona  
Dist.Cachar [Assam]- 788 026
11. **Jalal Uddin Barbhuiya**  
S/o Maskandar Ali Barbhuiya,  
Vill.& PO: Krishnapur,  
Via: Arunachal  
Dist. Cachar [Assam]-788 025
12. **Abdul Noor Laskar**  
S/o Badar Uddin Laskar,  
Vill: Tupkhana Pt.I  
PO: Arunachal  
Dist. Cachar [Assam]- 788 025
13. **Alim Uddin Laskar,**  
S/o Ashai Mia Laskar  
Vill: Tupkhana Pt.I  
PO: Arunachal  
Dist. Cachar [Assam]-788 025
14. **Alom Hussain Laskar**  
S/o Mainul Haque Laskar,  
Vill: Tupkhana Pt.I  
PO: Arunachal  
Dist. Cachar [Assam]-788 025
15. **Anwar Hussain Barbhuiya,**  
S/o Namar Ali Barbhuiya,  
Vill: Tupkhana Pt.I  
PO: Arunachal  
Dist. Cachar [Assam]-788 025

By Advocate Dr. J. L.Sarkar

Applicants

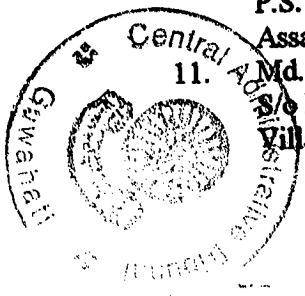
Versus

1. **The Union of India**  
Represented by the Secretary  
Defence Ministry, New Delhi  
Sena Bhawan-110 001
2. **The Director General of**  
Ordnance Services



Army Hqrs. DHQ PO  
New Delhi-110 011

- 3. **Commanding Officer**  
57 MTN DIV ORD Unit  
C/o 99 APO-909 057
- 4. **Sri Apurba Baruah,**  
S/o of Sri Haresh Baruah  
Village & PO; Komar Gaon  
PS: Kumar Gaon  
Dist. Golaghat  
Assam-785 619
- 5. **Sri Joydeep Rajbongshi**  
S/o Sri Khagen Rajbongshi  
Village: Mikirhat  
PO: Puranigudam  
PS: Samaguri,  
Dist. Nagaon  
Assam-782 141
- 6. **Sri Naba Jyoti Baishya**  
S/o Sri Jogendra Nath Baaishya  
Village: Dalibari, PO: Dadara  
PS: Hajo, Dist. Kamrup  
Assam-781 104
- 7. **Sri Amul Singphoo**  
C/o Sri Khogen Shvam  
Village: Deogharia,  
PO: Pather Shyam Gaon  
PS: Titabor,  
Dist.-Jorhat  
Assam-785 630
- 8. **Sri Ranjan Sarkar**  
C/o Sri Raj Kishor Sarkar  
Village: Fulkumari, PO: Silkhaguri  
P.S. Bijni, District: Chirang [BTC]  
Assam- 783 390
- 9. **Sri Nikhil Basumatary**  
C/o Sri Longo Basumatary  
Village No.1 Shamukia, PO: Khelamati  
PS: Puthimari, Dist. Snitpur  
Assam-784 152
- 10. **Sri Babul Sinha**  
C/o Khaichouba Sinha  
Village & PO: Tikarburunga  
P.S. Katigorah, Dist. Cachar  
Assam
- 11. **Md. Liakat Ali Khan**  
S/o Md. Safiur Rahman Khan  
Village: Garoliti, PO: Patiledaka



*[Handwritten signature]*

12. Dist.: Bongaigaon,  
Assam-783 391  
Sri Raju Biswas  
C/o Gopal Chandra Biswas  
Village: Ramnagar, Lamagram  
PO: Tavapur [Khelma]  
Dist. Golaghat  
Assam
13. Sri Ram Kumar  
C/o Ram Gopal  
R/o Vill: Chak 6H,  
PO: Patroda  
Dist: Sriganganagar,  
Rajasthan-335 701
14. Sri Anil Kumar  
S/o Sri Randhir Singh  
Village: Samalkha, PS: Beejna,  
District Karnal [Haryana]  
Pin: 132 001
15. Sri Siva Baruah  
S/o Sri Jogendra Baruah  
Village: Gelokey Changmagaon  
PO & PS Gelokey,  
District: Sivasagar  
Assam-785 696

Respondents

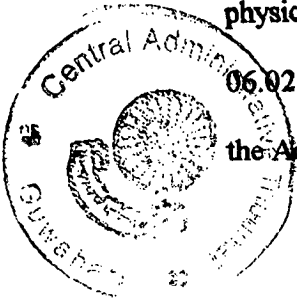
By Advocates Ms. Usha Das, Addl.C.G.S.C.  
Mr. U.K.Nair for private Respondents

O.A.No.15 of 2009 with O.A.No.81 of 2009  
JUDGMENT

Manoranjan Mohanty, Vice-Chairman-

Applicants (3 in number) in O.A. No.15 of 2009 faced a recruitment (for the posts of "Fireman" in 57 MTN.DIV.ORD. Unit); for which screening and physical tests were taken during 1<sup>st</sup> week of May 2007. By way of filing (on 06.02.2009) the present Original Application (No.15/2009) under Section 19 of the Administrative Tribunals Act, 1985, the Applicants have prayed as under:-

"8.1 That post of fireman (Gr.D Civilian) advertised by the employment notice and subsequent advertisement shall be filled up strictly following the requirements of the aforesaid Rules 2003 (a rule under Article 309, Annexure ) 4  
2



8 The result of the recruitment test be published following requirements of the said Rules of 2003 and the applicants be considered and appointed against the vacant posts advertised.

8.3 The candidates with qualification of matriculation only without any firefighting certificate shall not be considered for appointment against the advertised posts.

8.4 The instructions under letter dated 11.11.2005 (Annexure ) to read qualification as matriculation only be set aside and quashed.

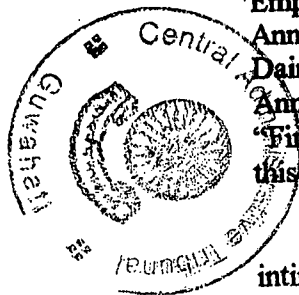
8.5 The qualification in the advertisement dated 13.12.2006 (Annexure-M) showing matriculation be set aside and quashed and mandated to be matriculation with firefighting training from institute of repute. The qualification for six months training in advertisement dated /2005 be set aside and quashed, and/or declared as having been waived by the respondents and substituted as matriculation with certificate of fire training from an institute of repute.

8.6 Any other relief or reliefs the Hon'ble Tribunal may kindly grant.

8.7 Cost of the case."

1.1 On 09.02.2009, while admitting the case (O.A. No.15/09) following interim orders were passed:-

"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 Jugasankha on 13.12.2006 under Annexure-M) so far made in the post of "Fireman", shall abide by the ultimate result of this case.



Respondents, accordingly, should intimate all the selected/appointed candidates about pendency of this Original Application No.15/2009; so that they shall remain free to contest this case. *hp*

*hp*

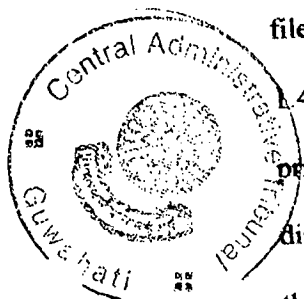
No fresh appointment of 'Fireman' should be made (till 30.03.2009) by the Respondents; without leave of this Tribunal.

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."

1.2 On 30.03.2009, on behalf of the Official Respondents, time was taken (up to 29.04.2009) for filing written statement. On that day (30.03.2009) the prayer (made in M.P.25/2009) of 25 persons (who claimed that (a) they are selected candidates and (b) for the reason of the interim order dated 09.02.2009, passed in O.A. No.15/2009, they have been prevented to be appointed; although selected) to be impleaded as Respondent Nos. 4 to 28 in O.A.No.15/2009 was allowed. They were also permitted, on 30.03.2009, to file their written statement by 29.04.2009.

1.3 On 29.04.2009 while the Official Respondents again took time till 25.05.2009 to file written statement; the newly impleaded private Respondent Nos.4 to 28 of O.A.No.15 of 2009 filed a Petition (Misc. Petition No.36/2009) seeking vacation/modification of the interim orders dated 09.02.2009 and for issuance of a direction (to the Official Respondents) to appoint them as 'Fireman' in accordance with their merit position. Applicants' side, on that day, took time to file an objection to the said Misc. Petition No.36/2009.

1.4 In their Misc. Petition No.25/2009 and Misc. Petition No.36/2009, the private/newly impleaded Respondents Nos. 4 to 28 of O.A.No.15 of 2009 disclosed, among other points, that some of the similarly placed candidates (as that of the three Applicants of O.A.No.15/2009) approached the Guwahati High Court with (i) a writ application [W.P ( C ) No. 2557/2007] ; which was dismissed on 26.11.2008; and (ii) and a Writ Appeal (No.51/2009) to the



Division Bench of the Hon'ble Court, wherein it was held (on 11.02.2009) that there were lack of jurisdiction with the Hon'ble Court (to entertain the dispute involved) and that this Tribunal has the jurisdiction.

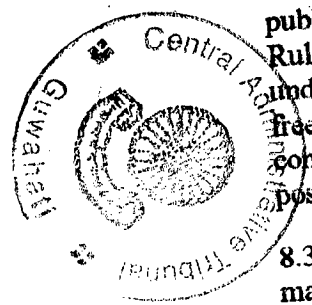
1.5 On 25.05.2009, on behalf of the Applicants, an objection to M.P.No.36/2009 was filed. On behalf of the Official Respondents, on that 25.05.2009, a written statement (to the O.A.No.15/2009) was also filed; wherein it was prayed to dismiss/reject the case (O.A.No.15/2009) immediately, so as to facilitate issuance of appointment order to the selected candidates, for the Applicants are indulging in delaying tactics in issuing appointment orders to the short-listed candidates for appointment in the post of fireman which causes inconveniences to 57 Mountain Division Ordnance Unit in its day to day functioning without fire staff.

2. In the meantime, on 01.05.2009, the 15 candidates (who approached the Hon'ble Guwahati High Court in W.P.(C) No.2557/2007 and W.A. No. 51/2009, after being unsuccessful in the selection process of recruitment of Firemen in question) approached this Tribunal with O.A. No.81/2009; wherein they prayed as under:-

“8.1 The post of fireman (Gr.D Civilian) as advertised by the employment notice indicating DAVP No.7101/0153/2005 and subsequent advertisement shall be filled up strictly following the requirements of the aforesaid Rules 2003 (a Rule under Article 309, Annexure-F)

8.2 The result of the recruitment test be published following requirements of the said Rules of 2003 conducting fresh physical test under the supervision of higher authorities for a free and fair selection and the applicants be considered and appointed against the vacant posts advertised.

8.3 The candidates with qualification of matriculation only without any firefighting



J

certificate shall not be considered for appointment against the advertised posts.

8.4 The instructions under letter dated 11.11.2005(Annexure-E) to read qualification as matriculation only be set aside and quashed.

8.5 The qualification in the advertisement dated 13.12.06 (Annexure-G) showing matriculation be set aside and quashed and mandated to be matriculation with firefighting training from institute of repute. The qualification for six months training in advertisement indicating DAVP No.7101/0153/2005 be set aside and quashed, and/or declared as having been waived by the respondents and substituted as matriculation with certificate of fire training from an institute of repute in terms of the Rules 2003.

8.6 Any other relief or reliefs the Hon'ble Tribunal may kindly grant.

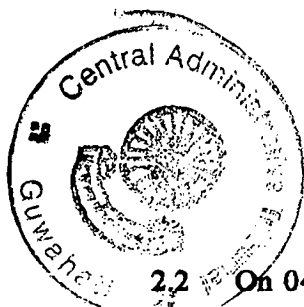
8.7 Cost of the case."

2.1 The following interim prayers were also made in the said O.A.No.81/2009:-

"9.1 No appointment shall be made for those with qualification only matriculation (no fire fighting training).

9.2 Early consideration of appointments of those (including the applicants) fulfilling qualifications as mandated by Rules 2003."

2.2 On 04.05,2009, while directing for issuance of notices to the Respondents of O.A.No.81/2009, no interim orders were passed (in view of the interim orders passed in O.A.No.15/2009) and the matter (O.A.No.81/2009) was posted to 25.05.2009 (to which date O.A.No.15/2009 was posted) awaiting written statement from the Respondents.



2.3 On 25.05.2009, the Official Respondents filed certain documents and, on 15.06.2009, they filed written statement in O.A.No.81/2009 with prayer to dismiss the said case.

3. In the above premises, the matters relating to [(a) extension of /vacation or alteration of interim order dated 09.02.2009] rendered in O.A.No.15/2009 and (b) grant of interim order in O.A.81/2009 was taken up on 15.06.2009; when Dr. J.L.Sarkar, learned Counsel appearing for the Applicants of both the cases, Mr.U.K. Nair, learned Counsel appearing for private Respondents in both the cases; Mr. Kankan Das, learned Additional Standing Counsel appearing for Official Respondents in O.A.No.15 of 2009 and Ms. Usha Das, learned Additional Standing Counsel appearing for the Official Respondents in O.A.No.81/2009 were heard and orders were reserved

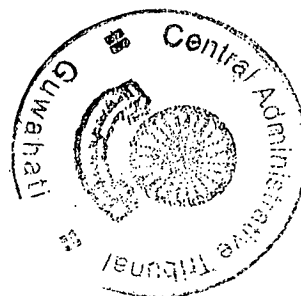
3.1 On 17.06.2009, Ms. Usha Das, learned Addl. Standing Counsel appearing for Respondents in O.A.No.81/2009 filed a list of citations. On behalf of the Applicants in O.A.No.15/2009, (a) a Memorandum dated 18/23.06.2009 and (b) another Memorandum dated 21/23.06.2009 were filed on 23.06.2009. By an order dated 25.06.2009, both cases(O.A.Nos.15/2009 and 81/2009) were asked to be listed on 03.07.2009 under the heading "TO BE MENTIONED".

3.2 In her Memo Dated 17.06.2009, Ms. Usha Das, learned Addl. Standing Counsel gave a list of following citations;-

AIR(1986) SC 1043

(1995) 3 SCC 456

(1992) 4 SLR 65



In his Memo Dated 18.06.2009, Dr. J.L. Sarkar, learned Counsel for the

Applicants of both the cases, gave a list of following citations:-

(1989) SCC 175 (180)

1989(2) SCC 541

(1987) 2 SCC 544

AIR 1978 SC 17(21)

AIR 1974 SC 555

AIR 1978 SC 597

AIR 1986 SC 180


AIR 1961 SC 564

(1955) 1 SCR 613

AIR 1959 SC 149

In the said Memo dated 18.06.2009, Dr. J.L. Sarkar also prayed to list these matters before a Division Bench.

3.3 On 03.07.2009, these cases were asked to be listed on 07.08.2009. On 07.08.2009, these matters were taken up before us in the Division Bench, when, (while considering about interim matters) the Counsel for the parties took us through the matter on merit of both the cases and, in the said premises, final hearing to the entire matter (in both the cases) were taken up; when Ms. U.Das, learned Addl. Standing Counsel for Govt. of India produced before us a Departmental File and also produced (after serving copies thereof) the new Recruitment Rules (pertaining to recruitment of Firemen) of 05.07.2006 issued under the proviso to Article 309 of Constitution of India.

3.4 We heard the arguments of Dr. J.L. Sarkar, learned Counsel for the Applicants of both the cases; Mr. U.K. Nair, learned Counsel for the private Respondents of both the cases, Ms. Usha Das, learned Addl. Standing Counsel for Union of India representing the Respondents in O.A.No.81/2009 and Mr. 

Kankan Das, learned Addl. Standing Counsel representing the Respondents in O.A.No.15/2009; who took us through the materials placed on record.

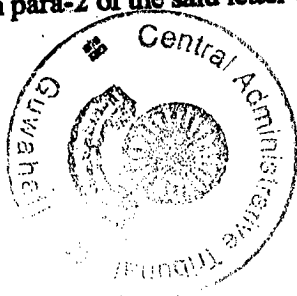
3.5 By this common order both the cases are being disposed of.

4. Materials placed on record goes to show as under,-

4.1 By Letter No.A/26576/Fire Staff/OS-20/168/-D(O-II) dated 03.02 2000 (of the Under Secretary to the Govt. of India in the Ministry of Defence) that was addressed to the Chief of Army Staff (in supercession of all previous sanctions issued regarding authorization of Fir-fighting personnel in the Army Ordnance Corps) that Presidential Sanction to restructure the Fire-Fighting Cadre in the Army Ordnance Corps was conveyed revising Cadre structure along with revised designation, pay-scales and number of posts; wherein it was specified as under,-

Present Cadre		Restructured Cadre		Revised Pay Scale
Designation	Existing Strength	Designation	Revised Strength	
Fireman I/II	2826	Fireman	2826	Rs.2750-4400
xxx	xxx	xxx	xxx	xxx

4.2 In para-2 of the said letter dated 03.02.2000, it was stated as under,-



"The educational qualifications and guidelines for method of rectt. of above re-structured posts has been laid down in the Annexure-A to this letter; for which rectt. Rules will be notified in due course."

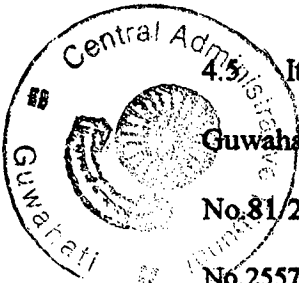
*[Handwritten signature]*

4.3 In Annexure-A to the above said Govt. letter dated 03.02.2000,, the qualification and Method of Recruitment for re-structured posts of Fire Staff (2000) was specified; relevant portion of which reads as under:-

Designation	Qualification	Method of Rectt.
Fireman	Matriculation & Trg. In fire-fighting under a State Fire-Service or an institute of repute	Direct Rectt.
XXX	XXX	XXX

4.4 Long after three and half years, a set of Recruitment Rules (called Army Ordnance Corps (GP 'C' and 'D' posts Non-Gazetted] Recruitment Rules, 2003) were issued on 13.11.2003 (in exercise of the powers under the proviso to Article 309 of the Constitution of India) under the signature of the Under Secretary to Govt. of India; wherein "Matriculation and Certificate of having undergone a Fire Course/Fire Service Training from an institute of repute" was shown to be the required qualification for the post of Fireman.

4.5 It appears from the copy of writ petition WP[C] No.2557/2007 of Hon'ble Guwahati High Court [filed as Annexure-H to the Original Application No.81/2009) and the copy of the Affidavit-in-Opposition filed (in said W.P(C) No.2557/2007) on behalf of the Official Respondents before the Hon'ble High Court of Guwahati (Annexure-2 to the M.P.No.36/2009 in O.A.No.15/2009) that on the request of the Civilian employees of 57 Mountain Division Ordnance Unit, the wards of the said Civilians were provided assistance to get them same sorts of elementary fire fighting training without verification of their physical fitness.



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4.6. Under Annexure-B dated 06.07.2005, to O.A.No.81/2009, the Second in Command of 57 Mtn. Div. Ord. Dept. requested the Director of Fire Service Organisation of Assam to the following effect:-

"FIRR SERVICE TRG COURSE"

1. It requested that wards of civilian employees of this unit be imparted fire service trg course at your school in Jul 05 session, as per lists 'A' & 'B' attached. Priority may please be accorded to incl of list 'A'.
2. It is further requested that experience certificate/Trg certificate may please be issued after completion of one month trg to each individual.
3. Your cooperation will be highly appreciated."

4.7. In response to the above communication dated 06.07.2005, the Director of Assam State Fire Service Organisation wrote back to 57 Mtn. Dvn. Ord. Unit (on 16.07.2005) as follows:-

"Sub: FIRE FIGHTING TRAINING FOR CIVILIAN EMPLOYEES OF C/O-99 APO.

Ref: Letter No.0374/110/CIV/EST Dtd. 6<sup>th</sup> July/05.

1. With reference to the above, please find herewith the training Schedule of the North East Regional Fire Fighting Training Centre Sila, North-Guwahati under State Fire service Organisation Assam which will serve your purpose as desired.
2. Further I like to inform you that we have only 30 (thirty) Seats for basic Fire Fighting training Course where 23(twenty three) trainees are already undergoing training for a period of 25(twenty five) weeks w.e.f. 4-7-05.
3. We cannot accommodate all of your trainees at a time. However, we may accommodate 10(ten) trainees in each batch for a period of 1(one) month training Course.
4. You are requested to send 10(ten) trainees at a time. Before sending your candidates please finalise the date of commencement of the training from the undersigned well in advance."

4.8. The contents of the above said letter dated 16.07.2005 of Assam Fire Service Organisation goes to show that, as if the said Director was entertaining a



*[Handwritten signature]*

proposal pertaining to Civilian Employees (trainees) of certain Armed Force Organisation; although the proposal was relating to the wards of the employees.

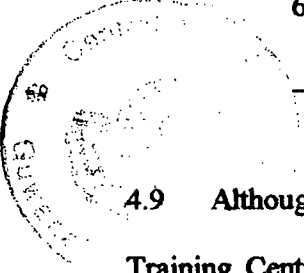
A "Training Schedule with Terms and Conditions" was enclosed with the above said letter dated 16.07.2005. Relevant portion of the same is extracted below:-

**"TRAINING SCHEDULE  
NORTH EAST REGIONAL FIRE FIGHTING TRAINING  
CENTRE, SILA, NORTH GUWAHATI**

Sl.No.	NAME OF THE COURSE	DURATION OF COURSE
1.	Fire Fighting Training Course For station Officer/sub-O	25 weeks.
2.	Fire Fighting Training Course for R/Fireman	25 weeks
3.	Motor Maintenance and Pump Operation Training for Driver	10 Weeks.
4.	Refreshers Course for Station Officers/sub-O	6 Weeks.
5.	Refreshers Course for Leading Fireman/Fireman	4 Weeks.
6.	Refreshers Course for Drivers	4 Weeks.

4.9 Although no basic course for 4-weeks were available in the aforesaid Training Centre, by some unknown arrangements, 11- wards of the Civilian Employees of Respondent Organisation were entertained as trainees for the period between 01.08.2005 to 31.08.2005; as is evident from the letter dated 01.08.2005 of the Training Officer of NER Fire Fighting Training Centre/North Guwahati. Relevant portion of the said letter dated 01.08.2005 is extracted

below:-



4.10. In para 4 of the Affidavit in opposition filed (by the official Respondents) in W.P.(C) No.2557 of 2007 (a copy of which has been filed as Annexure-I to O.A.No.81/2009, it was clearly disclosed that 'on the request of the Civilian Employees (purely as a welfare measure to the Civilian Employees serving under the Division Ordnance Unit) the wards of the said Civilians were provided assistance to get themselves trained in the said course. No check for physical fitness was carried before the wards of Civilian Employees proceeded for the said one month fire training.

4.11 By a communication dated 11.11.2005 of Govt. of India in MoD, following amendments in Annexure-A to GOI/MoD Letter No.A/26576/Fire Staff 105/20/255/D (O-II) dated 03.02.2000 (Supra) were carried out;-

"Qualification for Firemen

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

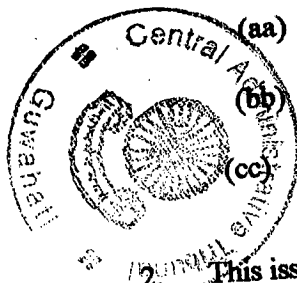
Read: (a) Matriculate

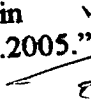
(b) Must be physically fit and capable of performing strenuous duties and must have passed the test specified below:-

- (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.
- (iii) Weight - 50 Kgs. (minimum)

(iv) Endurance Test:-

- (aa) Carrying a man (fireman lift 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 ump)
- (cc) Climbing 3 meters vertical rope using hands and feet.



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." 

4.12 Accordingly, the aforesaid Rules of 2003 stood superseded by "Army Ordnance Corps. Fire Staff(Group 'C'-Non-Gazetted) Recruitment Rules 2006" and the same was published in Official Gazette being given SRO No.93 dated.05.07.2006. Under the said new Rules of 2006, requirement to become a Fireman was as under:-

"(ii) 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 in concession 2.5 cms height shall be allowed for members of the Schedule 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 lift 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).

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



4.13. An advertisement was published in Employment News (dated 19.11.2005) for recruitment to the posts of Fireman in 57 Mtn. Ord. Unit; wherein qualification required was shown as HSLC with Fireman Training for six months. It appears, the Applicants of both the cases (who, apparently, acquired only one month training in a Govt. Institute; as aforesaid, being identified as Civilian employees of the Respondent Organisation) applied in response to the said advertisement.

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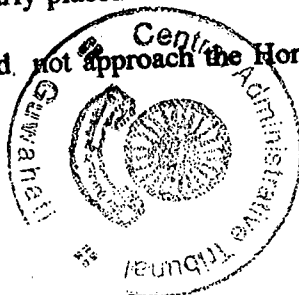
4.14 Before any recruitment was taken up, pursuant to the above said advertisement dated 19.11.2005, the same (Advertisement dated 19.11.2005) was cancelled on 10.01.2007 and a fresh advertisement was issued on 15.04.2007 for recruitment for posts of Fireman in the said 57 Mtn. Div. Ord. Unit and, in the said advertisement dated 15.04.2007, it was stated that the required educational qualification to be only Matriculation. This Advertisement was consistent with the new Rules of 2006.

4.15 Candidates (including those who applied pursuant to earlier Advertisement dated 19.11.2005) were called to face the recruitment (excepting those who were over-aged) and 48 candidates were selected and, out of those 48 selected candidates, 40 candidates are from the State of Assam, 01 was from Manipur, 04 from Haryana, 02 from Rajasthan and 01 from the State of Orissa.

5. Applicants of OA No.81/2009 (15 in number) approached the Hon'ble Guwahati High Court (in WP (C) No.2557/2007) challenging the selection of above said 48 candidates and the said writ application was dismissed on 26.11.2008.

6. The above order dated 26.11.2008, of the Hon'ble Court, became subject-matter of challenge before the Division Bench of the said Hon'ble High Court in Writ Appeal No.51/2009 and, because of the jurisdiction vested with this Tribunal (pertaining to 'recruitment to Govt. of India Services), the Division Bench of the Hon'ble Court allowed the Appeal, on 11.02.2009, and the order dated 26.11.2008 was set aside.

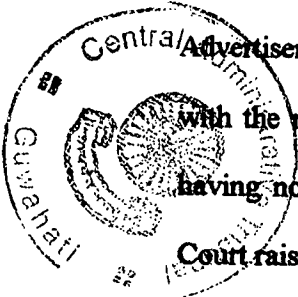
7. In the above premises, the Applicants of present OA No.81/2009 have approached this Tribunal and Similarly placed wards of the Civilian Employees of Respondent Organisation, who did not approach the Hon'ble Court, are now before us in OA No.15/2009.



8. The grievances of the Applicants, of both the cases, are that when the statutory requirement was Matriculation plus fire Fighting Training for six months, the candidates having no Fire-fighting Training could not have been entertained as candidates nor could they have been selected as Fireman; simply on the strength of Executive Instructions dated 11.11.2005, which was contrary to the statutory Rules of 2003. It has, however, been pointed out on behalf of the Respondents, that Applicants also had no six-months training. Dr. J.L. Sarkar, learned Counsel appearing for the Applicants of both the cases argued strenuously stating that the recruitment in question could not have been based on an executive instruction dated 11.11.2005; which was contrary to Statutory Rules of 13.11.2003. This argument was advanced despite the fact that Ms. Usha Das, learned Addl. Standing Counsel produced( on 07.08.2009) a copy of the new Recruitment Rules of 05.07.2006.

9. As has been seen, 1<sup>st</sup> Advertisement was issued on 19.11.2005 in accordance with the Old Recruitment Rules of 2003. But before recruitment, the new Recruitment Rules of 2006 were notified on 05.07.2006 and the 1<sup>st</sup> Advertisement dated 19.11.2005 was cancelled on 10.01.2007. A fresh Advertisement was, however, issued on 15.04.2007 with stipulations consistent with the new Rules of 2006. The Applicants were called to the selection and, having not been selected at fitness verification stage, approached the Hon'ble Court raising all sorts of allegations.

10. Thus, on the facts of the case, the above noted argument of Dr. Sarkar falls to the ground. We have found no violation of any statutory rules nor we have found any executive instructions to have over-ridden any provisions of any of the Statutory Rules in the matter of the recruitment in question and, as such,



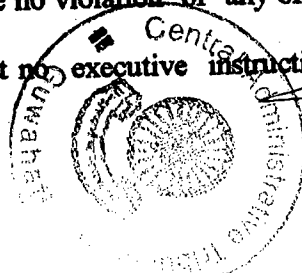
there were no miscarriage of justice in the selection process that led to selection of 48 candidates for the post of Fireman in 57 Mtn. Div. Ord. Unit.

11. Applicants, who obtained some Fire-fighter training certificate (of covering only one month) apparently by sufficiently misleading Assam State Govt. authorities, were also not qualified under the Old Rules of 2003/the 1<sup>st</sup> Advertisement dated 19.11.2005; because they did not have six-months Training. They were apparently disqualified in the selection process. But by approaching the Court/Tribunal; they have sufficiently hindered the appointment of the selected candidates.

12. The 2<sup>nd</sup> in Command of 57 Mtn. Div. Ord. Unit ought not to have sponsored the children of the Civilian Staff without making it open for all the youth of the country. By that conduct, he not only misled the children of the Civilian Employees of his Unit, but violated the constitutional provisions of equality in the matter of getting public employment. It is not known as to how the authorities of Assam State Govt. were misled and treated the wards of civilian employees of a Military Unit (to be Civilian Employees) without verification of their physical standard and as to how they were given one month training in absence of prescribed course of one month.

13. In the Affidavit-in-opposition filed before the Hon'ble High Court it was clearly stated (by the official Respondents) about cancellation of the 1<sup>st</sup> Advertisement dated 19.11.2005 by an order dated 10.01.2007. Knowing that well, the Applicants did not disclose (in the body of the Original Application) about the cancellation dated 10.01.2007.

14. For the reason of our finding that there were no violation of any of the Rules governing the Recruitment in question and that no executive instructions



were allowed to over-reach the statutory provisions in the matter of recruitment of Firemen in question, we dismiss these cases; vacate the interim restraint order dated 09.02.2009 passed in O.A.No.15 of 2009 and, as a consequence, grant liberty to the Official Respondents to appoint the selected 48 candidates as Fireman under them. No costs.



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Sd/-  
M.R. Mohanty  
Vice Chairman  
Sd/-  
M.K. Chaturvedi  
Member (A)

TRUE COPY  
प्रतिलिपि  
अनुभाग अधिकारी  
Section Officer (Judicial)  
Central Administrative Tribunal  
गुवाहाटी न्यायपीठ  
Guwahati Bench  
गुवाहाटी/Guwahati

Affected  
M.R. Mohanty  
Adv