

01/00

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

CD MP 307/97 under page 1 dtd 16.12.97  
(2) MP 184/97 under page 1 dtd 1.7.97  
(3) MP 162/97 under page 1 dtd 5.6.97

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SECTION OFFICER (Judl.)

OA No. 200196

vs. M. S. Baidya Applicant(s)

Union of India & ors Respondent(s)

Mr. H. Rahman, A. Barua Advocates for the applicant(s)

Mr. M. K. Choudhury, R. C. Advocates for the Respondent(s)

Office Notes

Date

Courts' Orders

20-9-96

This application is in  
form and within time  
C. F. of Rs. 50/-  
deposited vide  
IPO No. 44.4.108  
Dated 11.9.96  
Dr. Registrar  
12/9/96

(1)

Learned counsel Mr. H. Rahman  
for the applicant moves this appli-  
cation. Perused the contents of the  
application and the relief sought.

Heard counsel of the appli-  
cant. Application is admitted.  
written statement within 6 weeks.

List for written statement  
and further order on 12-11-96.

lm

Member

30.9.96

Notice of service  
No. 8 extra service  
copy may dep. in  
disposal of No. 705  
Rs. 45/- add. 30.9.96

12.11.96

(2)

Mr H. Rahman for the applica-  
Mr B. Mehta for Mr M. K. Choudhury.  
Railway counsel seeks four weeks  
time to file written statement.  
Allowed.

List for written statement  
and further orders on 9.12.96.

Member

30.9.96

Notice issued to the  
concerned parties vide  
D. No. 33/2 dt. 3.10.96

pg

W

12/11

24.10.96

Notice defers  
on reports No. 1, 2, 3, 4, 5  
6, 10, 12, 13. 7, 11

Ban

Notice duly served on  
Respondents nos 1-6 & 10, 12  
13. 9-12-96  
w/statement - has not been (3)  
filed.

11/11

1) w/statement - has not  
been filed.

11/11

1) Written Statement has  
not been submitted.

3.1

6.1.97

(4)

28/1/97

NO written  
Statement has  
been submitted.

28/1

nkm

11/11

29.1.97

(5)

Notice duly served on  
respondents no. 1-7 & 10-13.

No w/statement - has  
not been filed.  
Name of appearance has not  
been filed. Rly. Adv.

Learned counsel Mr. H. Rahman for the  
applicant. Notices have been served on  
respondent No. 1 to 6 and the private respon-  
dent No. 10, 12 and 13. Written statement has  
not been submitted by the respondents.

List for written statement and further  
order on 6-1-97.

Member

None present. No written statement has been  
submitted.

List for written statement and  
further orders on 29.1.97.

Member

Mr H. Rahman, learned counsel for  
the applicant present. Mr M.K. Choudhury  
learned counsel for the respondents pray  
for 10 days time to file written state-  
ment. 10 days time allowed as last chance.  
No further adjournment <sup>shall be</sup> granted. If no  
written statement is filed within this  
extended time the case will be fixed for  
hearing without written statement.

List on 12.2.1997 for written state-  
ment.

Member

Vice-Chairman

pg

11/11  
312

(3)

12.2.97

Mr B.K.Sharma, learned counsel

(6)

on behalf of Mr M.K.Choudhury prays for further extension of time to file written statement. Time was extended on various dates. On 29.1.97 the Tribunal allowed 10 days time as a last chance. It was also mentioned that no further adjournment could be granted. In view of the above, we are not inclined to grant any further extension of time.

Let this case be listed for hearing on 13.3.97.

12-3-97

1/ Notice duly served on R.No-1407 and 10 to 13.

2/ written statement has not been submitted.

21  
12-3

28-4-97

Vakalatnama filed by Mr. M. Chandra, Adv.

6  
Member

JB  
Vice-Chairman

pg

18/2

13-3-97

(7)

Mr.H.Rahman counsel for the applicant is present. List for hearing on 29-4-97.

4--6-97

Memo of Appearance filed by Mr. J. L. Sarkar, Railway Standing Counsel.

1m

13/3

6  
Member

29-4-97

(8)

Learned counsel Mr.N.Baruah for the applicant is present.

List for hearing on 5-6-97.

6  
Member

JB  
Vice-Chairman

1m

30/4

6-6-97

5.6.97

(9)

In terms of order dated 5-6-97 passed in mp. 162/97 written statement filed on behalf of the Respondents,

6  
Member

JB  
Vice-Chairman

nkml  
6/6

24-6-97

O.A.No.200/96

Written Statement 1.7.97  
Filed on behalf (10)  
of The respondent  
No-5 with a prayer  
MP- No- 184/97.

In view of the order passed in M.P.  
No.184/97 the written statement of respondent  
No.5 is accepted. Let this case be listed  
for hearing on 10.7.97 as ordered earlier.

Member

Vice-Chairman

nkm

2/7

7.7.97

Mr H. Chanda,  
learned Advocate  
has been filed an  
Vakalatnama on behalf  
of the respondents  
NO. 7 (Ganesh Prasad)  
and 9 (H. Tondra):

10.7.97

(11)

Mr H. Rahman, learned counsel for  
the applicant, prays for a short adjournment  
because he needs some instructions in the  
matter. Mr J.L. Sarkar, learned Railway  
Counsel, has no objection. Accordingly,  
the case is adjourned to 5.8.97.

Member

Vice-Chairman

7/7/97.

nkm

14/7

W/s by Mr L. W.  
on R.Ns 1-4:5

5.8.97

(12)

Division Bench is not sitting.

Let the case be listed on 27.10.1997.

By order

24.10.97

trd

1) Written Statement has  
been filed on behalf of  
The Respondents 1 to 5.  
2) Notices duly served  
on R-1-6, 7, 10, 11 and 13.

27-10-97

(13)

There is no representation  
on behalf of the applicant. Mr.J.L.  
Sarkar learned counsel for Railway  
Administration is present. Case is  
dismissed for default.

Member

Vice-Chairman

29/10

29.10.97

Copy of order has been  
issued to the L/As of the  
Sarkar vide nos. 37304/333/  
on 4.11.97

lm

29/10

16.12.97

In view of the order passed in

(14) M.P.307/97 the O.A. is restored to file.

List for hearing on 3.3.1998.

Member

Vice-Chairman

pg

3.3.98

Let the case be listed for hearing

(15) on 18.6.98.

Member

Vice-Chairman

pg

18-6-98

Mr.H.Rahman learned counsel appearing on behalf of the applicant submits that the applicant has been given relief by the department. So the applicant does not want to press the petition. Accordingly, the petition is dismissed as not pressed. Mr.J.L.Sarkar learned counsel for Railway Administration has no objection.

Member

Vice-Chairman

lm

22/6

26.6.98

Copies of the order have been sent to the D/Sec. for issuing the same to the parties through Regd. with A.D.

etc.

issued vide No. 1805-1816  
dt. 30-6-98

W/s has been b/w  
on R.Nos. 1-5  
the other Reports are  
still awaited

Notice duly served  
on R.Nos. 1-7,  
10-11, & 13.

2/3

Notice duly served  
served on R.Nos. 1-7  
10-11 & 13

W/s has been b/w  
on R.Nos. 1-5

17/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: AT GUWAHATI.

O.A. No. 200 of 1994.

Sri Manmohan Sukla baidya

... Applicant.

- Vs -

Union of India and others.

... Respondents.

I N D E X

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Filed By :

N.Barua,  
Advocate.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

Application under Section 19 of the  
Central Administrative Tribunal Act,  
1985.

ORIGINAL APPLICATION NO. 200 OF 1996.

Sri Monmohan Suklabaidya,  
son of late Mohendra Chandra  
Suklabaidya, Resident of Quarter  
No. T/14, Station Colony,  
Guwahati-781001.

... Applicant.

-VERSUS-

- ✓ 1. The Union of India,  
represented by the General Manager,  
N.F. Railway, Maligaon, Guwahati-11.
- ✓ 2. The General Manager,  
N.F. Railway, Maligaon.
- 3. The Chief Personnel Officer,  
N.F. Railway, Maligaon.
- ✓ 4. The Deputy Chief Personnel  
Officer(G), Maligaon.
- ✓ 5. Sri Dipak Talukdar,  
Dy. CCM(CL), N.F. Railway, Maligaon.

Contd...2.

*M. Suklabaidya*

*Monmohan Suklabaidya*  
*Applicant*  
*through*  
*M. Banerjee, Advocate*



2.

✓ 6. Sri J.N.Das,

STM(G), N.F.Railway, Maligaon,  
Guwahati-11.

7. Sri Ganesh Prasad,

Area Manager, Badarpur,  
N.F.Railway, Dist. Karimganj,  
Assam.

8. Sri Biman Purkayastha,

DOM N.f. Railway, Tinsukia, Assam.

9. Sri H.Towna,

DOM/Lumding, N.F.Railway, District  
Nagaon, Assam.

✓ 10. Sri P.C.Barman,

SCM/Rates, N.F. Railway, Maligaon.

✓ 11. Sri K.C.Sarkar,

STM/CON, N.F.Railway, Maligaon.

✓ 12. Sri P.K.Hazarika,

SCM/G/N.F. Railway, Maligaon.

✓ 13. Sri P.Sashidharan,

Law Officer, N.F. Railway, Maligaon.

14. Sri N.P.B.Nair,

DGM/DBRT, N.F Railway, Dibrugarh,  
Assam.

...Respondents.

Contd...3.

*M. Subramanya*

**I. Particulars of the order against which this application is made :**

This application is made against non-disposal of representation dated 8.8.95 and reminder dated 4.7.96 praying for fixation of seniority of the applicant along with consequential benefits as per the order of the Hon'ble Supreme Court passed in Civil Appeal No. 4420/90.

**II. Jurisdiction of this Tribunal :**

The applicant declares that the subject matter of the application in which the applicant seeks relief is within the jurisdiction of this Tribunal.

**III. Limitation :**

The applicant further declares that this application is within the prescribed period of limitation as prescribed by the Administrative Tribunal Act, 1985.

**IV. Facts of the Case:**

a) That your humble applicant is presently working as Senior Transportation Manager (Safety) under the N.F. Railway, Maligaon, Guwahati-11.

b) That your humble applicant was initially appointed in the Railways as Guard and he was

Contd...4.

*M. Sekhri*

gradually promoted from Guard to the post of Assistant Operating Superintendent Class II Gazetted post in Group B Cadre of the N.F. Railway in 1983.

c) That your humble applicant begs to state that while your humble applicant was working as Station Superintendent in the pay scale of Rs. 700/- - 900/- a Notification was issued by the General Manager, N.F. Railway, Maligaon for selection of AOS Group B Class II post for filling up 75% vacancies by selection. In response to the said notification, your humble applicant, as he was eligible for the said selection, submitted his application along with some other persons and the applicant's name was empanelled as qualified candidate to be promoted as Assistant Operating Superintendent (AOS).

d) That your humble applicant begs to state that as your humble applicant was empanelled along with 9 others to be promoted to Group B Class II Officers and the panel was approved by the General Manager, N.F. Railway, One Mr. M.L. Choudhury who was not qualified in the said selection had challenged the said selection before this Hon'ble Tribunal and the said case was registered as GC No. 181/86(T) and the same was pending for disposal before this Hon'ble Tribunal till 1988.

Contd...5.

*M. Suklabaidya*

e) That your humble applicant begs to state that the said original application filed by said Sri M.L. Choudhury was listed for hearing on 26.2.88 and the judgment was delivered by the Hon'ble Tribunal allowing the application of Sri M.L.Choudhury and quashing the selection and appointment of your humble applicant and others as Group B Officer under the N.F.Railway.

f) That your humble applicant begs to state that against the said judgment dated 26.2.88 passed in G.C. No. 181/86 your humble applicant and others filed an appeal before the Hon'ble Supreme Court challenging the judgment dated 26.2.88. The said appeal was registered as Civil Appeal No.4420/90 before the Hon'ble Supreme Court.

g) That your humble applicant begs to state that the said Civil Appeal No. 4420/90 was listed for hearing before the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to pass an order by which promotion and appointment of 10 penalists to Category 'B' post was regularised from the date of their respective appointment to the said post.

h) That your humble applicant along with other 9 penalists in Category 'B' post were promoted to Group B post on 18.7.83 and in view of the order passed by the Hon'ble Supreme Court, the petitioner

Contd...6.

*M. Sukhbaridya*

was regularised in Group B post with effect from 18.7.83.

A copy of the said judgment dated 6.9.94 passed in Civil Appeal No. 4420 /90 is enclosed herewith and marked as **ANNEXURE-'I'**.

i) That your humble applicant begs to state that as per the Hon'ble Supreme Court's order your humble applicant was regularised in Group 'B' post and the Deputy Chief Personnel Officer, N.F. Railway vide Notification No. E/254/11/DPTG(O) dated 3.11.94 given effect thereof.

A copy of the said notification dated 3.11.94 is annexed hereto and marked as **ANNEXURE-'II'**.

j) That your humble applicant begs to state that as per the Hon'ble Supreme Court's order your humble applicant was regularised in Group 'B' post on 18.7.83 and as per the order of regularisation your humble applicant is senior than the Respondents No. 5 to 14.

k) That your humble applicant begs to state that your humble applicant was promoted in Group B Class II post on 18.7.83 and his service was regularised on 18.7.83 and on the other hand the Respondent

Contd...7.

*M. Sankarabai Sga.*

Nos. 5 to 14 were promoted as Class II Group B posts much later than that of your humble applicant. The date and order of promotion of Respondent Nos. 5 to 14 are quoted below.

- |                      |   |
|----------------------|---|
| 1. Dipak Talukdar    | - ADM(a)No.E/283/82/Pt XIV<br>(O) dated 14.9.84.  |
| 2. J.N.Das           | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 28.10.86. |
| 3. Ganesh Prasad     | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 28.10.86. |
| 4. Biman Purkayastha | - ADM(a)No E/283/82/Pt XIV<br>(O)dated 28.10.86.  |
| 5. H.Towna           | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 28.10.86. |
| 6. P.C.Barman        | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 3.4.89.   |
| 7. K.C.Sarkar        | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 3.4.89.   |
| 8. P.K.Hazarika      | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 5.9.89.   |
| 9. P.Sashidharan     | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 2.12.88.  |
| 10. M.P.B. Nair      | - ADM(a)No E/283/82/Pt XIV<br>(O) dated 3.4.89.   |

The copies of the promotions orders are enclosed herewith and marked as ANNEX-  
URE-'3', '3A', '3B', '3C' & '3D' respectively.

- 1) That your humble applicant begs to state that from the above statement it is very much clear and evident that your humble applicant is senior in

Contd...8.

*M. Sankarabaiya*

8.

Group B Class II posts as he was promoted on 18.7.83 and his promotion was regularised from the same date, but the Respondent Nos. 5 to 14 were promoted to Group 'B' Class II posts much later date than your humble applicant.

m) That your humble applicant begs to state that during the pendency of the applicant's case before the Supreme Court all the private respondents were promoted to the Group B posts and they were subsequently promoted to the next grade and in Senior Scale of pay leaving aside the claim of your humble applicant as the case was pending before the Hon'ble Supreme Court. Ultimately, the Hon'ble Supreme Court was pleased to pass order allowing the appeal of your petitioner and thereby setting aside the order passed by the learned Tribunal. The Hon'ble Supreme Court was further pleased to uphold the selection of your humble applicant and also directing the respondents to regularise the promotion of your humble applicant from the date of their empanelment and promotion i.e. from 18.7.83 and as such the applicant is entitled to the benefits of promotion over his juniors who were promoted and inducted into Group B post much later than the applicant.

n) That your humble applicant begs to state that as the applicant filed representations one after another to the respondents for compliance of the

Contd...9.

*M. Suklabaidya*

order of the Hon'ble Supreme Court for regularisation of promotion and other benefits, and as the respondents did not pay any heed, he was rather compelled to file a contempt petition before the Hon'ble Supreme Court.

o) That the Hon'ble Supreme Court was pleased to dismiss the contempt petition No. 104 in Civil Appeal No. 4420/90 by order dated 19.4.96 thereby advising the applicant to file a original application before this Hon'ble Tribunal to redress his grievances which are connected and arises out of the judgment delivered by the Hon'ble Supreme Court in Civil Appeal No. 4420/90.

p) That your humble applicant begs to state that in Oriinal Application No.6C 181/86 one Sri M.L.Choudhury, a unsuccessful candidate for the Group B post had challenged the empanelment of your humble applicant and 9 others in Group 'B' post and the Hon'ble Tribunal was pleased to pass an order by which the selection and empanelment was set aside and quashed for which the Civil Appeal No.4420/90 had to be filed before the Hon'ble Supreme Court by the applicant and 9 other empanelled persons.

q) That your humble applicant begs to state that after hearing the Civil Appeal No. 4420/90 the Hon'ble Supreme Court was pleased to pass an order

Contd....10.

*M. Sekhbariya*



directing the respondents to regularise the service of your applicant in Group B post allowing the selection held in 1983, and ultimately the services of your humble applicant was regularised with effect from 18.7.83 as per the order dated 3.11.94 passed by the Deputy Chief Personnel Officer(G), N.F.Railway, Maligaon.

r) That your humble applicant begs to state that as the promotion in Grade B post was regularised with effect from 18.7.83 the applicant is also entitled for other consequential benefits w.e.f. 18.7.83 and is also entitled for the next promotion much earlier than the Respondents No. 5 to 14 who were inducted in Group B posts much later than your humble applicant.

s) That your humble applicant filed representations before the Chief Personnel Officer, N.F.Railway, Maligaon and to the General Manager, N.F. Railway for fixation of his seniority from the date of regularisation in Group B post and to give effect of consequential promotions and other benefits for which your humble applicant is entitled to as per his seniority over the Respondents No. 5 to 14.

t) That your humble applicant begs to state that all the promotion orders which were issued to

Contd...11.

*M. Sekkubailya*

the respondents No. 5 to 14 during the pendency of the case were on ad hoc basis and purely on temporary basis, and it was mentioned in the orders that these promotion orders were conditional subject to outcome of the SLP filed by the ad hoc AOS.

It may be mentioned herewith that the promotions of SR Scale Officers are on the basis of seniority in Group 'B' services.

u) That your humble applicant begs to state that during the pendency of the case before the Hon'ble Supreme Court the respondents were promoted to officiate in the higher post conditionally as to the Special Leave Petition were pending before the Supreme Court and in all the order of promotion, it was specifically mentioned that the promotions are on officiating basis or ad hoc and temporary measures subject to the result of the SLP.

The copies of the promotions orders of Respondens No. 5 to 14 are enclosed herewith and marked as ANNEXURE - '4', '4A' & '4B' respectively.

v) That the applicant begs to state that as the applicant had ultimately succeed in the SLP which was pending before the Supreme Court and his promotion in the Group B post was regularised from the

Contd...12.

*M. Sekkabaideya*

date of promotion i.e. 18.7.83 much earlier than the Respondents No. 5 to 14, your humble applicant is as such entitled to other benefits considering his regularisation in Group B post with effect from 18.7.83.

w) That your humble applicant begs to state that although he filed various representations before the authority, his case has not yet been considered and hence this application before this Hon'ble Tribunal for redressal of his grievances.

IV. Details of remedy exhausted:

The applicant declares that he has exhausted all the departmental remedies which are available to him as per the Departmental Rules.

V. Matters not previously filed or pending in any other Court:

The applicant further declares that he had not filed any application, writ or suit regarding this matter before any Court of law or any other Bench of the Central Administrative Tribunal.

VI. Relief sought:

In view of the above facts and circumstances the applicant prays for the following relief:

A. An order directing the respondents to

Contd...13.

*M. Sekkela Bai Syla*

restore his original seniority in Group B post from the date of his regularisation i.e. 18.7.83 and to give effect of the promotion and retrospective seniority for which he is entitled.

B. To direct the respondents to promote the applicant in Senior Scale Officers from the date of his juniors were promoted and to give benefits of pay scale, seniority etc. with arrears thereof.

**VII. Grounds for relief:**

A. For that your humble applicant is entitled for the correct seniority position as per the regularisation of his promotion in Group B post from 18.7.83 as his service in Group B post was regularised with effect from 18.7.83 much earlier than the respondents No. 5 to 14.

B. For that your humble applicant is senior than the Respondents No. 5 to 14 as in 1983 your humble applicant was inducted into Group B while the private Respondents were inducted into Group B service much later than your applicant.

C. For that your humble applicant is all along senior than the respondents as per the selection in Group B post which can be verified from the service records of the respondents.

Contd...14.

*M. Suklabaidya*

D. For that your humble applicant was given effect of his promotion much earlier than the private respondents in compliance of Hon'ble Supreme Court's order passed in Civil Appeal No. 4420/90 with effect from 18.7.83 much earlier than the Respondents No. 5 to 14, and as such, he entitled to all benefits of seniority and pay scale.

E. For that the applicant being all along senior than the Respondents as per the selection in Group B post which can be verified from the service records of the Respondents.

F. For that the promotion to the Senior Scale Officers are dependable on the basis of seniority counted from the date of selection in Group 'B'. As the applicant is senior in Group 'B' posts than all the Respondents, he is entitle to be promoted in senior scale post earliar than the Respondents No. 5 to 14.

G. For that the applicant filed various representations before the department for redressal of his grievance but he was not communicated anything for fixation of his seniority and benefits of pay scale and promotin till date.

H. For in any view of the matter the actions of the respondents authority in not giving effect to

Contd...15.

*M. Sukra Banitga*

the benefits of promotion with effect from 18.7.83 fixing his seniority in Group B post must earlier than the Respondents No. 5 to 14.

VIII. Interim Relief prayed for:

Your humble applicant prays that during the pendency of this application, no further regular promotion may be made in favour of the Respondents No. 5 to 14 till disposal of the application.

IX. Particulars of the Bank Draft/Indian

Postal Order:

Indian Postal Order No. 444108  
dated 11.9.96 for Rs. 50/- (Rupees fifty)  
only payable at Guwahati.

M. Senkubariya

VERIFICATION

I, Sri Monmohan Suklabaidya, son of late Mohendra Chandra Suklabaidya, aged about 51 years, presently working as *Sr. Transportation Manager* <sup>(Safety)</sup> N.F. Railway, do hereby declare as follows:-

1. That I am the applicant in the above application and as such I am fully acquainted with the facts and circumstances of the case.

I sign this verification on this the // th day of ~~August~~ <sup>September</sup>, 1996 at Guwahati.

*Manomohan Suklabaidya*

Declarant.

Annexure-'I'

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4420 OF 1990.

Shri Niranjana Das & Anr. ... Appellants.

Vrs.

Shri Makhanlal Choudhury

& Ors. ... Respondents.

ORDER

The General Manager (P), North East Frontier Railway, issued a Circular dated February 21, 1983 wherein it was decided to hold a selection for the formation of a panel of 12 posts of Assistant Operating Superintendents (Group B) against 75% vacancies. Alongwith the Circular, the list of 36 member of the staff who were eligible to appear in the selection was also enclosed. The written test was held on March 20/27, 1983. Thereafter, the viva-vice was held and a panel of 6 persons was finalised. Meanwhile, the Railway Board issued a Circular dated March 5, 1983. In the said Circular, amended provisions for determining integrated seniority for promotion from Group 'C' to Group 'B' were laid down. Para 4 of the Circular was as under :

"These instructions will apply to selections initiated after the date of

Contd...18.

**ATTESTED**  
*[Signature]*  
Advocate



issue of this letter and will also apply to selections which have been initiated and where written examination forming a part of the selection has not been held. In respect of selections which are in progress, instructions contained in the Ministry's Letter No. E(G) 79/2/33 dt. 2.4.79 should be kept in view for appropriate action and wherever employees in excess of the filled become eligible for consideration in accordance with this letter, necessary action should be taken to provide an opportunity to such employees to take the selection".

Although, in terms of para 4 of the Railway Board's Circular the written examination which was held on March 20/27, 1983 should not have been held, but due to reasons best known to the North East Frontier Railway, the said selection was held and as mentioned above a panel of 6 persons was finalised. It is not disputed that all those 6 panelists were promoted to Group 'B' posts. So far as remaining 6 posts were concerned, a fresh list of 28 candidates was prepared in accordance with the Railway Board's Circular dated March 5, 1983. Finally, a panel of 4

Contd...19.

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*Asana*  
 Advocate

persons was finalised which included the two appellants. These 4 panelists were also promoted to Group 'B' posts in the year 1984.

Makhanlal Choudhury, respondent no.1 in the appeal herein, challenged the selection before the Central Administrative Tribunal, Guwahati Bench on the ground that the test held on March 20/27, 1983 was in violation of the directive issued by the Railway Board in its Circular dated March 5, 1983. The Tribunal accepted the contention and set aside the initial selection of 6 panelists being violative of the directives issued by the Railway Board. The Tribunal also set aside the subsequent selection on the ground that both the selections were intertwined and it would not be possible to declare one illegal and save the other. The net result is that the Tribunal has quashed the selection made as a result of which the panel of 10 persons was finalised. This appeal by the two selected candidates is against the judgment of the Tribunal. This Court while issuing notice in the special leave petition on September 22, 1988 passed the following order :

"Delay condoned. Issue notice returnable within five weeks, limited to the question whether any relief can

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*Advocate*

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be secured to the petitioners without depriving the respondent No.1 of whatever rights they have secured under the judgment of the Tribunal. Status quo for six weeks shall be maintained."

This Court by the order dated August 27, 1990 granted leave limited to the question stated in the order of this Court dated September 22, 1988 (quoted above).

It is not disputed by Mr. V.C. Mahajan, learned senior counsel for the Railway that the two appellants and respondent Nos. 6 to 13 who were the 10 panelists were appointed to Group 'B' posts some time in the year 1983 and 1984 and since then they are continuously working in the said posts. Learned counsel for the appellants further states that all those 10 persons have been continuously working in the said posts. He further states that some of them even retired on attaining the age of superannuation from Group 'B' posts.

Keeping in view the facts and circumstances of this case, we are of the view that the interest of justice would be met if the promotion and appointment of 10 panelists to category 'B' posts be regularised from the dates of their respective appointments to

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*Advocate*

the said posts. We, however, make it clear that while doing so, respondent No.1 who is appointed to Group 'B' post after the judgment of the Tribunal shall not be adversely affected in any manner. The appeal is disposed of in the above terms. No costs.

Sd/- Kuldip Singh.

New Delhi  
September 6, 1994.

Sd/-B.L.Hansaria

**ATTESTED**

*Benu  
Advocate*

Contd...22.

## ANNEXURE-'2'

NORTHEAST FRONTIER RAILWAYOFFICE ORDER

In pursuance of the order of the Hon'ble Supreme Court dated 6.9.94 in the Civil Appeal No. 4420/90 (in SLP No. 10354/88, Sri N.Das & Ors. Vs. Sri M.L.Choudhury & Ors), the services of 10 Asstt. Operating Supdt./Manager, (Group-B), approved in the panel which was provisionally published vide GM(P)'s Memo No. E/254/69/Con Pt. II dt. 13.6.85 allowing the 10 panelists to continue on adhoc basis consequent upon CAT/GHY's order in GC 181/86 quashing the above panel, are hereby regularised to the post of ADM (Gr. B) from the date of their appointment to Gr. B as shown against each :-

Sr. Name & designation No.	Date of regularisation in Gr.B.	Remarks.
1. Sri KK Suklabaidya (SC) AOS/I/NBQ.	4.6.85	
2. Sri MM Suklabaidya (SC) SS/GHY.	18.7.83	
3. Sri SF Hussain, AOS/NJP.	24.6.83	
4. Sri RK Chowdhury, SS/LMG.	31.8.83	Retd. on 30.4.93.
5. Sri MK Sinha, AOS/KIR.	20.6.83	-do- 31.3.94.
6. Sri KD Chakraborty, AOS/APDJ.	4.6.85	-do- 31.8.94
7. Sri RP Sah (ST), SS/RNY.	28.9.87(AN)	-do- 28.2.93.
8. Sri KL Ghosh, AOS/M/HQ.	15.6.83	-do- 31.10.90

Contd...23.

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*Prerna*  
*Advocate*

- 9. Sri A.Sarkar, AOS/Y/NGC. 4.6.85
- 10. Sri N.Das, EA to COM. 4.6.85.

This issues with the approval of the Rly. Board as communicated vide their Message No. E(GP) 83/2/79 Pt.

Sd/- M.Brahmo  
Dy. Chief Personnel Officer (G),  
for General Manager(I)

No. E/254/11/OPTG(O). Maligaon, dtd. 2.11.1994.

Copy forwarded for information & necessary action to :-

- 1. GM/Maligaon.
- 2. FA & CAO/EGA/Maligaon, COM/CCM/NF Rly.
- 3. All DRMs, DRM(P)s
- 4. Secy. to GM, P.S. to GM.
- 5. CVO, CPRO, Sr. DGM.
- 6. OS/EO Bill. All DAOs
- 7. Officers concerned.
- 8. Spare copies for I/Case.

Sd/- M.Brahmo,  
for General Manager(I).

ATTESTED

*M. B. Brahmo*  
Advocate

Contd...24.

N.F.Railway

1. Shri R.N. Kalita, IRTs (Probationer) on being found suitable for holding working post after completion of training and passing 2nd Departmental examination is posted as ACS/DBRT (on Probation) vide Smti. Vijaya Sinha.

2. Smti. Sinha, on relief, is transferred to N. Railway in the same capacity in terms of Railway Board's XNR No. E(O) III 84AE3/66 dated 28.3.84.

3. Shri B.K. Bagchi, OS/Caids/HQ is transferred and temporarily detailed to look after the duties of ACS/Claims/NJP vide Shri B. Pradhan.

4. Shri B. Pradhan, on relief, is transferred and posted as Offg. ACS/NJP against an existing vacancy.

5. Shri Dipak Talukdar, Sr. CMI/HQ is temporarily detailed to look after the duties of ACO/Claims/HQ against an existing vacancy.

6. Shri K.K. Baishya, P.A. to CCS (Non-Gazetted) is transferred and temporarily detailed to look after the duties of ACS/NBQ against an existing vacancy.

This has the approval of the General Manager.

(C.S.P. Sinha)  
DY. CPO(G)  
for General Manager (P).

Contd...25.

**ATTESTED**  
*Pran*  
*Advocate*

No. E/283/82 PXIV (O) Maligaon, dated 14.9.84.

Copy forwarded for information and necessary action to:-

1. AGM(O) & AGM(EC)
2. COPS, CCS & CCO.
3. DRMs/TSK, APDJ & KIR
4. FA & CADOEGA)/MLG.
5. DAOs/KIR & APDJ.
6. DRM(P)s/KIR & APDJ, TSK.
7. Secy. to GM for GM's information.
8. CVO & CPRO
9. CA to GM/MLG.
10. OS/EG Bill/P.Br.
11. APO(G&C)/HQ & SCO(G)/HQ.
13. OS/ET/P. Branch.
14. Officers concerned.

**ATTESTED**

*Pranav  
Srivastava*

(C.S.P.Sinha)  
Dy. CPO(G)  
for General Manager (P)

Contd...26.



## ANNXURE-'3A'

NORTHEAST FRONTIER RAILWAYOFFICE ORDER NO 206/86(T).

Shri J.N.Das WSI/HQ. is temporarily appointed to officiate in Gr. 'B' service and posted offg. AOS/TW/HQ against an existing vacancy.

2. Shri Ganesh Prasad, GM/KIR, is transferred and temporarily appointed to officiate in Gr. 'B' service as AOS/NBQ vide Shri S.F. Hussain.

3. Shri Harang Tawna, SS/Khathkoti is transferred and temporarily appointed to officiate in Gr. 'B' service as AOS/LMG vice Shri D.B.Shose.

4. Shri D.B.Ghose, on relief, is transferred and reported as offg. ATO/Rules/HQ against an existing vacancy.

5. Shri B.Purkayastha, DYC/TSK is temporarily appointed to officiate in Gr. 'B' service and posted as Offg. AOS/TSK vide Shri R.B.Prasad.

6. Shri R.B.Prasad, on relief, is reverted to Gr. 'C' (Class III) service.

7. Posting order of Shri S.F. Hussain will follow:

The first promotion of S/Shri J.N.Das, Ganesh Prasad, Harang Tawna and B. Purkayastha to Gr. 'B' service has the approval of the GM and their posting

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*ABama*  
*Adraeah*

to Gr. 'B' service are subject to their medical fitness.

Posting order has the approval of Cops.

for GENERAL MANAGER(P)

No. E/283/82 FXV (o) Maligaon, dated 28.10.86.

Copy forwarded for information and necessary action to :-

1. AGM/Maligaon.
2. COPS, CCS, CFTS & CPRO
3. DRMs/KIR, APDJ, LMG & TSK.
4. CVO & CPRO
5. DRM(P)/APDJ, KMG & TSK.
6. S/Shri G.Prasad, H.Tawna & B.Purkayastha should be allowed to join their new post only after they are declared fit to hold the post of AOS by the Medical authority.
7. FA & CAO (EGA)/MLG.
8. DAOs/APDJ, LMG & KIR.
9. Efficiency Officer/MLG.
10. SPD(T&R)/MLG.
11. APO/Optg./HQ.
12. OS/EO.BILL & OS/EO 'G', F.Branch.
13. CA to GM/Maligaon.
14. Officers concern.
15. Area Officer/NBQ.

for GENERAL MANAGER(P)

ATTESTED  
Bam  
Advocate

ANNEXURE-'3B'

NORTHEAST FRONTIER RAILWAY

HEAD QUARTERS OFFICE

(PERSONNEL BRANCH)

GUWAHATI-781011.

OFFICE ORDER NO. 72/89 (COMMERC LAL).

1. Shri M.P. B.Nair, Law Asstt. /HQ who is empanelled for the post of ACS (Gr. 'B') is transferred and temporarily appointed to officiate in Gr. 'B' service and posted as Offg. ACS/KIR vide Shri K.P. Srivastava attained the age of superannuation on 31.3.80 (AN).

2. Shri D.Dhekial, Law Asstt. /HQ. who is the best amongst failed Scheduled Tribe candidates in the ACS/ Gr. 'B' selection against 73% vacancies held on 20.8.88, 12.9.88, and 26.10.88 is temporarily appointed to officiate in Gr. 'B' service purely on adhoc and trial basis for a period of 6(six) months and posted as Offg. ACS/BPB at LMG against the upgraded post sanctioned vide Railway Board's letter No. 88E(GC) 12-27 dt. 5.12.88.

3. Shri P.C.Barman, CRI/HQ who is the best amongst failed Scheduled Caste candidates in the ACS/ Gr. 'B' service purely on ad-hoc and trial basis for a period of 6 (six) months and posted as Offg. ACS/KIR against the upgraded post of ACS/KIR sanctioned vide Railway Board's letter No. 88E (GC) 12-27 dt. 5.12.88.

Contd...29.

NOTED  
ABAME  
Advocate

4. Shri K.C. Sarkar, CCMI/MZN who is the 2nd best amongst the failed Scheduled Caste candidates in the ACS/Gr. 'B' selection held on 20.8.88, 12.9.88 & 26.10.88 is transferred and temporarily appointed to officiate on Gr. 'B' service purely on ad - hoc and trial basis for a period of 6(six) months and posted as Offg. ACS/LMG vice Shri R. Hazarika.

5. Shri R. Hazarika, on relief, is transferred and posted as Offg. ACS/Claims/HQ vice Shri B.K.Bagchi.

6. Shri Bagchi, on relief, is posted as Offg. ACO/G/HQ vice Shri D.B.Chatterjee.

7. Shri Chatterjee, on relief, is transferred and posted as Offg. ACS/Catering/HQ vice Shri S.N. Brahma.

8. Shri Brahma, on relief, is transferred and posted as Offg. PA to CCS/HQ (Gazetted), against an existing vacancy.

9. Shri S.C.Sen, Offg. AM&SS/HQ is posted as Offg. ACS/Rates/HQ vice Shri M.C.Talukdar.

10. Shri M.C.Talukdar, Offg. ACO (Rates)/HQ is posted as Offg. AM&SS/HQ vice Shri Sen above.

First promotin of S/Shri Nair, Dhekial, Barman and Sarkar has the approval of the General

Contd...30.

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ADAMS  
Advocate*

Manager and posting orders issued with the approval of the CCS.

Performances of S/Shri Barman, Dhekial and Sarkar will be reviewed after 6(six) months to consider their continuance in Gr. 'B' service and also for inclusion of their names in the ACS/Gr. 'B' panel.

(S.Lakshminarayana)  
Dy.Chief Personnel Officer/Gaz.  
for GENERAL MANAGER(P)

NO. E/283/82 P. XIV(0) Maligaon, dt. 3.1.1989.

Copy forwarded for information and necessary action to:-

1. CCS & CCO/Maligaon.
2. DRMs/KIR, APDJ, LMG & TSK.
3. CVO & CPRD.
4. Secy. to GM.
5. FA & CAO/EGA/Maligaon.
6. DRM(P) /TSK, LMG & KIR.
7. DAOs/LMG & KIR.
8. Dy. CCS/Claims/HQ G. Dy. CCS/Catering/HQ.
9. SCD/Rates/HQ.
10. CA to GM/Maligaon.
11. CC/EO-Bill, P.Branch.
12. Officers concerned.

(S.Lakshminarayana)  
Dy.Chief Personnel Officer/Gaz.  
for GENERAL MANAGER(P)

Contd...31.

**ATTESTED**  
*Adams*  
*Aswath*

## ANNEXURE--'3C'

NORTHEAST FRONTIER RAILWAY.OFFICE ORDER NO.180/89(Commercial).

1. Shri D.K.Arvind, IA now Enquiry Inspector / Vigilance /HQ who is empanelled for the post of ACS/Gr. 'B' (against 25% vacancies) is transferred and temporarily appointed to officiate in Gr. 'B' service and posted as Offg. ACS/KIR vice Shri M.P.B. Nair.
2. Shri M.P.B.Nair, Offg. ACS/KIR, on relief is transferred and posted as Offg. ACO/C1./HQ against as existing vacancy termianting the dual charge arrangement of Shri B.K.Bagchi, Offg. PA to CCS.
3. Shri P.K.Hazarika,CRI/HQ who is empanelled for the post of ACS/ Gr. 'B' (against 25% vacancies), is transferred and temporarily appointed to officiate in Gr. 'B' service and posted Offg. as ACS/NBO vice Shri P.K.Biswas.
4. Shri P.C.Biswas, on relief, is transferred and posted as Offg. ACS/II/APDJ against the upgraded post sanctioned vide Rly.Board's letter No. 88E96C) 12-27 dt. 5.12.88.
5. Shri D.C.Rabha, CIR/HQ who is empanelled for the post of ACS/Gr.'B' (against 25% vacancies) as ST candidate is temporarily appointed officiate in Gr. 'B' service and posted offg. PRO (Commercial

Contd...32.

ATTESTED  
*Prerna*  
Advocate

Publicity /HQ against the upgraded post sanctioned vide Rly. Board's letter No. 88E/(GC) 12-10 (P.R.Cadre) dt. 19.4.89.

6. Shri P.K.Guha Offg. ACO (Refund)/HQ is transferred and posted offg.ACS/DBRT vide Shri M.L.Ghose who has been deputed for undergoing 5(five) weeks Catering Orientation Course commenced from 16.8.89 at Indian Institute of Hotel Management & Catering Technology / Calcutta.

7. Shri M.L.Ghose,Ex. Offg. ACS/DBRT (now training) on return from training is transferred and posted as offg. ACO (Refund)/HQ vide Shri P.K.Guha above.

8. Shri B.K.Bagchi, offg. PA to CCS is posted as offg. ACO/C1/HQ vice Shri N.N.De Senapati.

9. Shri N.N.De Senapati, Offg.ACO/C1/HQ is posted as offg. PA to CCS vice Shri B.K.Bagchi above.

The first promotin of S/Shri Arvind, Hazarika and Rabha to Group 'B' service has the aproval of the General Manager.

This issues with the approval of CCS.

(H.K.Khanikar)  
APO/Gazetted.  
for GENERAL MANAGER(P).

Contd...33.

*ADDITIONAL  
Advocate*

No. E/283/82 PXIV (0) Maligaon, dated 5.9.89.

Copy forwarded for information and necessary action to:-

1. AGM/Maligaon.
2. CCS & CCO/Maligaon.
3. DRMs/KIR, APDJ, TSK & LMG.
4. CVO & CPRO.
5. Secy. to GM/LMG.
6. SDGM/Maligaon.
7. DRM(P)'S/KIR, APDJ & TSK.
8. FA & CAO(EGA)/Maligaon.
9. DAOs/KIR, APDJ & LMG.
10. Dy. CCS/Claims/HQ & SCO (Rates)/MLG.
11. ADGM/Maligaon.
12. CA to GM.
13. CC/EO. Bill, P.Branch.
14. Officers concerned.

for GENERAL MANAGER(P)

ATTESTED

*Alam*  
*Shroek*

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ANNEXURE-'3D'

N.F. RAILWAY

Headquarters Office

Personnel Branch

Guwahati-781011.

OFFICE ORDER NO.237/88 (COMML.)

1. Shri S.C.Sen, CRI/HQ who is empanelled for the post of ACS (Gr. 'B'), is temporarily appointed to officiate in Gr. 'B' service and posted as offg. AM & SS /HQ vice Shri M.C.Talukdar.
2. Shri Talukdar, on relief, is posted as Offg.ACO (Rates) /HQ against an existing vacancy.
3. Shri P.C. Paul, CLA/HQ who is empanelled for the post of ACS (Gr. 'B') is temporarily appointed to officiate in Gr. 'B' service and posted as Offg. ACO/CP/HQ against an existing vacancy ?
4. The dual charge arrangement of Shri B.K.Bagchi, Offg.ACO/C/HQ made vide this office Order No. 233 (TTGC) dt. 23.11.88 will be terminated from the date Shri Paul assumes the charge of ACO(CP).
5. Shri P.Sashidharan, CLA/HQ who is empanelled for the post of ACS (Gr. 'B') is temporarily appointed to officiate in Gr. 'B' service and posted as Offg. ACO/Court HQ against an existing vacancy.

This have the approval of both GM and CCS.

For General Manager( )  
N.F.Rly., Maligaon.

Contd...35.

ATTESTED  
*[Signature]*  
Advocate

No. E/283/82 P.XIV (B). Dated 2.12.1988.

Copy forwarded for information and necessary action to :-

1. CCS & CCD/Maligaon.
2. FA & CAO/EGA/Maligaon.
3. DY. COS/Claims/Maligaon.
4. CVD & CPRO/Maligaon.
5. SCD (Rates)/Maligaon.
6. APO(Commercial)/Maligaon.
7. DA to GM/Maligaon.
8. CC/EC-Bill, P.Branch.
9. Officers concerned.

(A.R.K.Reddy)

Dy. C.P.O. (GAZ).

for GENERAL MANAGER(P)

**ATTESTED**

*ABR  
Advocate*

Contd...36.

ANNEXURE-'4'

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER NO. 21/92(COMML.)

1. With immediate effect the post of ACO/ (Claims)/NJP is temporarily upgraded to Sr. Scale as SCO (Claims)/NJP by transferring the Sr. Scale element of the post of Area Officer /RPN.

Shri SK Tudu, ACO (Claims)/NJP is temporarily appointed to officiate in Sr. Scale purely on ad-hoc basis and posted as ACO(Claims)/NJP against the above mentioned upgraded post.

2. Shri B.K.Bagchi, ACO (Claims)/HQ is temporarily appointed to officiate in Sr. Scale purely on adhoc basis and posted as SCO (M&S)/HQ against an existing vacancy caused due to retirement of Shri DB Chatterjee on 31.0.91(AN).

3. Shri D.Talukdar, ACS/NGC at GHY is temporarily appointed to officiate in Sr. Scale purely on adhoc basis and posted as SCO (Rates)/HQ vice Shri S.D.Sharma reported sick.

The promotion of S/Shri Tudu, Bagchi and Talukdar are temporary and purely on adhoc basis subject to the outcome of the SLP filed by the adhoc AOSs in the Supreme Court of India.

This have the approval of AGM, COPS and CCS.

Sd/- A.Chaturvedi,

Dy.Chief Personnel Officer(G),  
for GENERAL MANAGER(P).

Contd...37.

ATTESTED  
*Pranveer Singh*

NO. E/283/82 PT. XIV (0), Maligaon, dated 3.2.1992.

Copy forwarded for information and necessary action to :-

1. AGM/Maligaon.
2. COPS, CCS & CCO.
3. DRMS - KIR (EGA)/Maligaon.
5. CVO & CPRO.
6. DRM(P) - LMG & KIR.
7. ARM/NJP.
8. DAOS - LMG, APDJ & KIR.
9. PS to GM/Maligaon.
10. CC/EO Bill, P.Branch.
11. Officers concerned.

Sd/- A.Chaturvedi

Dy.Chief Personnel Officer (G),

for GENERAL MANAGER(P).

Contd...38.

ANNEXED  
Dy. Chief  
Personnel Officer

ANNEXURE-'4A'

NORTHEAST FRONTIER RAILWAYOFFICE ORDER NO. 53/94(TTN(O)

The following transfer and postings are ordered:-

1. Shri R. Moona, Offg. Sr. DOM/Con/MLG is transferred and posted as Dy. COM/Con(adhoc) against the work charged post under GM/Con vice Shri A.Tawna, retired from service on 28.02.1994 (AN) attaining the age of superannuation w.e.f. 28.02.94 (AN).
2. The element of Sr. DOM/Con/LMG which was originally transferred from HQ (i.e. element of Dy. COM/Safety) is temporarily transferred to KIR for operation of the post of DOM/KIR in J&G as Sr.DOM/KIR.
3. Shri M.A.Kamble, Offg. OCM/KIR who is empanelled for promotion to JA Grade on adhoc basis is appointed to Officiate in JAG (adhoc) basis and posted as R. DOM/KIR against the above arrangement -
4. Shri P.Sashidharan, Offg. SOM/G on return from leave is transferred and posted as Law Officer vice S. Mukherjee, Law Officer by restoring the SS element of the post of Law Officer.

The posting order of Sri Mukherjee will follow.

5. Shri K.C. Sarkar, AOM/CI/MLG, who is

Contd...39.

ATTESTED  
AD30mg  
Advocate

empanelled for promotion to Senior Scale on adhoc basis is appointed to Officiate in SS on adhoc basis and posted as SCM(G)/HQ vice Shri P.Sashidharan transferred.

6. Shri P.K.Hazarika, Offg. EA to CCM, who is empanelled for promotion to Senior Scale on adhoc basis is appointed to officiate in SS on adhoc basis and posted as Area Manager/NBQ against an existing vacancy.

The promotin of Shri Sarkar/Hazarika in Senior scale are purely on adhoc basis and subject to the out come of the SLP filed by the adhoc, ADM in the Hon'ble Court of India.

7. Shri J.Mandal, Offg.CLA/HQ., who is already posted as ALO (adhoc)/HQ has also been provisionally empanelled for Adhoc Gr.B service as ACM, on being released, is transferred and posted as EA to CCM on adhoc basis vice Shri Hazarika.

The adhoc promotin of Sri Mandal is purely on adhoc basis and will not confer on him any claims for seniorityor promotion on regular basis.

8. Till issue of posting order vice Shri Sarkar, CCO will make local arrangement.

This issues with the approval of DDM, CCM & GM/N.F.Railway.

Sd/-C.R.Hans,

Dy. CPO/Gaz/Maligaon,N.F.Rly.

for GENERAL MANAGER(P).

Contd...40

ATTESTED  
A. Barua  
Advocat.

NO. E/283/82/PT. XV(0) Maligaon, dated 8.2.1994.

Copy forwarded for information & necessary action to:-

1. GM/N.F.Railway/Maligaon. GM/Con/Maligaon.
2. FA & CAO/EGA/MLG/N.F.Rly.
3. All PHODS
4. All DRMs.
5. C/O, CPRO, SDGM.
6. CCO/N.F.Rly.
7. Sr. DPO/KIR, Sr.DPO/APDJ, Sr.DPO/LMG.
8. DADs/KIR, APDJ, LMG.
9. Law Officer/N.F.Railway.
10. Hd.Clerk, EQ-BillP.Branch/MLG.
11. Officer concerned.

Sd/- C.R.Hans.

Dy. CPO/Gaz.

for GENERAL MANAGER(P)/MLG.

N.F.Rly.

**ATTESTED**

*At Barua*  
*Advocate*

Contd...41

ANNEXURE-'4B'

NORTHEAST FRONTIER RAILWAY

OFFICE ORDER NO. 229/94(TTV(D)).

1. The element of the Dy. CCM/Catering /MLG which is lying vacant consequent on Shri S.D.Singh proceeded on leave for 45 days from 5.10.94 is temporarily transferred for operation of the post of DCM/LMG in JAG as Sr. DCM/LMG with immediate effect.
2. Shri D.Talukdar, DCM/LMG, who is empanelled by the local DPC for promotion to JA Grade on Ad-hoc basis, is temporarily appointed to officiate in JA Grade on adhoc basis and posted as Sr.DCM/LMG.
3. Shri Talukdar will draw the charge allowance @ Rs. 300/- per month in addition to his pay in senior scale from the date takes over the charges of JA Grade post.

Shri Talukdar's promotion is subject to the out come of the case pending in the CAT/GHY(O. A.No.10/94).

This issues with the approval of competent authority.

Sd/- M.Brahmo,

Dy.CPO/G.

for GENERAL MANAGER(P).

Contd...42.

ATTESTED

*M. Brahma*  
*Advocate*



NO. E/283/82/PT. XV(0) Maligaon dated 7.10.94.

Copy forwarded for information and necessary action to :-

1. GM/N.F.RLY.
2. COM, CCM/MLG.
3. FA & CAO/EGA/MLG.
4. SECY. TO GM.
5. CVD, CPRO/MLG.
6. DRM/LMG.
7. PS TO GM.
8. DNM(P)LMG, DAO/LMG.
9. OFFICER CONCERNED.
10. SPARE COPIES -3 for M/File.  
3 for P/Case.

**ATTESTED**  
*M. Brahma*  
Advocate.

Sd/- M. Brahma,

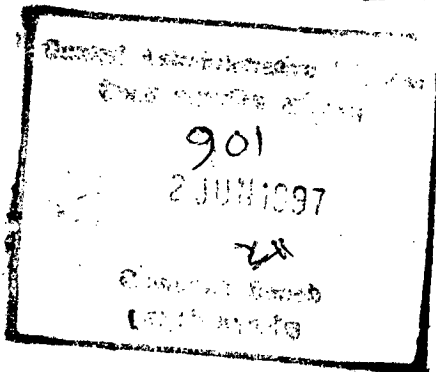
Dy. CPO/G.

for GENERAL MANAGER(P).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI



In the matter of :

O.A.No.200/96

Sri M.M.Suklabaidya ... Applicant

Vs.

Union of India & Ors... Respondents

And

In the matter of :

Written statement of the Respondent

No.1, 2, 3 and 4.

WRITTEN STATEMENT

1. That the application is not maintainable both in law as well as in fact.
2. That the application is barred by limitation and on this score alone the application is liable to be rejected in limine. The order for regularising the applicant was passed on 2-11-94. This was done in compliance of the order of the Hon'ble Supreme Court on 6-9-94(Annexure-I to the O.A.). The aforesaid order of the Supreme Court is very clear and accordingly the order for regularisation dated 2-11-94(Annexure-II to the O.A.) has been passed. The applicant has raised grievance against the order dated 2-11-94 by filing the instant O.A. in September 1996. As such, the application is time barred and therefore the same is liable to be dismissed on the ground of limitation.

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serve a copy  
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counsel for  
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3. The applicant in Para-4(f) of the O.A. has stated that he has filed appeal before the Hon'ble Supreme Court. But in fact he did not file any SLP. S/Sri N.Das and A.Sarkar filed the SLP before the Hon'ble Supreme Court being aggrieved by the judgement of the CAT/GHY Bench on G.C.No.181/86(T) (Sri M.L.Choudhury - Vs. - UOI & Ors.). The ~~appeal~~ <sup>Leave</sup> was granted and the case was decided in civil appeal No.4420/90. The applicant in this O.A. was one of the private respondents in the SLP.

Therefore, the applicant has made a wrong statement before the present Tribunal. On this ground also the application is liable to be dismissed taking it as a suppression of fact and intentional wrong statement to derive some personal gain.

4. That the order of the Hon'ble Supreme Court dated 6-9-94 has clearly indicated that on 22-9-88, the following orders were passed - "Delay condoned, issue notice returnable within 5 weeks, limited to the question whether any relief can be secured to the petitioner without depriving the respondent No.1 or whatever rights they have accrued under the judgement of the Tribunal, status quo for 6 weeks shall be maintained". The Hon'ble Supreme Court limited the matter only to the question whether any relief can be accrued to the petitioners without depriving the respondent no.1(Sri M.L.Choudhury) of his rights. The present applicant was not a petitioner in the SLP.

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5. The applicant being aggrieved by the General Manager(Personnel)/N.F.Railway's order dated 2-11-94, approached the Hon'ble Supreme Court alleging contempt for non-compliance of the Court's order. However, by his own averments in para-IV(o) he has admitted that the Hon'ble Supreme Court was pleased to dismiss his contempt petition No.104 in civil appeal No.4420/90 by their order dated 10-4-96. The very fact that the said contempt petition was dismissed by the Hon'ble Supreme Court speaks that the action taken by the Railway Administration has been in compliance with the Hon'ble Supreme Court's order.

6. That in their order dated 6-9-94, the Hon'ble Supreme Court has also held that the "Tribunal accepted the contentions and set aside the initial selection of 6(six) panelists being violative of the directive of the Railway Board". The Hon'ble Supreme Court also held that "the net result is that the Tribunal has quashed the selection made as a result of which the panel of 10 persons were finalised". The Hon'ble Supreme Court did not consider the disputes in the case between the parties but in fact, considered the long period of ad hoc services of the applicant and in pursuance to their order dated 22-9-88, ordered for justice in the civil appeal. In this connection, it may also be mentioned that the ad hoc services was continued to comply with the order of the Hon'ble Apex Court dated 22-9-88 to maintain status quo. In their

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"Keeping in view of the facts and circumstances of this case, we are of the view that the interest of justice would be met if the promotion and appointment of 10 panelists to category 'B' posts be regularised from the date of their respective appointments to the said posts. We, however, make it clear that while doing so, respondent no.1 who is appointed to Group 'B' post after the judgement of the Tribunal shall not be adversely affected in any manner. The appeal is disposed of in the above terms. No costs".

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H.O. No. 1101  
Dated 11/11/94  
P. S. B. B. B.

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The Administration has already complied with the Supreme Court's orders inasmuch as the services of all the 10 panelists have been regularised in group 'B' from the dates of their respective appointments in group 'B' and subsequently they have also been promoted to Senior Scale on ad hoc basis taking into account the fact that their erstwhile juniors were already promoted to Senior Scale on ad hoc basis.

It is further stated that in such ad hoc promotions to Senior Scale, no benefit of proforma fixation is admissible under the extant rules. However, keeping in view the fact that some of their erstwhile juniors have also been inducted to group 'A' and they have also been promoted to JA grade on ad hoc basis, the cases of the 10 panelists including the applicant have already been recommended to the Railway Board for consideration for their induction to group 'A' subject to their fitness. The question of granting the benefit of fixation to the extent of juniors will arise only if the 10 panelists including the applicant are finally inducted to group 'A' i.e. only when they are regularly promoted to Senior Scale by virtue of being placed in group 'A' which is decided in consultation with the UPSC with the approval of the President.

8. That under the circumstances explained above and in compliance with the Hon'ble Supreme Court's order dated 6-9-94 ordering to regularise the

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Asstt. Operating Supdt. were allowed to continue as such, purely on ad hoc basis for a period of six months from the date of issue of the Memorandum due to exigencies of service. Therefore, it was specifically mentioned in the aforesaid Memorandum that this ad hoc continuation in the post of AOS will not confer upon them any benefit or continuation as such over those who may be selected by virtue of his/their being eligible based on which the fresh selection will be made.

A copy of the aforesaid order is annexed herewith as annexure-A.

It will be well-nigh to mention here that on the crucial day of passing the order by the Hon'ble Supreme Court on 6-9-94, the applicant along with 9 other panelists were ad hoc AOS and accordingly their status quo has been maintained as ad hoc AOS i.e. all the 10 employees have been allowed to continue as such strictly in compliance with the interim order of the Hon'ble Supreme Court.

12. That as regards the statement made in para-IV(f) and (g), it is stated that only 2 persons (S/Sri N. Das & A. Sarkar) out of the 10 persons including the applicant whose selection has been cancelled and allowed to continue on ad hoc basis had filed SLP No. 10354/1988 in the Supreme Court, praying for a stay on the order of the Hon'ble CAT/GHY. While admitting the SLP, the Hon'ble Supreme Court passed an interim order on 22-9-88 that the Railway should maintain status quo of the petitioners with regard

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It is pertinent to mention here that certain clarifications were sought for from the Railway Board vide this Railway's letter No.E/254/II/PTG(O)/CAT dated 7-10-94(Annexure-D) regarding implementation of the Supreme Court's above quoted order in regularisation of the services of the applicant including other Officers in question and considering them for further promotion in the cadre.

On receipt of Board's approval dated 25-10-94, action has already been taken by this Railway to regularise the services of the applicant and other Group 'B' Officers of the Operating Department from the date of their regular appointment/promotion to group 'B' by an Office Order dated 2-11-94.

Subsequently applicant along with 4 Officers who are in service have been considered by the DPC for their promotion to Senior Scale(ad hoc) and promoted vide Office Order No.E/283/82(Pt.XV(0) dated 10-11-94 (annexure-E). Meanwhile, good number of Officers junior to the applicant have since been promoted to Senior Scale(ad hoc) and 2(two) of them being included in group 'A'/Class-I service.

Notwithstanding Board have categorically mentioned vide their letter No.E(GP)83/2/39 dated 19-12-94(Annexure-F) that no proforma promotion and consequential benefit of pay can be given to the applicant including other panelists to the extent of their juniors promoted earlier to

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Senior Scale on ad hoc basis on the ground that the proforma to Senior Scale given at the zonal level is on ad hoc basis. Claim for proforma promotion vis-a-vis juniors arises only when the juniors are promoted on regular basis to a higher post earlier than their seniors.

It is also pertinent to mention here that the promotion to Senior Scale on ad hoc itself suggest that it is not a regular promotion. More so, because the regular promotion to Senior Scale is decided at Board's level since the Senior Scale posts are treated as group 'A' posts and the placement of group 'B' Officers in group 'A' is decided in consultation with the UPSC and with the approval of the President and the benefit of proforma promotion, stepping up of pay and fixation of pay etc., with or without application of Next Below Rule is applicable in the case of regular promotion only and not for ad hoc/fortuitous promotion.

Railway Board are of the opinion that the ad hoc promotion given to the applicant and others cannot be termed as similar to regular promotion and the question of proforma fixation, if any, will arise only when these people are confirmed in group 'A' status after a proper selection is done at Board's level in consultation with UPSC. As such, proforma fixation in this instant case cannot be agreed upon at this stage since the promotion to Senior Scale of the applicant and others is only on ad hoc as communicated by the Board.

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One page only  
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15. That as regards the para-IV(m), it is evident from the records available that the applicant was working on ad hoc as Asstt.Operating Manager purely on temporary basis with specific terms and conditions. It is admitted that the Railway Administration by this time had also conducted 3/4 selections in Operating and Commercial departments against 75% vacancies as well as 25% vacancies for the post of Asstt.Operating Manager/Asstt.Commercial Manager (group 'B') services. In all the subsequent selections of AOM/group 'B' the applicant was called for the selection against 75% vacancies as per his seniority position in group 'B' post. But the applicant did not appear in such selection and the employees who were junior to the applicant in group 'C', appeared and empanelled and also promoted on regular basis while the applicant was working on ad hoc basis as AOM(group 'B') since 1983 to 1994. Applicant can blame himself only for not appearing in the selection for placement of his name in regular panel.

16. That as regards the allegation made in para-IV(n) of the application, ~~the~~ same is denied and it is submitted that the representation of the applicant addressed to Secretary, Railway Board dated 24-7-96 has been forwarded to this zonal Railway under Board's letter No.E(GP)83/2/39 dated 19-8-96 and reply thereto has already been sent to Board vide this Railway's ~~letter~~ No.E/254/II/OPTG(O)/CAT dated 30-8-96. It may be mentioned here that the decision in the matter to redress the grievances of the applicant is required

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to be taken at the Board's level and the matter is being pursued with the Board. Since his representation is pending with the Railway Board, the applicant should await the reply and then take up the matter with the Hon'ble Tribunal.

16. That in reply to the statement made in para-IV(o), the respondents reiterate and reaffirm the statement made in para-5 above.

17. That as regards the paragraphs-IV(p) to (v), the contention made by the applicant in these paras are baseless and the position stated in reply to para-IV(d) to IV(n) above is reiterated.

18. That in view of the foregoing facts, the application is liable to be dismissed.

VERIFICATION

I, Smt.M.Brahmo, aged about 36 years, by occupation Railway service, working as Deputy Chief Personnel Officer of the N.F.Railway Administration, do hereby solemnly affirm and state that the statements made above are true to my knowledge derived from the records of the case which I believe to be true and I sign this verification on this 28th day of May, 1997.

*M.Brahmo*  
DEPUTY CHIEF PERSONNEL OFFICER(GAZ.)  
NORTHEAST FRONTIER RAILWAY  
MALIGAON : GUWAHATI  
FOR & ON BEHALF OF  
UNION OF INDIA.

मुख्य कार्मिक अधिकारी (राज्य)  
Chief Personnel Officer (G)  
10 सो. रेलवे, गुवाहाटी-781011.  
N. F. Rlv., Guwahati-781011

- 13 (13)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4420 OF 1990

Certified to be true copy  
New Delhi ( )  
Assistant Registrar (Judicial)  
3/10/91  
Supreme Court of India

Annexure-A

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541732

Shri Niranjan Das and Anr.

...Appellants

versus

Shri Makhanlal Choudhury and Ors.

...Respondents

O R D E R

The General Manager (P), North East Frontier Railway, issued a Circular dated February 21, 1983 wherein it was decided to hold a selection for the formation of a panel of 12 posts of Assistant Operating Superintendents (Group B) against 75% vacancies. Alongwith the Circular, the list of 36 members of the staff who were eligible to appear in the selection was also enclosed. The written test was held on March 20/27, 1983. Thereafter, the viva-voce was held and a panel of 6 persons was finalised. Meanwhile, the Railway Board issued a Circular dated March 5, 1983. In the said Circular, amended provisions for determining integrated seniority for promotion from Group 'C' to Group 'B' were laid down. Para 4 of the Circular was as under:

"These instructions will apply to selections initiated after the date of issue of this letter and will also apply to selections which have been initiated and where written examination forming a part of the selection has not been held. In respect of selections

Amr  
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which are in progress, instructions contained in the Ministry's Letter No.E(G) 79/2/33 dt.2-4-79 should be kept in view for appropriate action and wherever employees in excess of the filled become eligible for consideration in accordance with this letter, necessary action should be taken to provide an opportunity to such employees to take the selection."

Although, in terms of para 4 of the Railway Board's Circular the written examination which was held on March 20/27, 1983 should not have been held; But due to reasons best known to the North East Frontier Railway, the said selection was <sup>held</sup> finalised and as mentioned above a panel of 6 persons was finalised. It is not disputed that all those 6 panelists were promoted to Group 'B' posts. So far as remaining 6 posts were concerned, a fresh list of 28 candidates was prepared in accordance with the Railway Board's Circular dated March 5, 1983. Finally, a panel of 4 persons was finalised which included the two appellants. These 4 panelists were also promoted to Group 'B' posts in the year 1984.

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Makhanlal Choudhury, respondent No.1 in the appeal herein, challenged the selection before the Central Administrative Tribunal, Guwahati Bench on the ground that the test held on March 20/27, 1983 was in violation of the directives issued by the Railway Board in its Circular dated March 5, 1983. The Tribunal accepted the contention

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and set aside the initial selection of 6 panelists being violative of the directives issued by the Railway Board. The Tribunal also set aside the subsequent selection on the ground that both the selections were intertwined and it would not be possible to declare one illegal and save the other. The net result is that the Tribunal has quashed the selection made as a result of which the panel of 10 persons was finalised. This appeal by the two selected candidates are against the judgment of the Tribunal.

This Court while issuing notice in the special leave petition on September 22, 1988 passed the following order:

"Delay condoned. Issue notice returnable within five weeks, limited to the question whether any relief can be secured to the petitioners without depriving the respondent No.1 of whatever rights they have secured under the judgment of the Tribunal. Status quo for six weeks shall be maintained."

This Court by the order dated August 27, 1990 granted leave limited to the question stated in the order of this Court dated September 22, 1988 (quoted above).

It is not disputed by Mr. V.C. Mahajan, learned senior counsel for the Railway that the two appellants and respondent Nos. 6 to 13 who were the 10 panelists were appointed to Group 'B' posts some time in the year 1983 and 1984 and since then they are continuously working in the said posts. Learned counsel for the

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appellants further states that all those 10 persons have been continuously working in the said posts. He further states that some of them even retired on attaining the age of superannuation from Group 'B' posts.

Keeping in view the facts and circumstances of this case, we are of the view that the interest of justice would be met if the promotion and appointment of 10 panelists to category 'B' posts be regularised from the dates of their respective appointments to the said posts. We, however, make it clear that while doing so, respondent No.1 who is appointed to Group 'B' post after the judgment of the Tribunal shall not be adversely affected in any manner. The appeal is disposed of in the above terms. No costs.

(M)

New Delhi,  
September 6, 1994.

.....J  
(KULDIP SINGH)

.....J  
(B.L. HANSARIA)

Attested  
by  
[Signature]

MEMORANDUM.

In pursuance of the Judgement and Order dt. 26.2.88 of the Hon'ble Central Administrative Tribunal, Guwahati Bench, delivered in case G.C.No. 181 of 1986, the panel of Assistant Operating Superintendent (Group 'B') against 75% quota, published provisionally placing the following ten persons in the aforesaid panel, under General Manager(P)'s Memorandum endorsed under his No. E/254/69/CCN.PII dated 13.6.85 is hereby quashed and set aside with further directive that there shall be a fresh selection for preparing a panel of 12 (twelve) Asstt. Operating Supdt. (Group 'B' Class-II) based on the integrated seniority list as on 02.03.1983.

Consequent on quashing and setting aside of the above panel, the ten persons so selected and promoted to the post of Asstt. Optg. Supdt. on different dates are, however, allowed to continue as such purely on ad-hoc basis for a period of six months from the date of issue of this Memorandum within which time the fresh selection should be finalised. This ad-hoc continuation in the post of Asstt. Optg. Supdt. will not confer upon them any benefit or continuation as such over those who may be selected by virtue of his/their being eligible from the corrected integrated seniority list based on which the fresh selection will be held.

Names of Asstt. Optg. Supdt. placed on the provisional panel published under General Manager(P)/Maligaon's Memorandum endorsed under his No. E/254/69/CCN.PII dated 13.6.85 with their present place of posting are given below:-

SN. Name	Designation at the time of selection.	Presently posted as -
1. Sri K.K. Suklabaidya(SC),	DYC/BNGN.	ACS/Y/NBQ.
2. " M.M. Suklabaidya(SC),	SS/DBRT.	SS/GHY.
3. " S.F. Hussain,	CYM/NBQ.	ACS/Y/NJP.
4. " R.K. Chowdhury,	CYM/IMG.	SS/IMG.
5. " M.K. Sinha,	T/KIR.	ACS/KIR.
6. " K.D. Chakraborty,	DYC/APDJ.	ACS/APDJ.
7. " R.P. Sah(ST),	SS/RNY.	SS/NJP.
8. " K.L. Ghosh,	TI/HQ.	ACS(M)/HQ.
9. " A. Sarkar,	DYC/NGC.	ACS/Y/NGC.
10. " Niranjan Das,	DYC, now CEI/HQ.	PA to CCPS.

This issues with the approval of the General Manager.

(A.R.K. REDDY)  
DY.C.P.O.(G).  
for GENERAL MANAGER(P).

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No. E/254/II/Optg.(O).

Maligaon, dated 23-8-88.

Copy forwarded for information to:-

1. Ex. Secy. to GM/Maligaon for information of the General Manager.
2. Chief Optg. Supdt./Maligaon.
3. DRMs/KIR, APDJ, IMG & TSK.
4. DPCs/KIR, APDJ, IMG & TSK.
5. GM/Law (with three spare copies for information & necessary action).
6. A copy each for the above mentioned officers.
7. OS/EC/CCN/CPO's Office/MLG.
8. OS/EC.. (with ten spare copies).
9. Sr.DCS/KIR, APDJ, IMG.
10. DCS/TSK.
11. APC(T)/MLG.

( A.R.K. REDDY )

23/8/88  
DY.C.P.O.(G).  
for GENERAL MANAGER(P).

Attested

Signature

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Annexure - C  
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NORTHEAST FRONTIER RAILWAY

OFFICE ORDER

In pursuance of the order of the Hon'ble Supreme Court dated 6.9.94 in the Civil Appeal No. 4420/90 ( in SLP No. 10354/88, Shri N. Das & Ors. Vs. Sri ML Chowdhury & Ors.), the services of 10 Asstt. Operating Supdt./Manager, (Group-B), approved in the panel which was provisionally published vide GM(P)'s Memo. No. E/254/69/Con Pt. II dt. 13.6.85 allowing the 10 panelists to continue on adhoc basis consequent upon CAT/GHY's order in GC 181/85 qualifying the above panel, are hereby regularised to the post of AOM(Gr.B) from the date of their appointment to Gr.B as shown against each :-

Sr. No.	Name & designation.	Date of regularisation in Gr.B.	Remarks.
1.	Sri KK Suklabaidya (SC), AOS/I/NEQ.	4.6.85.	
2.	" MM Suklabaidya (SC), SS/GHY.	18.7.83.	
3.	" ST Hussain, AOS/NJP.	24.6.83.	
4.	" RK Chowdhury, SS/IMG.	31.8.83.	Retd. on 30.4.93.
5.	" MK Sinha, AOS/KIR.	20.6.83.	-do- 31.3.94.
6.	" KD Chakraborty, AOS/APDJ.	4.6.85.	-do- 31.8.94.
7.	" RP Sah (ST), SS/INY.	28.9.87(AN).	-do- 28.2.93.
8.	" KL Ghosh, AOS/M/HQ.	15.6.83.	-do- 31.10.90.
9.	" A. Sarkar, AOS/Y/NGC.	4.6.85.	
10.	" N. Das, EA to COM.	4.6.85.	

This issues with the approval of the Rly. Board as communicated vide their Message No. E(GP)83/2/39 Pt. dated 25.10.94.

(Mrs. M. Brahmo)  
Dy. Chief Personnel Officer(G),  
for General Manager(P)

No. E/254/11/OP TG(O). Maligaon, dated 2-11-1994.

Copy forwarded for information & necessary action to :-

1. GM/Maligaon.
2. FA & CAO/EGA/Maligaon. COM/CCM/NF Rly.
3. All DIMS, DIM(P)s
4. Secy. to GM, PS to GM
5. CVO, CPRO, Sr. DGM
6. OS/EO Bill. All DAOs
7. Officers concerned.
8. Spare copies for I/Case.

(Mrs. M. Brahmo)  
for General Manager(I)

Attested  
AA  
Acc.

BY FAX

Annexure - D

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NORTHEAST FRONTIER RAILWAY

Office of the  
General Manager (P),  
No.E/254/II/OTG(O)/CAT. Maligaon, Guwahati-11, 7-10.94.

The Secretary(E),  
Railway Board,  
New Delhi.

For Personal Attention of Sr K L Dutt, Dy Secy E (Genl.)

SLP(C)

Sub:- Supreme Court case No.10354/88 and  
CAMP No.4420 of 1990, Sri N. Das & Ors.  
Vs. Sri ML Chowdhury & Ors.

...

Enclosed please find herewith a certified copy of the Order of the Hon'ble Supreme Court in the Civil Appeal No.4420 of 1990 on the case mentioned above, which has been directly received from one of the appellants.

2. In the SLP(C) No.10354/88, Chairman, Railway Board was made one of the respondents and accordingly, the Rly.'s reply in opposition was filed through the Rly. Board. Before taking any decision regarding implementation of the Order of the Hon'ble Supreme Court in the Civil Appeal No.4420/90, the following points are required to be got confirmed and approved by the Rly. Board :-

- 1) Regularisation of promotion of the 10 panelists as referred to in the Order of the Supreme Court to Gr.B from the date of their respective appointments to the said post.
- ii) Promotion of the panelists to Sr.Scale.
- iii) Proforma fixation of these persons to the extent of their juniors who have been promoted to Sr.Scale in the meantime on adhoc/regular basis.
- iv) Consideration of their placement in Gr.A/Class-I with reference to their juniors placed in Gr.A in the meantime.
- v) Consideration for their adhoc/regular promotion to JA Grade.

It is pertinent to mention that out of the 10 panelists, 5 persons have since retired from Rly. service on superannuation, while they were working in Group-B on adhoc basis during pendency of the Supreme Court case.

3. Further, a decision is to be taken in the case of Shri ML Chowdhury, Respondent No.I who had challenged the empanelment of these 10 candidates in the Guwahati Tribunal and got the said selection quashed, in terms of Tribunal's judgement. Shri Chowdhury was promoted to Group-B on adhoc basis during the pendency of the court case. Although he could not qualify in the Selection of AOM(Gr.B) held in 1983-84. The Hon'ble Supreme Court vide their order

contd.....2.

Hand again in 1989.

For per  
seniorly.

Attested  
Sd/-  
Sd/-

Order dated 6th September, 1994 have given direction that Shri Chowdhury shall not be adversely affected in any manner. Board may kindly examine the matter whether he can be considered for promotion to Group-B and allowed to continue on adhoc basis in terms of Hon'ble Supreme Court's Order without actually qualifying in the selection. In this connection, GM/NF Railway's letter to Member Staff, Rly. Board dated 14th August/91 may please be referred to, a copy of which is enclosed for ready reference which will give the background of the case. / 85

4. A reply by return will be highly appreciated.

Encls: As above.

*Mrs. M. Brahmo*  
(Mrs. M. Brahmo)

Dy. Chief Personnel Officer (G),  
for General Manager (P)

*Attended  
Shri  
Sri.*

22

Signature E  
SN 101

- 61 -

NORTHEAST FRONTIER RAILWAYOFFICE ORDER NO. 245/94 (T&C Deptt.)

The following transfer and posting are ordered :-

1. Shri KK Suklabaidya, AOM/NBQ who is empanelled for promotion to Sr. Scale on adhoc basis is appointed to officiate in Sr. Scale on adhoc basis and posted as Area Manager/NBQ against an existing vacancy.
2. " MM Suklabaidya, SS/GHY who is empanelled for promotion to Sr. Scale on adhoc basis is appointed to officiate in Sr. Scale on adhoc basis and posted as SCM/Claims vice Smt. Leena Sarma proceeding on study leave for one year.
3. \* The SS element of the post of SCM/Catering/HQ is temporarily transferred to KIR for operation as DOM/KIR by upgrading the post of AOM/KIR.
4. Shri SF Hussain, AOM/KIR who is empanelled for promotion to Sr. Scale on adhoc basis is appointed to officiate in SS on adhoc basis and posted as DOM/KIR against the above arrangement.
5. \* The SS element of the post of DSC/APDJ is temporarily transferred to GHY for operation as DOM/GHY by upgrading the post of AOM/Yard/GHY.
6. Shri A. Sarkar, AOM/Yard/GHY, who is empanelled for promotion to Sr. Scale on adhoc basis is appointed to officiate in SS on adhoc basis and posted as DOM/GHY against the above arrangement.
7. Shri N. Das, EA to COM, who is empanelled for promotion to Sr. Scale on adhoc basis is appointed to officiate in SS on adhoc basis and posted as STM/Safety/HQ against an existing vacancy.

This issues with the approval of GM, COM &amp; COM.

(Mrs. M. Brahmo)  
Dy. Chief Personnel Officer(G),  
for General Manager(P)

No. E/283/82 Pt. XV(O). Maligaon, dated 10.11.94.

Copy forwarded for information and necessary action to :-

- |                               |                                       |
|-------------------------------|---------------------------------------|
| 1. GM, CCM, COM, CFIM.        | 2. PA&CAO/EGA/MLG.                    |
| 3. CVO, CPRO, SDGM.           | 4. All DRMs, ADRM/GHY.                |
| 5. Sr. DPO/KIR, APDJ, LMG.    | 6. DRM(P)/TSK.                        |
| 7. DAO/S/KIR, LMG, APDJ, TSK. | 8. Sr. DOM/KIR, APDJ, LMG.            |
| 9. PS to CM.                  | 10. Officers concerned.               |
|                               | 11. Spare copies for P/case & M/file. |

(Mrs. M. Brahmo)  
for General Manager(P)

Attest -

Shri  
Am.

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD).

No.E(GP)83/2/39 Pt.

Rail Bhavan, New Delhi-110001  
dated 19.12.94.

The General Manager,  
N.F. Railway,  
Guwahati.

(Attn: Mrs. M. Brahma, Dy.C.P.O.(G).)

Sub : SLP(C) No.10354/88 and C.A. No.4420/90 -  
Sh. N. Das and Others Vs. M.L. Chowdhury &  
Others.

Ref : AGM, Dr. M.X. Sharma's confidential D.O.  
letter No.E/254/11/PTG(O)/CAT dt. 17.11.94  
addressed to Adviser (MS).

The following points were referred to this office for  
the consideration of the Board and for their clarifications.

- a) Whether the benefit of proforma promotion and fixation of pay to the extent of their juniors promoted earlier to Sr. Scale on adhoc basis can be given to the five serving officers who have been promoted to Sr. Scale on adhoc basis under N.F. Rly's office Order No.254/94 (TT&C Deptt.).
- b) Whether the five retired officers can be given the benefit proforma promotion in Sr. Scale (adhoc) to the extent of their juniors notwithstanding the fact that those officers did not shoulder higher responsibility and duty. Also, whether monetary benefits i.e. enhanced pension, DCRG and leave salary etc. can be granted to those employees on the basis of such proforma promotion and consequent fixation of pay.
- c) Whether the ten officers (five serving and five retired) should be considered for substantive absorption in Gr.'A' Jr. Scale of IRTS to the extent of their juniors who have been so absorbed in IRTS earlier.

With regard to the queries as brought out a & b above, it is advised that proforma promotion with reference to junior in case of adhoc promotion is not admissible as per the extant instructions.

So far as the position regarding para-C above is concerned, it is stated that the eligible officers who have been regularised in Group 'B' vide Railway's office order No.E/254/11/PTG(O) dt. 2.11.94 may be considered for substantive absorption in Group 'A' Jr. Scale of IRTS in consultation with UPSC. As such, the same should be examined and proposal sent to this office for consideration. In this connection, their service particulars as on 1.10.94, 1.10.93, 1.10.92 and so on may be sent to this office by placing them in appropriate place on the seniority list of Group 'B' officers of Traffic Department. This may be done expeditiously.

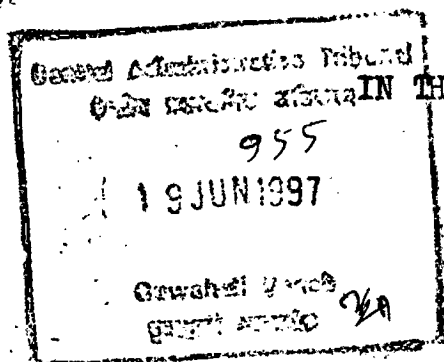
I hope this clarifies the position.

Sd/-  
(V.P. MEHRA)  
Dy. Director, Estt.

Attended from copy  
30/12/94  
R.F. Rly. Manager

Attested  
Dy. Secy





IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Filed by The Petitioner  
through Adv.  
17.6.97

O.A. No. 200/96

Shri M.S. Baidya

-Vs.-

Union of India & Ors.

In the matter of :-

Written statement on behalf  
of the Respondent No.5.

The respondent No.5 most respectfully begs  
to state as under :-

1. That the respondent No.5 has received the copy of the application and has understood the contents thereof.
2. That the respondent No.5 belongs to Commercial Department in the Group-B, category in the capacity as of Assistant Commercial Manager (for short A.C.M.), and the applicant belonged to operating department, as Assistant Operating Manager (for short A.O.M.). But these departments are separate and cadres of ACM and AOM are distinct and separate with separate seniority units. From these units promotion to senior scale is

copy  
handed over to  
Sri. H. Rahman Adv.  
on. 12.6.97.  
Adv.

19/6/97

to the common cadre of Senior Scale Officer and SCM (Senior Commercial Manager/STM (Senior Transportation Manager) etc. This Deponent has got his promotion regularly. He was promoted to the ACM with effect from <sup>15.11.1977</sup> 14.9.84. He got promotion to Senior Commercial Manager with effect from 3.2.92. He was promoted to Group-A service with effect from 1.6.92 and he has got the Junior Administrative grade with effect from 7.10.94. The applicant has no scope and right to supercede this deponent and disturb his position. Moreover this deponent was not a party in the cases referred to in the Original Application.

3. That it is respectfully submitted that this application is grossly barred by limitation. The order for regularising the petitioner was passed on 2.11.94. This was done in compliance with the orders of the Hon'ble Supreme Court dated 6.9.94. This order is very clear giving regularisation and nothing more (no seniority). The applicant has filed the instant application in September, 1996. This application deserved to be dismissed in the threshold on the ground of limitation.

4. That the applicant is also guilty of suppression of very important and material fact. In para 4(f), he has stated that he has filed appeal before the Hon'ble Supreme Court. But in fact, he was not aggrieved by the judgement of the Hon'ble Central Administrative Tribunal/ Guwahati Bench passed in G.C. No.181/86(T) (ML Choudhury -Vs.- UOI & Ors.) and he has not filed any SLP. Shri N. Das and Shri A. Sarkar filed the SLP before the Hon'ble Supreme Court where the leave for appeal was granted

and the case was decided in Civil Appeal No.4420/90. The applicant in this O.A. was made respondent by the petitioners in the SLP. It is also mentioned here that the present applicant in the O.A. did not also dispute the merit of the case before this Hon'ble Tribunal in the said G.C. 181/66(T).

The applicant by suppressing the material fact of not filing any SLP and making a wrong statement that he filed appeal before the Hon'ble Supreme Court has tried to project that he was always contesting the case. This application is, therefore, liable to be dismissed on the ground of suppression and intentional wrong statement.

5. That the order of the Hon'ble Supreme Court dated 6.9.94 has clearly indicated that on 22.9.88, the following orders were passed - "Delay condoned, issue notice returnable within 5(five) weeks, limited to the question whether any relief can be secured to the petitioner without depriving the respondent No.1 or whatever rights they have secured under the judgment of the Tribunal, Status quo for 6 week shall be maintained." The Hon'ble Supreme Court limited the matter only to the question whether any relief can be secured to the petitioners without depriving the respondent No.1 (Shri M.L. Choudhury) of his rights. The present applicant was not a petitioner in the SLP.

6. That it is stated that the applicant being aggrieved by the order dated 2.11.94, which has not given him any seniority, approached the Hon'ble Supreme Court alleging contempt for non-compliance of the Court's order and by his own averments in para IV(c), the Hon'ble Supreme Court was pleased to dismiss his contempt petitioner No.104 in Civil Appeal No.4420/90 by order dated 10.4.96. This shows that what the Railway had done is fully compliance of the Hon'ble Supreme Court's order. It is denied that the Supreme Court advised to file Original Application.

7. That in their order dated 6.9.94, the Hon'ble Apex Court has also held that the Tribunal accepted the contentions and set aside the initial selection of 6(six) panelists being violative of the directive of the Railway Board. The Hon'ble Tribunal also held that "the net result is that the Tribunal has quashed the selection made as a result of which the panel of 10 persons were finalised". The Hon'ble Supreme Court did not consider the disputes in the case between the parties but in fact, considered the long period of ad-hoc services of the applicant and in pursuance to their order dated 22.9.88, ordered for justice in the Civil Appeal. In this connection, it may also be mentioned that the ad-hoc services were continued to comply with the order of the Hon'ble Apex Court dated 22.9.88 to maintain status quo. In their order dated 6.9.94, the Hon'ble Apex Court has taken cognisance of the finding of the Hon'ble CAT/Guwahati Bench on the basis of the Railway Board's circular dated 5.3.83 and 2.4.79. Thereafter, the Hon'ble Supreme Court

has declined to set aside or quash the judgment of the Hon'ble Central Administrative Tribunal/Guwahati Bench. The Apex Court has ordered as under :-

" Keeping in view the facts and circumstances of this case, we are of the view that the interest of justice would be met if the promotion and appointment of 10 panelists to Category 'B' posts be regularised from the date of their respective appointments to the said posts. We, however, make it clear that while doing so, respondent No.1 who is appointed to Group 'B' post after the judgment of the Tribunal shall not be adversely affected in any manner. The appeal is disposed of in the above terms. No costs."

It is submitted that this order read with the order dated 22.9.88 of the Hon'ble Supreme Court, delivered justice to the panelists in the peculiar circumstances of the case. The Court has also taken into cognisance that many officers had also retired.

8. That the Hon'ble Supreme Court by their order dated 22.9.88 and also by the order dated 6.9.94 has made it specifically clear that the right earned by the Original Applicant in G.C. No.181/86 before the Hon'ble Central Administrative Tribunal/Guwahati Bench (Shri M.L. Choudhury) could not be in any way adversely affected. Granting the reliefs prayed by the present applicant in the present O.A. will, in fact, mean that the judgment

of Hon'ble Central Administrative Tribunal in G.C. 181/86 would be rendered non-est. Moreover, this will also cause grievance to the said Shri M.L. Choudhury against which Supreme Court has given a specific safe-guard.

9. That consequent upon the judgment of the CAT/Guwahati in G.C. No.181/86, the panel of the 10 panelists were formally quashed and set aside by Memorandum No.E/264/II/Optg.(O)/Maligaon dated 23.8.88 by the Railway Authorities. There-after, this quashed panel has never been restored. It is stated that the said panel remains quashed and set aside even to-day. It is further stated that by the said order, these 10 officers were allowed to continue in the Group 'B' posts purely on ad-hoc basis. This ad-hoc was continued as a result of the status quo order passed by the Hon'ble Apex Court on 22.9.88. Copies of the judgment of the Hon'ble CAT in G.C. 181/86 and Memorandum dated 23.8.88 are annexed as Annexure 'A' & 'B' respectively.

10. That under the circumstances explained above and in compliance with the Hon'ble Supreme Court's order dated 6.9.94, ordering to regularise the 10 panelists in Group 'B' posts, the order dated 2.11.94 has been passed regularising the services of the officers including the present applicant. But no seniority has been given to them because this would unsettle many settled things and is likely to invite future litigation and the panel stood set aside and quashed.

In this connection, the deponent begs to state the ad-hoc Doctors in the Railways have been regularised

retrospectively by the order of the Hon'ble Supreme Court in Dr. AK Jain and Ors. -Vs.- UOI & Ors. (1989(1) SLJ Supreme Court). The Hon'ble Supreme Court in the peculiar circumstances of the case considering the long ad-hoc services of the Doctors ordered for their regularisation with retrospective effect. Though the ad-hoc Doctors were regularised from their date of initial appointment, railways have not given them seniority from the date of regularisation and the matter came up before the Hon'ble Supreme Court in Dr. Haque and Ors. Vs. UOI & Ors. (1993 Vol.24 ATC Page 117) and the Hon'ble Supreme Court was pleased to hold that the Doctors though regularised are not entitled to seniority from the date of regularisation. The deponent states that in the instant case also regularisation has been done as a special case and the applicant has not been given seniority to which he is not entitled.

11. That in reply to the statement in para IV(f), (g), (h) and (i), it is denied that the applicant had filed the application before the Supreme Court. It is also stated that the applicant was not given any seniority benefit.

12. That in reply to the statement in para IV(j), this deponent denies the correctness of the statement that he is senior to the present deponent.

13. That in reply to the statement in para IV(k) and (l) this deponent begs to state that he has been promoted following rules of promotion. On the contrary, the applicant

was continuing on AD-HOC basis, ~~his~~ his selection stands quashed and as such is non-est. His promotion to Group 'B' post is the result of a peculiar circumstance and order of the Hon'ble Supreme Court.

14. That in reply to the statements in paragraph IV(m) it is denied that the Supreme Court allowed the appeal of the petitioner. In fact the applicant did not file any petition/appeal before the Supreme Court. It is also denied that the Supreme Court set aside the order of this Hon'ble Tribunal. The Supreme Court also did not uphold the selection of the applicant as alleged. By then order of the Hon'ble Supreme Court only got the benefit of regularisation. The Railway also gave them benefit of regularisation only without seniority maintaining equality of treatment with the ad-hoc doctors of the Railway regularised by Hon'ble Supreme Court's order where also no seniority was given.

15. That in reply to the statement in para IV (m), (n) & (o), it is stated that the Supreme Court has dismissed the contempt petition. The applicant has been given only regularisation and no seniority correctly. Therefore, the Contempt petition was dismissed. It is denied that the Hon'ble Supreme Court advised the applicant to file O.A. before this Hon'ble Tribunal.

16. That in reply to the statement in para IV(p) it is denied that the applicant had filed application before the Hon'ble Supreme Court.



17. That in reply to the statement in Para IV(q), (r) and (s) it is stated that the applicant is not entitled to seniority above this deponent.

18. That in reply to the statement in para IV(t) it is stated that the deponent has been regularly promoted to Group-B post and thereafter promotion to Group-A post and Senior Scale (all regular) and further promoted as Junior Administrative rank (regular).

19. That in reply to the statement in para IV(u), (v) and (w) it is stated that the statements made above in this written statement are re-iterated and it is submitted that the applicant is not entitled to relief as prayed for in the application.

20. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

V E R I F I C A T I O N

I, Shri Dipak Talukdar, son of Shri Jajneswar Talukdar, resident of Guwahati aged about 49 years do hereby verify that the statements made above are my information derived from the records which I believe to be true.

*Dipak Talukdar*  
Deponent. "14/32

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GJWAHATI BENCH

G.C.No.181 of 1986

Shri M.L. Choudhury

- Applicant

vrs.

Union of India & Ors.

- Respondent

PRESENT:

The Hon'ble Justice Shri D. Pathak, Vice-Chairman  
The Hon'ble Shri S.P. Hazarika, Member

For the applicant

: Mr. S.K. Sen, Advocate  
Mr. J.L. Sarkar, Advocate  
Mr. R.P. Sarma, Advocate  
Mr. A. Dasgupta, Advocate

For the respondents

: Mr. A.R. Barooah, Advocate  
Mr. B.K. Sharma, Advocate

Date of Judgement & Order: The 26<sup>th</sup> day of February, 1988.

JUDGEMENT & ORDER

(Per S.P. Hazarika)

This application initially submitted as a writ petition under article 226 of the constitution of India and registered in the Gauhati High Court as Civil Rule No.175/86 has come to the Tribunal on transfer by the operation of section 29 of the Administrative Tribunals Act, 1985.

2. The applicant M.L. Choudhury, is a Chief Controller in the N.F. Railway in the scale of Rs.840-1200/-, which is the highest scale for the....

Amesha  
B. B. B.

the group-C employees of the Railways at the relevant time. The next promotion for the group-C employees is to the Group-8 grade and the promotion is made after a selection from the different streams of group-C employees constituting separate seniority units. For the purpose of selection for the promotion an integrated seniority list is prepared under the prescribed principles before the eligible persons are called upon and notified in the order of the integrated seniority to appear at the selection test. The applicant was one of the 36 persons called for such a selection test notified on 10.3.1983. He appeared in the test under protest as his name was shown at a much lower position in the integrated seniority list. He qualified in the written test but for not being successful in the viva-voce test the applicant failed to be included in the panel of 6 persons prepared on 2.6.1983. A few days later, on 14.6.1983, the 6 empanelled persons were also temporarily appointed in the Group-8 posts as Assistant Operating Superintendent but showing them as having been empanelled provisionally.

3. The number of vacancies was not mentioned in the notice inviting the candidates for the aforesaid selection test but it is not disputed that there were 12 vacancies. The size of the list....

*Done in 2020*

list of candidates called for the test which was 36 also confirms this number of vacancies as at the relevant time, three times the number of vacancies constituted the zone of selection. The panel prepared in June, 1983 being of six persons only against 12 vacancies, another selection test was notified in August, 1983, and 28 more persons excluding the persons called in March, 1983 were invited for the written examination to be held on 18.9.1983. This was done apparently on the ground that some of the persons due for inclusion in the list of candidates notified in March, 1983 according to the correct integrated seniority were left out. The result of this subsequent test, which may be just another instalment of the test notified in March, 1983 were not announced. But 4 of the persons included in the list of 28 were appointed in July, 1984, 'to look after the duties of Class II (Gr.8) posts on local and adhoc arrangement.'

4. The applicant assails the above selections and appointments by promotion on the following grounds:

- (1) The Railway Board revised the principles for determination of the integrated seniority of persons from different streams and seniority units for promotion from Group-C to Group-B by a circular dated 5.3.83 under which the applicant's name should have been at Sl.No.2 of the list....

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B. Thelma  
Adm.

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list of 36, but instead his name was shown at Sl.No.20 by determining the integrated seniority under the principles which were no longer in force.

- (2) The representation of the applicant filed on 18.3.1983 against the wrong showing of the seniority and for postponing the selection scheduled for 20.3.1983 pending preparation of the correct seniority list in accordance with the Railway Board's revised principles laid down in letter No.E(G)81/2/57 dated 5.3.1983 was left without consideration and the written test was held by the respondents on the 20th and 27th March, 1983 in violation of the instructions contained in the said letter dated 5.3.1983.

- (3) Out of the 36 persons called for the selection test in March, 1983, thirteen persons including 2 of the 6 persons empanelled on that occasion were ineligible for appearing in the test in view of their lower position in the correct integrated seniority list and the inclusion of these 13 ineligible persons resulted in the exclusion of the same number of eligible persons.

- (4) The list of 28 persons called for the test on the second occasion again included some ineligible....

*By Test SO. Law.*

- 14 - 79

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ineligible persons according to their position in the integrated seniority list and out of the 4 persons detailed to look after the duties of group-8 posts in July, 1984, three are ineligible according to the seniority determined according to the Railway Board's circular dated 5.3.1983. That the three persons are ineligible is also clear from the revised seniority list prepared by the Railway Board before notifying the second instalment of the test.

- (5) Ineligible persons were <sup>maliciously</sup> included in both the occasions to give undue benefit to the juniors at the cost of the seniors including the applicant.
- (6) Altogether 64 (36 + 28) persons were called for the selection test for filling up 12 vacancies though under the prescribed principle in force at the relevant time the zone of selection should have consisted only of 36 persons under the 3 X formula.
- (7) To a further representation made by the applicant on 10.8.1984 against the posting of 4 persons to look after the duties of Group B posts, of whom three are ineligible, the respondents in their reply dated 19.11.1984 made a wrong statement that the applicant's case was considered from his correct seniority position at sl.no.2.
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LD.  
Adv.

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5. The respondents do not dispute that the seniority shown in the notice dated 10.3.1983 was not in accordance with the integrated seniority determined on the revised principle laid down by the Railway Board on the 5th March, 1983. Their contention is that the selection test had to be held as scheduled as the time was too short after the receipt of the Board's circular to revise the seniority list and <sup>that</sup> a renotification of the written examination would delay the selection which was administratively undesirable to avoid prolongation of the vacancies in the Group B posts against the promotion quota. The respondents also do not dispute the exclusion of some of the eligible persons in the March, 1983 notice according to the redetermined integrated seniority. They, however, contended that it was to give such persons due opportunity of sitting in the examination that a second instalment of the test was held. In the process the zone of selection got enlarged as more persons than what is permissible under the prevailing principle of the 3 X formula had to be called for the test. The <sup>over</sup> respondents in support of the validity of this action/that the expansion of the list of candidates beyond the prescribed zone of selection had the approval of the Board which they obtained after giving a complete clarification of the whole position to the Railway Board in their letter No.E/254/11/OPT(0) dated 31.5.1983 a copy of which has been furnished in the records....

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records produced by them. Yet another averment of the respondents is that in the revised seniority list the applicant's name was shown at Sl.No.2 which is the position claimed by him and admittedly due to him, but he could not be empanelled for his failure to qualify in the selection test, which includes also the viva-voce test.

6. The Railway Board was impleaded in the application as respondent No.3, but the Board did not file any written statement although the validity of some of the Board's actions has been challenged. Only one counter affidavit has been filed on behalf of respondent No.1, Union of India; No.2, The General Manager, N.F. Railway and No.4, the Chief Personal Officer, N.F. Railway with their contentions and averments as outlined above.

7. The short points for determination in the case are whether the selection tests and the appointments can be saved in view of the prescribed principles having the force of rules and whether the Railway Board could validate the actions and orders which are not in conformity with the rules and principles laid down by the Board.

8. It is not disputed by the respondents that the Railway Board's circular dated 5.3.1983 was received before the written examination which was scheduled to be held on 20.3.1983. The applicant has specifically averred that the circular was received in the N.F. Railway on 11.3.1983 and this averment has remained unrefuted. According to this circular  
of....

*Amul*  
*S. Sen*  
*Adh*



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of the Railway Board, the integrated seniority of group-C employees is to be determined for the purpose of promotion to group-B on the basis of the date of employment of the employees to the grade of Rs.700-900/- in the respective group-C stream on a non-fortuitous basis. The applicant himself has prepared a seniority list on this basis at Annexure K. The respondents have also filed with their records a copy of the seniority list prepared on the said basis, a copy of which was enclosed to the Railway Board in their letter dated 31.5.1983 by which they sought the approval of the Board for enlargement of the zone of selection from 36 to 63. Incidentally, the number is not 63 but 64 as shown by the enclosed seniority list which also includes a person under Sl.No.54 A. There is a slight difference between the seniority list prepared by the applicant at Annexure K and the list prepared by the respondents, but the difference is inconsequential for the purpose of the present case. It is sufficient to note that the last person in the seniority list sent to the Railway Board on 31.5.1983 was included in the March, 1983 list of 36 persons which is an apparent justification for enlargement of the zone of selection to 64.

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9. The circular dated 5.3.1983 distinctly states at paragraph 4 that the instructions contained in it would apply to selections initiated after the date of issue of the letter that is, 5.3.1983 and that it would also apply to selections which have been initiated....

*Amesh*  
*S.D.W.*

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initiated and where the written examination forming a part of the selection has not been held. What is an admitted fact that the circular was received before the examination was held on 20.3.1983 it was patently violative of this circular to hold the written examination and proceed with the selection test without examining whether a revision of the integrated seniority list was called for in view of this revised principle. In the same para 4 the Railway Board had also stated that in respect of selection which are in progress, instructions contained in the Ministry's letter No.E(G)79/2/33 dated 2.4.79 should be kept in view for appropriate action and wherever employees in excess of the field become eligible for consideration in accordance with the principle contained in the letter, necessary action should be taken to provide an opportunity to such employees to take the selection. The respondents of N.F. Railway authorities should have no reason to be confused or misled by this part of the instructions as the aforesaid circular dated 2.4.1979 is also very clear on the point. The 1979 circular of which a copy is at Annexure P, covers all the possible stages of a selection test initiated prior to the required revision of a seniority list. The four different stages are

- (1) list of candidates for written examination notified, but the written examination not held,
- (2) written examination held and some persons ineligible for appearing in the examination according to....

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to the revised seniority has qualified in the written examination but viva-voce test has not been held, (3) viva-voce test has also been held but panel not finalised and approved, and (4) panels have been approved and finalised. In a case like the one before us the 1979 circular also requires that where the written examination has not been held as yet, the seniority list is to be first revised before holding the examination.

10. The applicant's contention that 13 of the 36 persons from Sl.No.23 to 36 excepting Sl.No.35 of the list of candidates called for the test on the first occasion in March, 1983 are ineligible is also confirmed by the seniority list forwarded to the Railway Board on 31.5.1983. These thirteen persons include the last 2 of the 6 persons empanelled on 2.6.1983 vide Annexure D. These two empanelled persons were ineligible as their positions in the revised seniority list are Sl.No.43 and 45 as shown by the seniority list prepared by the N.F.Railway on or about 30.5.1983 and forwarded to the Railway Board on 31.5.1983.

11. As the written examination was held on the 20th and 27th March, 1983, the applicant has rightly contended that the case should have been treated as coming under the 1st stage of the 1979 circular and not in the 2nd stage as intimated to the Railway Board. We shall shortly notice this reference to the Rly. Board in fact when the viva-voce test was held on 21.4.1983 the case had crossed the second stage when the Rly Bd was moved on 31.5.1983. The panel of six persons having been approved and finalised on 2.6.1983,

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*SD Adv.*

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the case was at the end of the third stage and was on the verge of coming to the 4th stage when the Rly Board's approval to the process was sought on 31.5.1983. The finalisation of a panel of six only after moving the Railway Board but before receiving their approval, which was also given by the Railway Board promptly in their letter No.E(Sp)83/2/39 dated 25/27.6.1983, gives an obvious indication of an undue haste on the part of the N.F. Railway authorities. The N.F. Railway authorities apparently misinformed the Railway Board that the case came under stage II of the 1979 circular when in fact they themselves had, by finalising the panel of six, made the process to that extent a fait accompli coming under stage IV.

12. Whether there was enough time for the N.F. Railway authorities to revise the seniority list is not an issue in the case. The written examination not having been held when the circular was received they had no option than to renotify it after a revision of the seniority list. Their failure to do so has been patently violative of the aforesaid circular dated 5.3.1983 as well as the Railway Board's circular dated 2.4.1979 from which also it clearly follows that the examination in such a case is to be postponed, to be re-scheduled after a revision of the seniority list.

13. The fixation of a zone of selection to be meaningful, the seniority list of candidates for the test must be correctly determined. The underlying principle for the fixation of a zone of selection is that the supersession of eligible employees should not be allowed beyond a certain fixed limit. To

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*Director  
S.P. Chow.*

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bring in junior employees within the zone of selection and then to hold a supplementary examination to allow an opportunity to the senior persons who were left out, amounts to enlarging the field of competition and thereby unduly exposing some of the senior candidates to supersession by the junior candidates who are otherwise ineligible for sitting in the examination. Such supersession, not only denies timely promotion but unduly restricts the scope of promotion for the senior officers as the promotion of an ineligible junior blocks the prospects of the seniors, may be at times permanently. The expansion of the zone of selection, except in accordance with the prescribed rules and principles must therefore be held to be untenable. In this connection, the learned counsel for the applicant has also brought to our notice the circular No.E(GP)81/1/18 dated 9.4.1981 issued by the Railway Board about the rigid enforcement of the zone of selection even where the number of vacancies gets enlarged for the administration's inability to timely hold the selection test. This circular prescribes that the vacancies for the different periods are to be taken separately and for each period, the zone of selection is to be taken separately and the selection for those vacancies confined to the particular zone only although one single examination has been held for vacancies of more periods than one. This circular of 1981 is inapplicable for promotion to group-B posts but the underlying principle of preventing....

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enlargement of a zone of selection due to no fault of the candidates is equally applicable. In the instant case where the examination should have been confined only to 36 persons they have now extended it to 64 persons. On the first occasion, it appears that out of the 6 empanelled persons all except the first one are junior to the applicant. Three of them have been wrongly shown as senior to him and two were not eligible at all. It cannot be said with certainty that had the applicant's seniority been shown at sl.no.2 instead of 20 then also he would not have been selected on that occasion. We could not also accept the Railway's statement that the applicant's correct seniority at sl.no.2 was considered during the test. Not only that no record has been produced to that effect, the records produced only show that the viva-voce test was held on 21.4.1983 whereas the revised seniority was finalised on or about 30.5.1983. In any case there is no record to show that the revised seniority was intimated to the Selection Board during or before, the panel was under preparation by the Selection Board.

14. Apart from the wrong showing of the applicant's seniority, if only six persons were to be empanelled on that occasion in March, 1983, the selection should have been confined to the first 18 (6 x 3) persons of that list in which case the last two empanelled persons who were at sl.no.25 and 31....

*Quintin S. J.*

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31 of the list of candidates would have been out of consideration.

15. As already observed it stands undisputed that the representation filed by the applicant on 18.3.1983 for revision of seniority before holding the written examination was received before the scheduled date of the examination. The respondents have failed to give any cogent reason for the administration not considering it when it was pin-pointed in the representation that the holding of the examination as scheduled would be violative of the Railway Board's circular.

16. The relevant portion of the N.F. Railway's letter dated 31.3.1983 to the Railway Board reads as below:

"The stream-wise selection of T(T) & C.D. was processed and the date for holding the Written Test against 75% vacancies was fixed in the month of March '83. Just on the eve of holding the written examination Board's letter dt. 5.3.83 referred to above, regarding revised instructions for determining the integrated seniority has been received. The time being too short, it was inconvenient on the part of the administration to cancel the proposed written test examination as envisaged in the instructions at stage No.1 communicated under Board's letter No.E(GP)79/2/33 dated 2.4.79.

In view of the fore-going, it was decided to hold the written test examination on the scheduled date and as per earlier seniority list and regularise the same as per instructions communicated at stage No.11 vide Board's letter dated 2.4.79.

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"The combined seniority list of the eligible candidates as drawn up on the basis of the earlier order is enclosed at ANNEXURE 'A'. As per Board's revised orders dt.5.3.83, the combined seniority list of the eligible candidates has been prepared afresh and the same is enclosed at ANNEXURE 'B'. It would be seen from the seniority lists mentioned above that the zone of consideration for holding the written test examination to fill up the vacancies of 12 posts (9 JR, 2 SC & 1 ST) has been extended from 36 to 63.

Railway Board are requested to communicate their sanction to the relaxation of the enlarged zone of consideration so as to enable this Railway to call the remaining eligible candidates to appear at the selection for the post of ADS and also to finalise the panel for filling up the vacancies of ADS."

In view of the earlier discussions it is clear that the letter does not convey the actual position of what has been done and what was being done in the N.F. Railway. They did not give even an indication that two ineligible persons qualified in the written examination and viva-voce test and were being empanelled. They also did not state the date on which the viva-voce test was held. They further did not indicate that they were finalising a panel of six only against the 12 notified vacancies and were appointing all of them including the two persons who would be outside the zone of selection under the revised seniority. These lapses would not lend to the bonafides in informing the Railway Board that the case came under stage II of the 1979 circular.

17. The Railway Board had given their approval to the above proposal in their letter dated 25/27.6.1983 of which the substantive part reads as :

"The Railway Ministry in the circumstances explained in your letter approve of the proposal made in the last para of your above letter to consider additional employees who have gained eligibility.

*Amali*  
*S.D.*

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The Ministry would also observe that on the instructions contained in letter of 5.3.83 becoming available, necessary steps should have been taken to call those becoming eligible as per the provisions of the said letter, even by postponing the written test, if necessary."

This letter is not an approval to the panel of six finalised on 2.5.1983. The Railway Board in allowing the consideration of additional employees apparently by holding a supplementary test approved the test already held which they knew to have been held in violation of their own circular, dated 5.3.1983. Had the circular been followed correctly and faithfully, there would have been no occasion to call additional employees far less to call any for a supplementary test. We have not also been shown any authority for the Railway Board to give approval to the holding of an examination which under their circular should not have been held before preparing the revised seniority. The Rly Bd's letter therefore does not amount to an approval to the written examination held on 20.3.1983 and the subsequent action.

18. It is also noticed that the panel dated 2.6.1983 does not indicate that it was provisional but in the appointment letter issued on 14.5.1983 (Annexure E-1) this has been stated to be provisional. Now records have been produced by way of an explanation as to how and under what authority an already approved panel has been altered to make it only provisional. This has been observed not for giving the stamp of the Tribunal's approval to the panel but only to state that yet another apparent irregularity has been done and left unexplained by the respondents which also goes to indicate the want of application of mind, if not propriety, in the discharge of duties in the process of the impugned selection and appointment.

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19. Coming to the applicant's contention about the whole process of selection being maliciously done we would generally observe that allegation of malice is more easily made than proved for which the established principle is to insist upon the strictest proof. Where individuals are alleged to be acting mala fide they are to be named and specifically impleaded stating also the positive facts of malice so that the allegation may be subjected to the necessary proof. This has not been done by the applicant. But even where there is no malice-in-fact there may be malice-in-law for the department's failure to do their duties with due care and diligence and in accordance with the provisions of the law. From the discussions above a conclusion is inescapable that there had been malice-in-law in the process of making the impugned selections and appointments.

20. On a careful consideration of the materials before us and after hearing the learned counsels for the parties we are in no manner of doubt that the Railway authorities acted completely without jurisdiction when they held the selection test on 20.3.83, <sup>27.3.83</sup> ~~20.7.83~~ without revising the seniority list on the basis of the Railway Board's circular which was received by them earlier. This irregularity had as a corollary led to a further irregularity of enlarging the zone of selection which could have been avoided had the Railway authorities revised the seniority list before going ahead with the examination.

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There is no explanation whatever for the Railways to include in the panel on 2.6.1983 2 persons who are known to be not eligible according to the seniority list prepared by them on or before 30.5.83. In the circumstances the impugned selections are liable to be quashed and set aside as completely violative of Railway Boards circular.

21. We have carefully considered as to whether the entire panel of six persons should be quashed and set aside or it could be saved in part. In the revised seniority list the positions of the first 4 persons of the panel are at Sl. No.13,16, 17 and 36. The first three of them would have been therefore in the zone of selection for a panel of six comprising of  $3 \times 6 = 18$  persons. There was therefore a case for allowing them to be retained. But we find that even for this zone of 18 persons at least seven senior persons have been left out for the written examination held in March. In the circumstances it will not be just and proper to allow the retention of any of the six persons in the impugned panel. So far as the four persons appointed ad hoc there is no basis at all for their appointment. Therefore all the impugned selections are liable to be quashed.

22. In the result the application has to be allowed and we do so accordingly. The impugned actions and orders of selection and appointment are quashed and set aside and it is directed that there shall be a fresh written examination and

viva-voce

*Attn: S. P. D.*

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Viva-voce test for preparing a panel of 12 persons as on 2.5.1983 for which 36 persons in the order of the revised seniority list may be called. We however, refrain from commenting upon the correctness of the revised seniority list prepared on or about 30.5.1983 so as to enable any aggrieved person to make necessary representations, if so advised.

The parties are left to bear their own costs.

*S.P.K.*  
*26/4/88*  
D. Pathak  
Vice-Chairman

*S.P.*  
*26/4/88*  
S.P. Hazarika  
Member

Certified to be True Copy  
*6/4/88*  
Deputy Registrar (Judicial)  
Central Administrative Tribunal  
Guwahati Bench  
*6.4.88*

To, Mr. B.K. Sharma  
Advocate.

*Attested by*  
*26/4/88*

NORTHEAST FRONTIER RAILWAY.M E M O R A N D U M

In pursuance of the Judgement and Order dt. 26.3.88 of the Hon'ble Central Administrative Tribunal, Guwahati Bench, delivered in case G.C. No. 181 of 1986, the panel of Assistant Operating Superintendent (Group 'B') against 75% quota, published provisionally placing the following ten persons in the aforesaid panel, under General Manager(P)'s Memorandum endorsed under his No. E/254/69/Con.PII dated 13.6.85 is hereby quashed and set aside with further directive that there shall be a fresh selection for preparing a panel of 12 (twelve) Asstt. Operating Supdt. (Group 'B' - Class-II) based on the integrated seniority list as on 02.0.1983.

Consequent on quashing and setting aside of the above panel, the ten persons so selected and promoted to the post of Asstt. Optg. Supdt. on different dates are, however, allowed to continue as such purely on ad-hoc basis for a period of six months from the date of issue of this Memorandum within which time the fresh selection should be finalised. This ad-hoc continuation in the post of Asstt. Optg. Supdt. will may confer upon them any benefit or continuation as such over those who may be selected by virtue of his/their being eligible from the corrected integrated seniority list based on which the fresh selection will be held.

Names of Asstt. Optg. Supdt. placed on the provisional panel published under General Manager(P)/Maligaon's Memorandum endorsed under his No. E/254/69/Con.PII dated 13.6.85 with their present place of posting are given below :-

SN.	Name	Designation at the time of selection.	Presently posted as -
1.	Sri K.K. Suklabaidya(SC),	DYC/BNGN.	AOS/Y/NBQ.
2.	" M.M. Suklabaidya(SC),	SS/DBRT.	SS/CHY.
3.	" S.F. Hussain,	CYM/NBQ.	AOS/Y/NJP.
4.	" R.K. Chowdhury,	CYM/LMG.	SS/LMG.
5.	" M.K. Sinha,	TI/KIR.	AOS/KIR.
6.	" K.D. Chakraborty,	DYO/APDJ.	AOS/APDJ.
7.	" R.P. Saha (ST),	SS/RNY.	SS/NJP.
8.	" K.L. Ghosh,	TI/HQ.	AOS(M)/HQ.
9.	" A. Sarkar,	DYO/NGC.	AOS/Y/NGC.
10.	" Niranjan Das,	DYO, now CPLI/HQ.	PA to COPS.

This issues with the approval of the General Manager.

Sd/- 23.8.88

(A.R.K. REDDY)

DY.C.P.O.(G)

for GENERAL MANAGER(P).