

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ~~LUCKNOW BENCH~~

OA/TA/RA/CP/MA/PT ..361.....of 20.90

.....Abdul Ghaffar.....Applicant(S)

Versus

.....Union of India & Anothers.....Respondent(S)

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Certified that the file is complete in all respects.

~~B. Q. handed out & destroy~~

Signature of S.O.

Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

CA 341/90

OF MAY 1998

Date of Decision

16.7.97

Abdul Gaffar.... Petitioner

None for Appellant Adv. for the Petitioner

VERSUS

U.C.I. Letters.... Respondents

S.W.S. Verma.... Adv. for the Respondents

QUESTION:

The Hon'ble Mr. D C Verma, J.M

The Hon'ble Mr.

Whether Reporters of local papers may be allowed to see the judgment.

To be referred to the Reporter or not.

Whether their lordships wish to see the fair copy of the judgment?

Whether to be circulated to all other Benches? X

Signature

Member (J)

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the ¹⁶ day of July, 97.

O.A. No. 341 of 1990

HON. MR. D.C. VERMA, MEMBER(J)

Abdul Gaffar son of late
Altaf Husain alias Chokhey, Ex. Guard
under station superintendent Northern
Railway, Faizabad, resident of Mohalla
Paharganj, Islamabad, District
Faizabad.

Applicant

None for applicant

versus

1. Union of India through the General
Manager, Northern Railway, Baroda
House New Delhi.
2. The Divisional Railway
Manager, Northern Railway Hazratganj,
Lucknow.

Respondents.

By Advocate Shri S. Verma.

O R D E R

HON. MR.D.C. VERMA, MEMBER(J)

By this O.A. the applicant Abdul
Gaffar son of late Altaf Husain alias Chokhey
has claimed relief of correction of date of
birth. As per the recorded date of birth, the
applicant has been retired in the afternoon
of 31.1.1990 vide Annexure A-4 dated 31.1.90.
The applicant has prayed for quashing of the
said order.

2. As per the applicant's case, his date
of birth is 28.10.1934, as per entry in the
School Leaving Certificate(copy Annexure A-1)



and not 17.1.1932 as entered in the service record.

3. The respondents have contested the claim of the applicant. Pleadings have been exchanged between the parties. No R.A. has been filed by the applicant.

4. As per the facts contained in the O.A., the applicant joined the service as Porter (class IV service) on 8.8.1955. As per the recitals made in para 6 of the O.A., sometime after his appointment as Porter, the applicant was required to attend the office of respondent No. 2 i.e. D.R.M. Northern Railway Lucknow who was then designated as Divisional Superintendent. In the said office the applicant was made to sign and put his thumb impression on some official records. The applicant did so as per the directions of the dealing staff. However, on being asked, the applicant disclosed, his aforesaid date of birth i.e. 28.10.34. It is however seen that in the service record (copy Annexure B-1 to the C.A.) the date of birth of the applicant is recorded as 17.1.1932. This document was thumb marked by the applicant. The applicant has also signed in English which shows that the applicant admitted that the date of birth is ~~not~~ 17.1.1932, as recorded in this document. There is nothing on record to show that the applicant made any representation for correction of date of birth at that time, as has been claimed by the applicant in para 6 of the O.A. In case the date of birth as recorded in the service



record was not acceptable to the applicant, the applicant could have very well made representation and could have pursued the matter in law court, ~~but~~ No such step was taken by him.

5. It is pertinent to note that as per the School leaving certificate (copy Annexure A-1 to the O.A.) the date of birth of the applicant is 28.10.1934. This School Leaving Certificate was issued in, as claimed by the applicant, October, 1952 i.e. prior to the date the applicant was regularly appointed in the service. If it was so, the applicant could have filed this paper at the time of entry in service, but as per the respondents, no such record was filed. Though the applicant claims that he made representation in the year 1973 for correction of date of birth, but no action was taken by the respondents. The applicant thereafter did not pursue the matter to claim relief from court of law. Even when the applicant signed the service record (Annexure B-1 to the C.A.) in the year 1955 at the time of his appointment as Porter, the applicant had not taken any step to get the entry corrected. Thus, it is found that only after retirement on 31.1.90 the applicant, for the first time came to the Tribunal and filed this O.A. in October, 1990. Thus, during the period of about 35 years, the applicant took no effective steps to get the date of birth corrected and therefore, his claim for correction of date of birth after retirement cannot be acceded to.

S
[Signature]

6. In the case of Union of India vs. Mrs. Saroj Bala(AIR 1996, SC, 1000) the apex Court refused the relief of correction of date of birth after 18½ years of service. Similarly, in the case of Union of India vs. Ram Suia Sharma(1996 SCC(L&S) 605 the apex court refused to grant relief of correction of date of birth as the same was made 25 years after joining service. In the case before this Bench, the applicant has claimed correction of date of birth after more than 35 years and that too after retirement. The claim therefore, is barred by laches and delay. The O.A. has therefore, no merit and is rejected.

No costs.


MEMBER(J)

Lucknow:Dated: 16.7.97

Shakeel/

(AS)

21/6

Hon. Mr. D. C. Verma, J. M.

Constituents: None

Respondent: Sri S. Verma, B.A.LL.B.

Order is received.

J. M.

16.7.97

Visible Mr. D. C. Verma, J. M.

Judgment pronounced today
in the open court.

16/7/97

J. M.

①
Rt. Hon. Mr. Justice
V. K. Shukla
Adjourned
15/10/96.

23.8.96

No sitting of D. B. Case
adj to 29.10.96.

See

29/10/96

Hon. Mr. V.K. Seth, A.M.
Hon Mr. A.C. Verma, I.M.

Sh. S. Karkic brief holder
for Sh. L.P. Shukla Prays for
Adjournment.

dict on 15/11/96.

✓ T.M.

✓ A.M.

15.11.96

Due to bad health of Sri
S. S. Shukla Adv adjourned
12.12.96
MHC

12.12.96

dict in Mr. V.K. Seth A.M.
Hon Mr. A.C. Verma I.M.

On In - regard to Crm
& Off. - adjourned (9.12.96)

✓ T.M.

✓ D.M.

9.1.97

No sitting of D. B. adjourned
07.2.97

✓ D.M.

7.2.97

No sitting of D. B. adjourned
06.3.97

✓ D.M.

AT

12-10-95

list on 10.11.95 for
Relief R.A. before me.

DR

R

10-11-95

DR

list on 11-12-95 for filing
R.A. before me & this
should be treated as a
last opportunity. Notice be
sent to the applicant if no
C.A. filed till the next
date the R.A. be listed
for ex-parte orders.

Note for 11-12-95
Sikarne
13/11/95

R

11-12-95
+F

DR

None for the applicant.
Learned Counsel for the
respondents is present.
Mr. R.A. filed till today.
Place before the Hon'ble
Bench on 30-1-96 for
order.

AB

30-1-96

Present: Sh. L.B. Shukla
for the applicant
Sh. S. Verma for the respondent.

CR
C& filed B&R
RA not filed
till today
25/11/95

At the request of the counsel of the applicant,
as a last opportunity, a week's time is granted
to file rejoinder and to get ready. Rejoinder may
be filed within a week. List on 19-3-96.

VS

aa. (V.K. Seth)
M(A)

(A.V. Haridayan)
CD

OA.341/90 (A)
AD

4-11-94

Due to Diwali Holiday case
adj to 12-11-94.

R
BOT

12/11/94

D.R. Both the parties are present.

C.A. has been filed by respondent
on behalf of O.P.No. 2. No C.A. filed
on behalf on O.P. No. 1. List this
case on 02/1/95 for filing the same
by O.P. No. 1. before D.R.

R
D.R.

02/1/95

→ f.

None for the parties.
List on 13/2/95 for
filing R.A. before me.

AB

R

13/2/95

D.R.

→ f.

Respondents are present.
None for the applicant.
List on 07/4/95 for filing
R.A. before me.

AD

R

→ f. (J)

AG

07/10/93

D.R.

Both the parties are not present. Counter has not been filed yet again. List this case for filing C.A before D.R. on 08/12/93.

cm

8.12.93
D.R.

none present for the parties, counter has not been filed yet again. List this case for filing C.A. on 11.1.94 before D.R.

2

11-1-94
D.R.

C.A. filed but R.A. has not been filed. Parties are not present. Applicant is directed to file it by 23/3/94 before me.

(2)

D.R.

~~Att.~~
~~of~~
~~not A marked~~
~~in~~
~~the S~~
~~before D.R.~~
~~23/3/94~~

A10

39-7-92

D.R.

None is present for the parties. Respondents to file Counter by 5-11-92

5-11-92

D.R.

Both the parties are absent.
Counter has not been filed.
Respondent to file Counter by
24-12-92

24-12-92

D.R.

Both the parties are absent.
Counter has not been filed.
Respondent to file Counter
by 10-2-93

10/2/93

D.R.

Both the parties are absent.
C.A. has not been filed.
Respondent to file it by
15/4/93.

D.R.

15/4/93

Both the parties are not present. Counter has not been filed.
Respondents are directed to file the same on 14/5/93.

~~OL
(D) has not been filed
SPPS
SPPS~~

~~15/4/93~~

~~OL
(A) not filed
SPPS before DR(2)~~

~~15/4/93~~

~~OL
(A) not filed
SPPS before DR(3)~~

~~15/5/93~~

341/9/1

(A11)

26.5.91

D. R.

No appearance has

been made on

behalf of the applicant.

Notices have been

issued to the respondent.

None appeared for the

O. P. today. Counter has

not been filed O.P. to

file counter by 26.4.91

26.4.91

D. R.

Applicant is sick is

present O.P. is absent

today. O.P. to file C.A.

by 31/5/91. ✓

31.5.91

D. R.

None is present for the
Both parties Counter has
not yet stated whether to
file counter by 26.7.91

26.7.91

D. R.

Both the parties

are absent today. Respondent to file counter by
14/10/91. ✓

A-12

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Registration No. 341 of 1980 (L)

APPLICANT(S) Shri Abdul Ghaffar

REPRESENTATIVE(S) V.O.I & others

Adminis...
Bench...
Date...
Recd by P 17/10/80

AC
17/10/80

Stu
17/10

Particulars to be examined

Endorsement as to result of examination

Is the ~~appeal~~ ^{applicant} competent ? *yes*

2. a) Is the application in the prescribed form ? *yes*

b) Is the application in paper book form ? *yes*

c) Have six complete sets of the application been fixed. *yes*

3. a) Is the ~~appeal~~ ^{application} in time ? *yes*

b) If not, by how many days it is beyond time ? *yes*

c) Has sufficient cause for not making the application in time, been filed ? *yes*

4. Has the document of authorisation/ Vakalatnama been filed ? *yes*

5. Is the application accompanied by B.D./Postal order for Rs.50/- *yes Postal order 50/-*

6. Has the certified copy/copies of the order(s) against which the application is made been filed ? *yes*

7. a) Have the copies of the documents relied upon by the applicant and mentioned in the application, been filed ? *yes*

b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? *yes*

c) Are the documents referred to in (a) above neatly typed in double space ? *yes*

8. Has the index of documents been filed and paging done properly ? *No*

9. Have the chronological details of representation made and the outcome of such representation been indicated in the application ? *yes*

10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ? *No*

A14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BRANCH, LUCKNOW.

Abdul Ghaffar ... Applicant.

Versus

Union of India & another .. Respondents.

FORM-I
(See rule 4)

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNALS ACT, 1985.

FOR USE IN TRIBUNAL'S OFFICE:

Date of filing _____

or

Date of receipt by post _____

Registration No. _____

1. (a) Date of filing
Date of hearing
Date of receipt

17/10/90

AI

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, *f/12/10*
LUCKNOW BENCH. *Deputy R/1*

O.A. No. 341 of 1990 (L).

DSW
17/10

Abdul Ghaffar, son of Late Altaf Husain alias Chokhey, Ex. Guard under Station Superintendent Northern Railway, Faizabad, resident of Mohalla Paharganj, Islamabad, Distt. Faizabad (U.P.).

.... Applicant.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.

2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

.... Respondents.

DETAILS OF APPLICATION:

1. Particulars of the order against which the application is made.

Order passed by the respondent no. 2 communicated through Notice No. nil dated 31.1.1990 issued by the Station Superintendent, Northern Railway, - Faizabad (Annexure A-4).

*Filed today
S.M.
17/10*

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

A. Ghaffar.

...2.

3. Limitation:

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case:

(1). That the name of grand father of the applicant was Idoos. He had three sons namely Late Muzaffar Hussain alias Lakhai, Late Wahid Hussain alias Sukhai and Late Altaf Hussain alias Chokhey and they all were resident of Mohalla Paharganj, Islamabad, Faizabad.

(2). That the aforesaid Altaf Hussain alias Chokhey was employed as a 'Bhisti' under the respondents. While posted at Ayodhya Railway Station, he died in the year 1962.

(3). That the applicant is the son of the aforesaid Late Altaf Hussain alias Chokhey.

(4). That during the life time of his father, the applicant was appointed by his father as a Porter (Class IV Service) on and with effect from 8.8.1955 under the respondents. Thereafter, in the year 1956, the applicant was promoted as a Shuntman and thereafter in the year 1975 was promoted as Shunting Jamadar (class III service). Lastly in the

Altaf

year 1981, he was promoted as Guard Grade 'C' (Class III Service) on which post he worked till his premature retirement in the afternoon of 31.1.1990 on the basis of disputed date of birth.

(5). That the applicant, prior to his entering the railway service, had studied in Govt.-Inter College, Faizabad and passed his class VIII from that institution. In the said institution, the applicant had studied from July, 1941 to May, 1948 and his date of birth was got entered by his father as 28.10.1934 in the school records.

(6). That after some times of his appointment as Porter, the applicant was required to attend the office of the respondent no. 2 who was then designated as Divisional Railway Manager Superintendent. In the said office, the applicant was made to sign and put his Thumb Impression on some official records. The applicant did so as per direction of the dealing staff. On being asked, the applicant disclosed his aforesaid date of birth that is 28.10.1934 and educational qualification for which he was required to submit confirmatory certificate such as copy of school certificate.

(7). That in pursuance of the aforesaid instructions, the applicant submitted an attested copy of School Leaving Certificate of the aforesaid college which was already available with him from October 1952. A true photo stat copy of the said

A. Gaffor.

(4)

School Certificate dated 17.10.1952 is being filed
Annexure: A-1, herewith as Annexure No. A-1 to this application.

(8). That after the submission of the aforesaid certificate, the applicant remained under a bonafide belief that his date of birth as well as educational qualification and other particulars, as entered in the certificate, were recorded accordingly in the official records of the respondent no. 2.

(9). That in the year 1955 when the applicant entered the railway service under the respondents, it was obligatory on the part of the applicant to produce confirmatory certificate of his date of birth such as Municipal Birth Certificate or School Leaving Certificate or Baptismal certificate in original, as the case may be. In case, no such certificate was available with the applicant, he was bound to submit affidavit otherwise he was to be disqualified and was not entitled to continue in employment.

(10). That since the applicant had submitted the attested copy of the School Leaving Certificate (Annexure No. A-1), his services were not terminated and on that basis, he was promoted in class III services.

(11). That after many years of his appointment, the applicant came to know that

A. Gaffon

...5.

wrong date of his birth that is 17.1.1932, which he had neither declared nor any confirmatory certificate or affidavit in support thereof was submitted by him, was recorded in the official records by the office of the respondent no. 2.

(12). That on several occasions, as and when the necessity arose, the applicant gave representations for correction of his date of birth and to record the full name of his father on the basis of the school certificate dated 17.10.1952, the attested copy of which was already submitted by him in the office of the respondent no. 2.

(13). That on all occasions as and when the applicant contacted the office of the respondent no. 2 in connection with his aforesaid representations, he was advised that his case was under consideration and that the necessary corrections would be done in the official records in due course after obtaining ~~of~~ the approval of the competent authority.

(14). That on 3.2.1973 when the applicant was posted under the Station Master, Barabanki, a representation through the Station Master, Barabanki was sent to the respondent no. 2 as in that year such representations from staff were invited by the Railway Administration for correction of date of birth. At that stage too, the applicant submitted the attested copy of the aforesaid School Certificate.

A Gaffar

(Annexure No. A-1). A true photo stat copy of the said representation dated 3.2.1973 is being filed herewith as Annexure No. A-2 to this application.

(15). That eversince the matter, despite several reminders given by the applicant, remained pending with the respondent no. 2. Ultimately, the applicant, by means of a representation dated 2.11.88, requested the General Manager, Northern Railway, Baroda House, New Delhi for the aforesaid corrections. This representation was made by the applicant as per advice of the office of the respondent no. 2. and it was submitted through the respondent no. 2.

(16). That thereafter, the applicant came to know that his aforesaid representation was sent to the General Manager, Northern Railway, New Delhi by respondent no. 2 under his letter No. 831E/5/3/Misc/85 dated 20.12.1989.

(17). That in the month of January, 1990, the applicant was verbally informed by the office of the respondent no. 2 that the General Manager (P), Northern Railway, New Delhi, by his letter No. 758E/6(VIII) Alteration in date of birth of Guards(EIB) dated 19.1.1990, had demanded certain information in regard to his representation which would be furnished by the respondent no. 2 within a few days. The applicant was assured that his case would be finalised within a few days other-

A. Rajan.

(7)

wise he would not be retired from service on 31.1.1990 on the basis of disputed date of birth and till the disposal of his representation by the competent authority. A true photo stat copy of the said letter dated 19.1.1990 is being filed Annexure A-3 herewith as Annexure No. A-3 to this application.

(18). That from the aforesaid letter (Annexure No. A-3), it is evident that the respondent no.2 had to furnish certain information to the respondent no. 1 to decide the case of the applicant.

(19). That as far as the applicant knows, the respondent no.2 did take no action on the aforesaid letter dated 19.1.1990 (Annexure No. A-3) as required by the respondent no. 1 to decide the case of the applicant. The applicant was put in dark and misled by the respondent no. 2.

(20). That all of a sudden on 31.1.1990, the Station Superintendent, Northern Railway, Faizabad under whom the applicant was then posted, by a Notice number nil dated 31.1.1990, informed him that he would be retired from service on the same date that is in the afternoon of 31.1.1990 under the orders of the respondent no. 2. By the said notice the applicant was also required to hand over the charge of the articles under his possession and vacate the railway quarter allotted to him at that station. He was also advised to receive his settlement dues on 1.2.1990 in the office of the respondent no.2. A true photo stat copy of the said Notice no. nil

A. C. Jaffar.

(8)

dated 31.1.1990 of the Station Superintendent, Northern Railway, Faizabad is being filed herewith Annexure A-4. as Annexure No. A-4 to this application.

(21). That on the basis of the aforesaid Notice (Annexure No. A-4), the applicant has been retired from service in the afternoon of 31.1.1990.

(22). That the applicant has been retired from service on the basis of wrong date of birth that is 17.1.1932 which was neither declared by the applicant nor accepted by him at any stage. It was recorded in the official records without any basis.

(23). That the applicant has been retired from service in an arbitrary manner without first disposing of his representations and without making any inquiry into the matter which was required under the rules.

(24). That the applicant has been retired from service by the respondent no. 2 without complying with the instructions issued by the respondent no. 1 contained in Annexure No. A-3 to this application.

(25). That under the departmental rules, the date of birth of a railway servant, as entered in his Service Record, can be altered in the following circumstances :-

(a) where it is ascertained that it has

A Gaffar

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has been falsely stated by the employee to obtain an advantage otherwise inadmissible, or

(b) where it is proved that genuine clerical error was occurred in recording the date of birth, or

(c) where a satisfactory explanation of the circumstances in which the wrong date of birth came to enter is furnished by the railway servant concerned.

(26). That on the basis of the above grounds, the date of births of several railway servants have been altered by the respondents, but in the case of the applicant, no such treatment has been given to him and the applicant has been retired from service without considering his case in the light of the above instructions and without verifying the facts stated by him. Thus the applicant has been retired from service in an arbitrary manner and discriminated in the matter of public employment which is violative of Articles 14 and 16 of the Constitution of India.

(27). That the applicant, by means of a representation dated 19/20.2.90, challenged the order of his retirement before the respondents, but the respondents maintained complete silence over the matter and despite reminder dated 2.5.1990 given by the applicant, they have not decided his said representation though a period of about 8 months

A Gaffar

(10)

has passed. A true photo stat copy of the said representation dated 19/20.2.1990 is being filed herewith Annexure No.5. as Annexure No. A-5 to this application.

(28). That it is important to mention here that the respondent no. 2, relying on the School Leaving Certificate (Annexure No. A-1) which contains the date of birth of the applicant and his educational qualification, promoted the applicant in class III service even as a Guard Grade 'C' on which post an illiterate person cannot be appointed or promoted. Thus the said school certificate has been partly relied by the respondents for the purpose of the applicant's promotion but for other purpose such as alteration in date of birth of the applicant, the same has not been taken into consideration which is arbitrary and without any basis.

(29) That the action of the respondent no. 2 in retiring the applicant in the after-noon of 31.1.1990 on the basis of 'error' and incorrect date of birth that is 17.1.1932 is illegal, arbitrary, prejudicial and amounts to punishment. Therefore, the same is liable to be curtailed with all consequential benefits. The correct date of birth of the applicant being 20.10.1934, he is entitled to continue in the employment of the respondents upto 31.10.1992 when he will attain the age of 58 years.

AlGaffar.

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(17)

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Grounds.

(a). Because the applicant had never declared his date of birth being 17.1.1932 as recorded in his Service Record by the respondents.

(b). Because the alleged date of birth of the applicant, as recorded in the Service Record, is without anybasis, hence it is arbitrary.

(c). Because the applicant, at all stages, declared his date of birth being 28.10.1934.

(d). Because the date of birth, as claimed by the applicant, is supported by the School Certificate.

(e). Because the applicant had no occasion to declare his wrong date of birth being 17.1.1932 as recorded by the respondents in his service record particularly when he had the school certificate showing his date of birth being 28.10.1934 issued on 17.10.1952 by the School Authority.

(f). Because the School Certificate submitted by the applicant has been partly relied while promoting the applicant in class III services.

(g). Because the applicant has been retired

A. Loffan

from service in an arbitrary manner and on the basis of a fictitious date of birth.

- (h). Because the applicant has been retired from service without first disposing of his representations.
- (i). Because the applicant has been discriminated and the order of his retirement has been passed in violation of Articles 14 and 16 of the Constitution of India.
- (j). Because the retirement of the applicant in the afternoon of 31.1.1990 amounts to punishment which has been imposed upon him without giving him a reasonable opportunity of showing cause.

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules, etc.

7. Matter not previously filed or pending with any other court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit

A. C. Gaffar.

is pending before any of them.

8. Relief sought:

In view of the facts mentioned in para above, the applicant prays for the following reliefs :-

(a) This Hon'ble Tribunal be pleased to quash the order of applicant's retirement made in the after-noon of 31.1.1990 contained in Annexure No. A-1, and the applicant be reinstated with all consequential benefits under the respondents.

(b) This Hon'ble Tribunal be further pleased to direct the respondents to correct the official records on the basis of School Leaving Certificate (Annexure No. A-1) and on that basis the applicant be allowed to continue in the employment of the respondents till the age of 58 years that is upto 31.10.192.

(c) Cost of this application be awarded to the applicant

9. Interim order, if any prayed for:

In the circumstances of the case, the applicant prays for no interim order..

10. In the event of application being sent by Registered post: Nil

A. C. Gaffar.

A251

(11)

11. Particulars of Bank draft/Postal orders filed in respect of the application fee.

i). Number of Postal Order: Q 02 415928

ii). Name of issuing post office: M. Bawali

iii). Date of issue: 16/1/90

iv). Post office at which payable: Allohabad

12. List of enclosures:

1). Photo stat copy of School Leaving certificate dated 17.10.1972 issued by Govt. Inter College, Faizabad.

2). Photo stat copy of representation dated 3.2.1990.

3). Photo stat copy of Letter No. 758E/6(VIII) alteration in date of birth of Guards(MB) dated 19.1.1990 issued by the General Manager (P), Northern Railway, New Delhi.

4). Photo stat copy of Notice dated 31.1.1990 issued by the Station Superintendent, Northern Railway, Faizabad for retirement of the applicant.

5). Photo stat copy of representation dated 19/20.2.1990 of the applicant made to the General Manager, Northern Railway, New Delhi and copy to the respondent no.2 challenging his retirement.

A. Gaffar.

... 15.

(15)

Verification:

I, Abdul Ghaffar, son of Late Altaf Husain alias Chokhey, aged 56 years, Ex. Guard grade 'C' under the Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow, resident of Mohalla Paharganj, Islamabad, Faizabad do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge and that I have not suppressed any material fact.

A. Gaffar.

Date: - 10- 1990

Signature of the applicant.

Place: Lucknow.

Xan D. Gaffar

To,

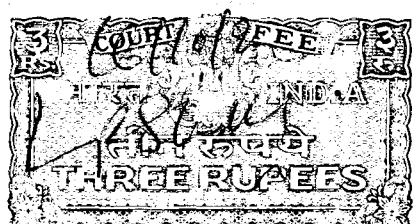
The Registrar,
Central Administrative Tribunal,
Circuit Bench, Lucknow.

In the ~~High~~ High ~~Central~~ Administrative Tribunal
Circuit Bench, Lucknow

A30

बादालत श्रीमान
(वादी) अपीलान्ट

महोदय



o. 7.

1/1990



Abdul Ghaffar

of
Union of India & भारताम

प्रतिवादी (रेस्पान्डेन्ट)

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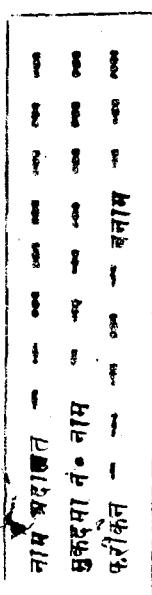
ऊपर लिखे मुकदमा में अपनी ओर से श्री C. P. Shukla, Advocate

C. P. Shukla, Advocate

वकील

महोदय

एडवोकेट



को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रत्योक्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी रखावें और रुपया वसूल करे या सुलहनामा व इकबालदावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तमदीक करे या मुकदमा उठावे या कोई रुपया जमा करे या हमारी या चिपकी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवे या पंच नियुक्त करें वकील महोदय द्वारा की गई वह सब कार्यवाही हमस्तो सर्वदा स्वीकार हैं और होगी मैं यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या अपने किसी पैरोकार को मेजता रहूँगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसीलिये यह वकालत नामा लिख दिया प्रमाण रहे और समय पर काम आवे।

हस्ताक्षर

A. Ghaffar -

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

महीना

सन् १९

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स्वीकृत

Kanupat Singh

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD,
CIRCUIT BENCH, LUCKNOW.

O.A. No. of 1990 (L).

Abdul Ghaffar _____ Applicant.

Versus

Union of India & another _____ Respondents.

LIST OF DOCUMENTS RELIED UPON.

	<u>Page nos.</u>
1. <u>ANNEXURE NO. A-1.</u> Photo stat copy of School Leaving Certificate dt. 17.10.1952 issued by Govt. Inter College, Faizabad.	16
2. <u>ANNEXURE NO. A-2.</u> Photo stat copy of representation dated 3.2.1973.	17
3. <u>ANNEXURE NO. A-3.</u> Photo stat copy of Letter No. 758E/ 6(VIII) Alteration in date of birth of Guards (IE) dt. 19.1.90 issued by General Manager (P), Northern Rly., New Delhi to respondent no. 2.	13
4. <u>ANNEXURE NO. A-4.</u> Photo stat copy of Memo dated 31.1.90 issued by the Station Supdt., Northern Railway, Faizabad for the retirement of the applicant.	19
5. <u>ANNEXURE NO. A-5.</u> Photo stat copy of representation dt. 20 to 27 19/20.2.1990 made by the applicant to the General Manager, Northern Railway, New Delhi and copy to the respondent No. 2 against retirement.	20

A. Ghaffar
Signature of the Applicant.

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oval, e. g. non-
payment of dues,
removal of guilty
offender.

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2. *W. d. d. d.*

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A. Cleggar.

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To

RECORDED

A-2

The Divisional Superintendent,
Northern Railway,
Lucknow.

Through the Station Master, Bacabanki (U.K.)

Subs: Application for correction of date of birth.

Sir,

I would like to request before your goodness that I was appointed as a Porter in (U.K. East) since 15.8.1955. I would like to state that I have a birth certificate in my service records and date of birth is wrongly recorded therein as 17.1.32. Please actualy the date of birth of mine as per my leaving certificate, photocopy attached herewith for kind perusal and record, is 28-10-1934 (Twenty-eight October, One Thousand Nine Hundred Thirty Four A.D.), and thus the date of birth of mine recorded as 17.1.32 is quite wrong. The actual name of my mother is Altaf Husain (U.K. Chukhay), which needs to be recorded in my service records.

- (1) Kindly, the date of birth as per my birth certificate is 28-10-1934;
- (2) my mother's name is Husain (U.K. Chukhay) = be recorded in my service records.

For information, I shall be greatly obliged to you.

Yours faithfully,

Abdul Gaffar.

Abdul Gaffar,
Chhatra,
U.K. Gunt (U.K.)

Enc. V. above.
15.10.1972.

A. Gaffar

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EXHIBIT NO.

A-3

उत्तर रेलवे
NORTHERN RAILWAY

Headquarters Office,
Baroda House, New Delhi.

No. 7582/6(VIII) Alteration in date of birth
of Guards(EIS) Dated 19-1-1990.

The Divl. Railway Manager,
Northern Railway,
Lucknow.

Sub: Rep. from Shri Abdul Gaffar Guard/Lucknow for
alteration in the date of birth.

Ref: Your letter No. 8312/5/3/Misc/85 dated 20.12.89/4.1.90

Before the case is put up to the competent authority for
obtaining approval for alteration in the date of birth of the
above named employee, the following points may be clarified early:-

1. On what basis 17.1.1932 was recorded as date of birth in his
service record at the time of appointment in class IV and
indicate designation of his first appointment also.
2. On what date he was promoted in Class III and why he could not
apply for change of Date of Birth in 1973.
3. Whether original school certificate has been got verified from
school records by deputing a Welfare Inspector. If so, report
of the Welfare Inspector be sent to this office.
4. He had been going for periodical medical examination from time
to time with this date of birth recorded in the memo. Why he
did not apply earlier for alteration.

The above facts may be clarified and all authentic proofs/
documents examined/and then his case be forwarded to this office
with personal recommendations of Divl. Railway Manager.

(A. Sakhshi)
for General Manager (R)

A. Gaffar
Advocate
HUKI

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A-4



उत्तर रेलवे
NORTHERN RAILWAY

दिनांक: ३१/११/१९७०

का अनुदान वापसीर गाडी । निर्भावाद ।

उत्तर क्षेत्र किसी भागादि की दोष
दिनांक ३१/११/१९७० को दापरात्र लोटी आवाही हुई
होके के उपरान्त लोटी दोनों से निर्भाव
हो रहे हैं। उत्तर क्षेत्र वासी हो गए ।
निर्भावमें हो रहा है वारे, इस वारानी का
प्रमाण बतारहे हैं। ८-१२/११/१९७० दिनांक है जूसामें
वीच रखा जाए। को, व्यापारी होए ।

दिनांक दिनांक ३१/११/१९७० को

अपेक्षित गुणातान: (संक्षिप्त) हुए अवास देख
प्रत्येक विवरणों का साक्षणता है।
अवास (जो अपेक्षित हो रहा है) ।

दिनांक ३१/११/१९७०

A Coffe

र. र. र. र. र. र.

मैथिली
L. P. 2000/11/19
Advocate

A36

A-5

to General Manager,
Northern Railway,
Baroda House, NEW DELHI.

EXHIBIT NO.

Through : The General Manager,
Northern Railway, Kharagpur,
Bardhaman.

Information is received that on 11th
July 1911 (1910) from
the Post of Guard (No. 100) of the
Baroda Chittaranjan Railways, under
Northern Railway, the man has unchained
train at the Station Gopalganj, under
Northern Railway, and fled with Notice
to the General Manager.

Sir,

This representation has occurred against
the authority order of the General Railway -
Master, Northern Railway, I enclose communicated
to the General Service Superintendent, Northern -
Railway, the said retelling the representationist
fully from the post of Guard with effect from
11th July 1911 (1910) without first disposing
of all representation and for correction of his
date of birth wrongly recorded in his Service -
records as also the name of his father which was
under process and on which certain enquiries were
ordered to be made by your Board. I vide your
Letter No. 10476/1911 dated 20th June 1911
to General Manager.

As viewed by the above action, it is most
respectfully submitted as under :-

1. That the representationist's grand father's

Name

A. C. Caffar

A. C. Caffar

name was Ido. He had three sons namely Late -
Muazzafar Hussain alias Iskandar, Late Motid Hussain
alias Bushra and Late Attaf Hussain alias Chokhey
and they all were residents of Paharganj, Islamabad,
District Islamabad.

That the notorious Altaf Hussain alias Choksey was employed as a 'Bhisti' under the Divl.-Superintendent (now known ^{as} Divisional Railway - Manager), Northern Railway, Lucknow. While posted at Jodhpur Railway Station, the said Sri Altaf - Hussain alias Choksey died in the year 1962.

That the re-representative is the son of the aforesaid Altaf Hussain alias Chokhey

That during the life time of his Father, the representationist, on 6.8.1952, entered the railway Service as a Porter. Thereafter, in the year 1956, he was promoted as a Shunter and then in the year 1972 promoted as Shunting Jockey. Lastly in the year 1981, the representationist was promoted to Grade 'C' on which post he worked till his retirement in the afternoon of 31.12.1990 and on the

Table 5. True Cope

A. Gaffar C. intermediate

1. That on entering the railway service in class IV in the year 1955, on the instructions of the concerned officer he was required to put his thumb for impression on some official records (subsequently known as Service Record), which he, as per instruction of the concerned officer, did. At this stage again, the representationist, on being asked, disclosed his aforesaid educational qualification. On this, he was asked to submit an attested copy of his educational qualification and date of birth.

2. That in compliance of the aforesaid instructions, the representationist submitted an attested copy of School Leaving Certificate of Government Inter-College, Fazil and which was issued to him on 17.10.1932. It was submitted in the office of the Divisional Supdt., Northern Railway, Lucknow within a week.

3. That after the submission of the aforesaid certificate, the representationist remained under the impression that his correct date of birth viz 28.10.1932 recorded in the said School Certificate was entered in the official records. Here it may be mentioned that at that time, it was a rule that no appointment was given to any one unless a satisfactory proof of date of birth such as date of birth certificate/school certificate was produced.

3. Copy

A. S. Gaffar
Advocate
That after many years of his appointment the representationist came to know that the office had recorded wrong date of birth viz 17.1.1932 in the official record which he had never disclosed. Thus on several occasions, as and when necessity arose, the repre-

A. Gaffar

power representations for correction of his date of birth as well as father's name on the basis of the aforesaid School Leaving Certificate, a true photostat copy of which is being filed herewith as Annexure No. 1 to this representation..

10. That as and when the representationist contacted official/official concerned in connection with his aforesaid representations, he was advised that the matter regarding the aforesaid corrections was under consideration but that the same would be done in due course of time after obtaining approval of the competent authority.

11. That on 3.2.1973 when the representationist was posted as a Shuntman under Station Master, Barabanki, a representation was again moved to the Divisional Railway Manager, Northern Railway, Lucknow for the aforesaid corrections and it was moved through the Station Master, Barabanki as in that year such representations were invited by the Administration.

12. That ever since, the matter, despite several reminders given by the representationist, remained pending with the administration and all the times when he contacted the office personally, he was advised that his case was under process and that his request, being genuine, would be acceded to.

Amrit Singh

*L. P. Singh
A. Coffar, Advocate*

A. Coffar

13. That all of a sudden in the month of October, the representationist was advised to move an application for the said corrections to your goosel. Thus on 2.11.1983, he moved a representation to your

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-2-

regarding return to the Divisional Railway Manager, Northern Railway, the day duly forwarded by the Secretary of the Station Superintendent, Northern Railway, intimated under whom the representationist had been working as a Guard.

14. That after moving the aforesaid representationist to your result, the representationist, on a visit to the office of the Divisional Railway Manager, Northern Railway, Lucknow, was advised that the same in further connection with the competent authority the same would be acceded to.

15. That in the fourth week of January, 1990, the representationist was informed by the office verbally that the General Manager (P), Northern Railway, New Delhi, by reason of a letter bearing No. 758E/6(VIII) Alteration in date of birth of Guards (EIs) dated 19.1.1990, had demanded certain information in regard to his representation which would be furnished by the office within a few days so that the representationist would not be retired from service on 31.1.1990 till the issue of the representation.

16. That in the facts and circumstances mentioned above, the representationist had to place reliance and started to await the fate of his representation.

17. That all of a sudden, the Station Superintendent, Northern Railway, intimated, by a memo dated 31.1.1990, informed the representationist that he would be retired on the same date and the officers of the Divisional Railway Manager, Northern -

First memo
1/2/90
Advocate

A. C. Gaffar.

Railway, Lucknow. By the said Memo, the representationist was also asked to vacate the Railway Quarter under his allotment at Faizabad. He was also advised to attend the Office of the Divisional Railway Commissioner, Northern Railway, Lucknow on 1.2.90 for a meeting. It is further stated in the said Memo that copy of the said Memo dated 31.1.1990 of the Station Superintendent, Faiz and the Office herewith as Annexure No. 2 to this representation.

10. That on the basis of the aforesaid Memo (Annexure No. 2), the representationist has been retired from service in the after-noon of 31.1.1990 without first disrobing of his representation, which is against all concept of justice.

11. That the administration, which is a violation of the fundamental rights as mentioned above, is an illegal organization. Therefore, it is evident that the rules of the organization are discriminatory.

12. That the impugned order of retirement of the representationist is violative of Articles 14 and 16 of the Constitution of India and also against the Railway Rules.

13. That under the said rules, the representationist is entitled to retirement pension in the following manner. As per the 20th Amendment Act 1985, the representationist shall attain the age of 58 years on 27.10.1992 and is to be retired in the after-noon of 31.10.1992. Thus his retirement in the after-noon of 31.1.1990 amounts to a pre-mature retirement which is a punishment without being given

True
LA
A Coff
A Coff

IN THE HIGH COURT OF JUSTICE, CALCUTTA.

22. That the date of birth that is 17.1.1932 on the basis of which the representationist has been retired from service in the afternoon of 31.1.1990 has wrongly been recorded in the official records. The same was never declared or accepted by the represented at any stage. It has no basis to stand. The correct date of birth of ~~birth~~ of the representationist, as per School Leaving Certificate (Annexure No. 1) is 28.10.1934 and on that basis he ~~was~~ is to be retired in the afternoon of 31.1.1990.

23. That it could be seen from Annexure No.2 that the School Leaving Certificate showing the representationist's date of birth as 28.10.1934 was available with him from 17.10.1952 when it was issued to him. Thus under this circumstance, there was no occasion for the representationist to declare his date of birth as 17.1.1932 in the year 1952 when he was appointed in class IV service as a Porter under the then Divisional Superintendent, Howrah Railway, now known to be recorded in the School Leaving Certificate (Annexure No. 1) the representationist is entitled to be appointed in class IV service.

24. That it is also worth consideration that the Railway Administration, relying on the School Leaving Certificate (Annexure No. 1) which contains all the relevant information, has appointed him in the class IV posts of a Guard in the year 1961, which are class III posts on which illiterate persons cannot be appointed.

2) Euston
A Lafford

Thus promotions of the representationist on the class III posts of Shunting Jamadar and Guard grade 'C' is a clear cut proof that the school leaving certificate (Annexure no. 1) showing his educational qualification upto class 8th Standard submitted by the representationist in his application dated 10.1.1990 is not true.

25. That in the facts and circumstances mentioned above, a great injustice has been inflicted upon the representationist by retiring him in the afternoon of 31.1.1990.

It is, therefore, most respectfully prayed that that the case of the representationist be considered with a judicious view and to meet the ends of justice he may be reinstated in service as guard 'C' with retrospective effect with all consequential benefits and he ~~should~~ be allowed to continue in the employment of the Railway Administration till he attains the age of 58 years that is in the afternoon of 31.10.1992.

It is further prayed that till the disposal of this representation, the representationist may not be compelled to vacate the Railway Quarter which is in his possession at Faizabad.

Without prejudice to his legal right, the representationist is prepared to receive his dues as per his needs of livelihood but the same would be returned, as per rule, on reinstatement.

An early decision is awaited.

Thanking You.

Yours faithfully,
A. Gaffar.
(ABDUL GHAFFAR) Ex. Guard,
N.Rly, Faizabad.

Dated 19.2.90
Copy to DGM/R.Rly./LKO for information & similar action.

A.M.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A.No.341 OF 1990(L)

Sri Abdul GaffarApplicant
Versus
Union of India and othersRespondents

REPLY ON BEHALF OF RESPONDENTS

I, P M Tuhaili presently posted as
Assst Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, hereby solemnly state as under:-

1. That the undersigned is presently posted as
Assst Personnel Officer in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, and is competent and duly authorised by the
respondents to file this reply on their behalf. The
undersigned has read and understood the contents of
the application moved by the applicant under Section
19 of the Administrative Tribunal Act, 1985
(hereinafter referred as 'application') and is well
conversant with the facts stated hereunder.
2. That the contents of paragraphs 1, 2 and 3 of
the application need no comment.
2. That in reply to the contents of paragraph 4.1
of the application it is most respectfully submitted
that according to the Service Record of the applicant
the father's name of the applicant is mentioned as
Chokhey, and not Sri Altaf Hussain alias Chokhey,
though the address mentioned therein is similar to
that mentioned in the paragraph under reply.

Ans

-2-

3. That in reply to the contents of paragraph 4.2 of the application it is most respectfully submitted that the service record of late Sri Altaf Hussain alias Chokhey (as mentioned in the paragraph under reply) is not available at this late stage. However, the father's name of the applicant is mentioned in his Service Record is Chokhey, and not as late Sri Altaf Hussain alias Chokhey.

4. That the contents of paragraph 4.3 of the application, not being in conformity with the record is not admitted. As already stated in the foregoing paragraphs, father's name of the applicant is mentioned only as Chokhey in the record.

5. That in reply to the contents of paragraph 4.4 of the application it is most respectfully submitted that the applicant was promoted as 'Shunting Porter' in grade Rs.35-50 with effect from 10.09.1956, and was later promoted as 'Shunting Jamadar' in grade Rs.225-350 with effect from 10.12.1975. He was promoted as Guard 'C' in scale Rs.330-530(RS) on 6.06.1980, and was further promoted as Guard 'B' scale Rs.330-560(RS) as a result of cadre restructuring vide Notice No.757-E/5/3/Gd.B/83 dated 13.12.1986. But it is specifically denied that the applicant was prematurely retired on 31.01.1990 on the basis of 'disputed' date of birth. In fact, the applicant was retired from service after having attained aged of superannuation at 58 years, and his date of birth as per entry in his Service Record is 17.01.1932 which was recorded on the basis of his declaration.

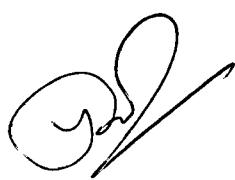
A photostat copy of the relevant page of his Service Record, wherein his date of birth is recorded on the basis of his declaration is shown, is being annexed herewith as ANNEXURE No.B-1 to this reply.

6. That the contents of paragraph 4.5 of the application, as stated, are denied. It is most respectfully submitted that at the time of his



appointment, the applicant Sri Abdul Gaffar had not produced any certificate, and no entry to that effect appear in his service record which is being maintained since 1955, and this shows that the present claim of the applicant about his date of birth is an after thought and he is trying to avail undue benefit by changing his declaration which was given by him at the time of joining railway service. It is further submitted that according to his own admission, the applicant is a literate person and has received education upto class VIII, and under his own clear signatures, he had declared his date of birth to be 17.01.1932 in presence of another railway employee. It can not be said that the applicant did not know about the consequences and import of his declaration about his date of birth, nor it can be said that the applicant did not know that he did not know that his date of birth which was being entered at the time of joining railway service. This clearly goes to show that the applicant very well knew that his date of birth which was being entered into his Service Record was 17.01.1932, and he did not produce any school leaving certificate at the time of joining railway service which dates back to the year ~~1948~~ 1952.

7. That the contents of paragraphs 4.6 and 4.7 of the application, being totally wrong and baseless, are denied. It is most respectfully submitted that the applicant is giving out his concocted version of story only with a view to put thrust to his claim. It is most respectfully submitted that the applicant is a fairly literate person and it is evident from the record itself that he himself declared his date of birth to be 17.01.1932 under his clear signatures, which was witnessed by another railway employee at the time of his joining railway service. It is also evident that at the time of joining servive, he did not produce, or deposited any certificate (which was allegedly in his possession since 1952), otherwise he would not have signed over the wrong entry of his date of birth.



8. That the contents of paragraphs 4.8, 4.9 and 4.10 of the application, being totally wrong, baseless and pure concoction, are denied. It is most respectfully submitted that the averments made in the paragraphs under reply are clear after thought. It is further submitted that the entries made in the Service Record of the applicant (including that of his date of birth), being more than 35 years' old shall be deemed to be correct, unless otherwise proved by the applicant. It is submitted that the applicant is trying to get undue benefit at this late stage when he very well knows that the records (excluding Service Record) pertaining to the year 1955 and onwards, being more than 20 years old, have been weeded out. The applicant is trying to introduce his 'cock and bull' story at this stage by alleging that he submitted his School Leaving Certificate at the time of his appointment, which he never did otherwise there should have been an entry to that effect in his Service Record, or he was asked to sign and put his thumb impression on some official record, which he unhesitatingly did (being a fairly literate person). It is further submitted that the applicant joined railway service as a Class IV (Group D) employee, and was appointed temporarily as a 'Box Porter' in scale Rs.30-35, in which no minimum educational qualification was prescribed, and there would have been no need to require him to produce any certificate in support of his educational qualifications, nor did he produce any such certificate, which is apparent from his Service Record.

9. That the contents of paragraph 4.11 of the application are denied. It is most respectfully submitted that the applicant was fully aware that his date of birth, which was being recorded at the time of his appointment in railway service on the first page of his Service Record, was 17.01.1932, and in token of its correctness, he had affixed his signatures thereon in presence of another railway



employee with full knowledge of its consequences and import.

10. That the contents of paragraphs 4.12 and 4.13 of the application, being totally wrong, are denied. It is most respectfully submitted that his date of birth, as entered in his Service Record, was accepted by the applicant, and no representation challenging its correctness or validity, as alleged in the paragraphs under reply, are available on record. It is noteworthy that the applicant has not mentioned any dates on which he is said to have given his representations, nor has filed copies thereof in the present application before this Hon'ble Tribunal.

11. That the contents of paragraphs 4.14, 4.15, 4.16 and 4.17 of the application are pure fabrication wrong and hence, denied. It is most respectfully submitted that the representation of the applicant received in the office of the Respondent No.2 regarding change of his date of birth, was forwarded to the General Manager, Northern Railway, New Delhi, who is the Competent Authority in this regard. It is specifically denied on the basis of record that he had submitted his representation regarding change of his date of birth in the year 1973. It is noteworthy that the representation allegedly submitted by the applicant in the year 1973, a photocopy of which is being annexed as Annexure No.A-3 to the application, contains acknowledgement of its receipt on 5.02.1973, and alleged endorsement by the Station Master, Northern Railway, Barabanki as "Seen and sent to D.S. LKO for N/A". The applicant could not have produced a photocopy of this document which was supposed to have been sent to the D.S., LKO, unless he was in possession of the original of this document. It goes to show that this so called representation is either a fabrication, or it was never moved before the authority concerned.



It is respectfully submitted that official correspondence on various issues goes on between the Divisional Office and Northern Railway, Headquarters Office, New Delhi at various levels and stages, and the averment of the applicant to the effect that he was informed that he would not be relieved/retired on 31.01.1990, is totally wrong and baseless and hence, denied. It is further submitted that the applicant's date of birth was correctly entered into his Service Record on the basis on his declaration as 17.01.1932, and he was rightly retired from service on 31.01.1990 after having attained the age of superannuation of 58 years. The fact that there was certain correspondence between the Headquarters Office and the Divisional Office at Lucknow would not, under any circumstances, entitle the applicant to continue in service beyond the age of superannuation.

12. That the contents of paragraphs 4.18 and 4.19 of the application are misleading and hence, denied. It is most respectfully submitted that the case was under consideration and correspondence with the Headquarters Office.

13. That the contents of paragraphs 4.20, 4.21 and 4.22 of the application, as stated, are denied. It is most respectfully submitted that the applicant, at all times, was fully aware that he was due retirement with effect from 31.01.1990, as his date of birth was 17.01.1932 as per his Service Record. The Station Superintendent, Faizabad acted correctly, and the applicant was retired from service on 31.01.1990 after attaining age of superannuation of 58 years. On retirement, the applicant was supposed to vacate railway quarter allotted to him, and to deposit all the railway property in his possession on retirement. No illegality was committed by requiring the applicant to do the same. The settlement dues, which were due to him, were paid to him. It is reiterated that the applicant was fully aware while signing the first page of his Service Record as a token of its correctness that his date of birth was 17.01.1932,

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and he never presented/deposited the said 'School Leaving Certificate' at the time of his appointment.

14. That the contents of paragraphs 4.23 and 4.24 of the application, being wrong and misleading, are denied. It is most respectfully submitted that the applicant was correctly retired from service on the basis of his date of birth recorded in his Service Record which was entered therein on his own declaration, and there was no violation of any service rule in this regard. The applicant is trying to distort the facts. There were no instructions from Respondent No.1 for not retiring the applicant on 31.01.1990 at any point of time.

15. That in reply to the contents of paragraph 4.25 of the application, it is most respectfully submitted that the relevant rule regarding date of birth as given in the Railway Establishment Code, Volume-I (Fifth Edition-1985) is being reproduced below:-

Rule 225

(4) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a Group A & B railway servant and a General Manager in the case of a Group C & D railway servant to cause the date of birth to be altered

- (i) where in his opinion it has been falsely stated by the railway servant to obtain an advantage otherwise, inadmissible, provided that such alteration shall not result in being retained in service longer than if the alteration had not been made, or
- (ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or
- (iii) Where a satisfactory explanation (which should not be entertained after completion of probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended.



AS1

16. That the contents of paragraph 4.26 of the application are denied. It is most respectfully submitted that the case of alteration in date of birth is considered when it falls within the rules. The case of the applicant does not fall in any of the 3 categories mentioned in Paragraph 225 of the Railway Establishment Code, Volume-I (Fifth Edition, 1985). The applicant had voluntarily declared his date of birth to be 17.01.1990 at the time of his appointment in railway service, which has been witnessed by another railway employee, and as a token of correctness thereof, had signed the Service Record with full knowledge of its consequences and import.

17. That the contents of paragraphs 4.27 and 4.28 of the application are denied. It is most respectfully submitted that while being promoted from Class IV to Class III (Group 'D' to Group 'C') against promotee quota, there was no minimum educational qualifications prescribed for the same. The applicant was supposed to pass only the literacy test. Therefore, the averments to the effect that the applicant was promoted on the basis of school certificate is wrong and hence, denied. It is submitted that the school certificate was never submitted by the applicant at the time of his promotion from Class IV to Class III (Group 'D' to Group 'C'), nor it was on record while considering for promotion.

18. That the contents of paragraph 4.29 of the application, being wrong, are denied. It is most respectfully submitted that the correct date of birth of the applicant as declared by him at the time of his appointment in railway service was 17.01.1990, and he was correctly retired from service on 31.01.1990 after completing age of superannuation of 58 years.

Lucknow, Dated:
April 15, 1993.



AJ2

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VERIFICATION

I P. N. Tripathi presently posted as
Asstt Personnel Officer Lucknow in the Office of
the Divisional Railway Manager, Northern Railway,
Lucknow, hereby verify that the contents of paragraph
1 of this reply is true to my personal knowledge and
those of paragraphs 2 to 18 are based on record and
the same are believed to be true. That no part of
this reply is false and nothing material has been
concealed.

Lucknow, Dated:
April , 1993.


I P. N. Tripathi
April 1993

AS3

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

O.A.No.341 OF 1990(L)

Sri Abdul Gaffar

....Applicant

Versus

Union of India and others

....Respondents

ANNEXURE No.B-1

PLEASE TURN OVER



(All Punishments should be entered in red ink)

Name (in full)..... Abdul Gaffar.....

Designation (on appointment).....Box. Painter.....Ticket No.....

Particulars of Service