

30/10/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-175/2001 ordered Pg-1

Allowed Date 24/7/2001

INDEX

O.A/T.A No. 3181/2000

R.A/C.P No.

E.P/M.A No. 175/2001

1. Orders Sheet OA 3181/2000 Pg. 1 to 3

2. Judgment/Order dtd. 14/09/2001 Pg. NO. Rejoinder order dismissed

3. Judgment & Order dtd. Received from H.C/Supreme Court

4. O.A. 3181/2000 Pg. 1 to 18

5. E.P/M.P. 175/2001 Pg. 1 to 2

6. R.A/C.P. NIL Pg. to

7. W.S. Pg. 1 to 3

8. Rejoinder Pg. to

9. Reply Pg. to

10. Any other Papers Pg. to

11. Memo of Appearance

12. Additional Affidavit

13. Written Arguments

14. Amendment Reply by Respondents

15. Amendment Reply filed by the Applicant

16. Counter Reply

SECTION OFFICER (JUDI.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI, 5. (FORM NO. 4)
(See Rule-42)

ORDER SHEET

APPLICATION NO. 318/2000

Applicant(s) Sri Bishwadev Dey.

Respondents(s) Union of India and others.

Advocate for Applicant(s) Mr. A.K. Roy, Mr. R.K. Paul
Smt. S. Roy; Mr. J. Gogoi.

Advocate for Respondent(s) R.K. Advocate.

Notes of the Registry	DATE	ORDER OF THE TRIBUNAL
	29.9.00	Present: Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman. Heard Mr. A.K. Roy, learned counsel for the applicant and Railway counsel. Issue notice to show cause as to why application shall not be admitted. Returnable by six weeks. List on 13.11.00 for Admission.
501942 28/9/2000 1m R.K. Roy 28/9/2000	13.11.00	Vice-Chairman
1m R.K. Roy 28/9/2000	13.11.00	Application is admitted. Issue usual notice. Call for the records. List on 13.12.2000 for written statement and further order.
1m R.K. Roy 28/9/2000	3.1.01	Vice-Chairman
Service report are still awaited.	6.2.	Adjourned to 3.1.2001. Mr. Roy 13.1.2001
Writs have been filed.	6.2.	List on 6.2.2001 for order and to enable the respondents to file written statement.
2.1.2001	6.2.	Adjourned to 8.3.2001. Mr. Roy 6.2.

Notice duly served on
R. No. 283.

O.A. 318 of 2000

4/11/2001

No written statement
has been filed.

7.3.01

List on 11.4.01 to enable the
respondents to file written statement.

Vice-Chairman

(B)

Zm
5.3.01

lm

11.4.01

List on 23.5.01 to enable the respon-
dents to file written statement.

Vice-Chairman

lm

23.5.01

List again on 27.6.2000 to enable
the respondents to file written statement.

No written statement
has been filed.

Zm
26.6.01

trd

27.6.01

No written statement so far filed.
List on 1.8.01 for filing of written
statement and further orders.

Vice-Chairman

lm

1.8.01

Written statement has been filed.

The learned counsel for the respondents
shall serve the copy of the written
statement to the counsel for the appli-
cant within 48 hours. The applicant may
file rejoinder if any, within 10 days
from ^{The receipt} to-day. _{hr}

Vice-Chairman

Pl. comply order
dated 1/8/01.

lm

24/8/01
25/8/01

Mr. I. Gogoi, learned counsel for the applicant
submitted that though the written statement has file
copy yet to served to the applicant. Mr. S. Sarma,
learned counsel for the respondents stated that he
will serve the copy on Monday. The applicant may
rejoinder. _{hr}

List on 14/9/01 for order.

Copy of order dated 1/8/01
communicated to the learned
counsel, vide D/No. —

441

23/8/01 which has been filed.

Vice-Chairman

O.A. 318/2000

b
3

Notes of the Registry Date Order of the Tribunal

14.9.01

Heard Mr. I. Gogoi, learned counsel for the applicant.

Mr. Gogoi, states that he does not want to press the application. Accordingly, the application is dismissed as not pressed.


Vice-Chairman

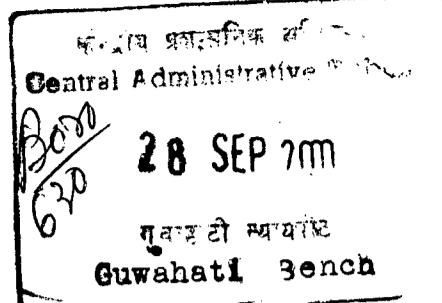
18.9.2001
copy of the order
has been sent to the
D/sec. for issuing
Ten days to the 4th
for the parties.
RS

mb

Notes of the Registry

Date

Order of the Tribunal



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

Case No. 28
Date: 28/9/2000
Court: Guwahati Bench

O.A. No. 318 /2000

Shri Bhola Nath Dey

-versus-

Union of India & others.

I N D E X

<u>S.l. No.</u>	<u>Documents</u>	<u>Page</u>
1.	Application ...	1-8
2.	Verification ...	9
3.	Annexure-A ...	10.
4.	Annexure-B ...	11-12
5.	Annexure-C ₁ ...	13.
6.	Annexure-C ₂ ...	14.

For use in the office :-

Signature : - 
Date : - 28/9/2000

Shri Bhola Nath Dey.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

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

X
Filed by the applicant
Shri Bhola Nath Dey
Shri Bhola Nath Dey
through -
Ashok Kumar Ray,
Advocate
28/2/2000

BETWEEN

Shri Bhola Nath Dey
Khalasi,
Office of the Section Engineer(works)
Simluguri, N.F.Railway,
District Sibsagar, Assam.

28 SEP 2000
Guwahati Bench

... APPLICANT.

-AND-

1. Union of India, represented by
the General Manager, N.F.Railway, Maligaon
2. The Divisional Railway Manager (P)
N.F.Railway, Tinsukia Division,
P.O. Tinsukia.
3. The Section Engineer(works)
Simluguri, N.F.Railway,
P.O. Simluguri.

... RESPONDENTS.

1. Particulars of order against which this application is directed :

This application is made due to non-correction of date of birth of the applicant in the

contd...2

Shri Bhola Nath Dey

Service Book and also against the action of the respondents in giving retirement on the basis of wrong date of birth.

2. Jurisdiction :

That the applicant declares that the subject matter of this application is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :

That the applicant also declares that this application is made within the time limit as has been prescribed under section 21 of the Administrative Tribunal Act, 1985.

4. Fact of the Case :

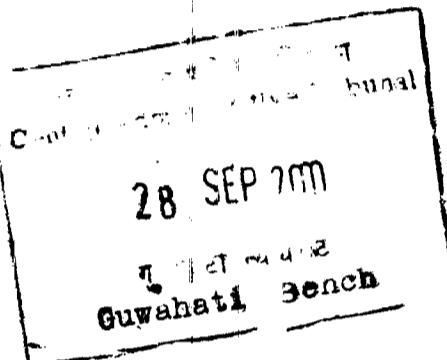
(i) That the applicant entered into the service under respondents as a casual labour on 1/5/1979 and he was granted CPC Scale of pay w.e.f. 1/9/1979 and in the year 1982 his service was made permanent.

(ii) That when he was granted CPC scale in the year 1979 his service book was opened and at that time his date of birth was recorded by the then respective Officer and his signature was taken in the service book. At that time his date of birth was

contd...3

, Sir Bhola Nath Dey

recorded wrongly as 1/10/1940 instead of 1/10/1949.


(iii) That the applicant was not aware about the wrong entry of the date of birth, though he put his signature in the service book. He came to know about the wrong entry in the year 1997 and immediately he submitted one representation dated 5/2/1997. He also submitted the original admit card of HSLC and the certificate issued by the Principal, B.P.Baruva Memorial Higher Secondary School, Sonari.

(iv) That after the said representation the respondent No.2 did not correct the date of birth on the basis of the certificate and the admit card and rejected the claim of the applicant vide letter dated 24/9/1998 instead of correcting the date of birth the respondent asked the applicant to submit explanation for giving different declaration.

One copy of the letter dated 24/9/1998 is annexed as Annexure-'A'

v) That after receiving that letter the applicant submitted his explanation dated 9/10/1998 stating specifically that he simply put his signature in

contd...4

Sri Bhola Nath Dey

in the service book but he did not filled up the relevant blank portion of the service book. He also specifically stated that he came to know about the wrong entry of date of birth from Head Clerk, IOW, Simluguri. After the said representation the respondent No.2 neither gave any reply nor corrected the service book.

One copy of the representation dated 9/10/98 is annexed herewith as
Annexure-'B'

vi) That the applicant states that his date of birth is 1/10/1949 and accordingly his age was 18 years 5 months when he appeared in the HSLC examination in the year 1968 under the Board of Secondary Education, Assam. Regarding his date of birth, the Principal of the B.P.Baruva Memorial Higher Secondary School gave one certificate dated 15/2/1971 which also shows the age of the applicant was 18 years 5 months on 1/3/1968. The applicant submitted the above two original documents to the respondents but refused to correct the date of birth and also did not return the original admit card and the certificate.

Copies of the admit card and the certificate issued by the Principal are annexed herewith as Annexure-'C₁' and Annexure-'C₂'.

contd...5

Sir Bhola Nath Dey.

(vii) That the applicant states that as per his correct date of birth, his date of retirement will be on 30/9/2009. But the respondents are going to give retirement to the applicant on 28/9/2000 on the basis of wrong date of birth which has been entered by themselves in the service book. In this connection it is also to be stated that the respondents never informed him about his date of birth which was recorded in the service book nor asked him to submit the records/documents regarding date of birth during his long period of service.

28 Sept 2011
Guwahati Bench

(viii) That the applicant states that from the service book it is clear that his date of birth was recorded incorrectly inasmuch as that no person can get any service at the age of 39 years.

(ix) That the applicant states that as he has submitted his original certificate/records regarding his date of birth in the year 1997, the respondents should have accepted the same correcting the date of birth in the service book, but that has not been done and on the basis of wrong entry of date of birth, they are going to give retirement on 28-9/2000 and hence this Hon'ble Tribunal along

contd..6

Shri Bhola Nath Dey

17

and hence the applicant approach this Hon'ble Tribunal along with this applicant.

5. G R O U N D S :

- (i) For that the action of the respondents is illegal and arbitrary.
- (ii) For that as the applicant has produced the authenticated documents relating to his date of birth, the respondents should have accepted the same by correcting the date of birth.
- (iii) For that as the date of birth was recorded ~~in~~ the service book without basing any age proving certificate, the same should not be relied on.
- (iv) For that as the column of date of birth was not recorded by the applicant himself in the service book, that should not be relied on, more so, when he has produced the authenticated documents.
- (v) For that as per the entry in the service record the applicant's age comes at 39 years in the year 1979 i.e. at the time of joining in the service, which is not possible at all inasmuch as no person can get any service at the age of 39 years.
- (vi) For that the action of the respondents is arbitrary and whimsical and not supported by any documents and hence same is not acceptable in the

contd...7

Sri Bhola Nath Dey

in the eye of law.

(vii) For that the action of the respondents violates the fundamental rights of the petitioner.

(viii) For that the action of the respondents is illegal inasmuch as it violates the principle of natural justice and administrative fair play.

(ix) For that at any rate the action of the respondents is not maintainable in the eye of law and is liable to be quashed.

6. Detail of Remedies avail :

That the applicant declares that he has taken recourse to all the remedies available to him but but failed to get justice and hence there is no other alternative ~~efficacious~~ remedy open to him other than to approach this Hon'ble Tribunal.

7. Matter not previously filed and/or pending before any court :

That the applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter before any court, authority or any other bench of this Hon'ble Tribunal nor any such application, writ application or suit is pending before any court.

8. Relief Sought for :

Under the circumstances stated above, the

contd...8

sin Bhola Nath Dey

the applicant prays for following reliefs :-

- (i) To direct the respondents to correct the date of birth in the service book on the basis of the admit card of HSLC and certificate of the Principal of the School.
- (ii) To allow the applicant to continue his service on the basis of the corrected date of birth.
- (iii) To grant any other relief as your Lordships may deem fit and proper.
- (iv) Cost of the applicant.

9. Interim reliefs if any :

Under the circumstances stated above Your Lordships may please to direct the respondents to allow the applicant to continue his service and not to give his retirement on 28/9/2000 on the basis of wrong entry of date of birth.

10. Particulars of Indian Postal Order :

- (i) I.P.O. No. : 2G 502942
- (ii) Date of issue : 28-9-2000
- (iii) Payable at : Guwahati.

11. List of enclosures :

As stated in the index.

contd...9

Sir Bhola Nath Dey

VERIFICATION

I, Shri Bhola Nath Dey, son of Late Haripada Dey, aged about 51 years, resident of village & post office Bhojo, District Sibsagar, Assam, at present working as Khalasi under the Section Engineer(Works), Simluguri, N.F.Railway do hereby verify that the contents of paragraph 1 to 12 of the application are true to my knowledge and belief and I have not suppressed any material fact of the case.

And I sign this verification on this 27th day of September, 2000. *Shri Bhola Nath Dey*

Applicant.

Place:- Guwahati

Date:- 27.9.2000

N. F. RAILWAY.

No. 403-R/P-Caref/8

Office of the
Divisional Rly. Manager(P),
N.F. Railway/TSK at DBRT

D. 28-9-98

To,
Shri Bholanath Dey,
S/O. Late Hari Pada Dey,
Khalasi under SE(Works)SLGR.

Sub:- Anomaly of Date of Birth.

Ref:- Your application dt. 5.2.97.

On the strength of your application dt. 5.2.97 in respect of wrong maintenance of date of Birth in the service records the following have been detected.

You have entered in Railway service as Casual labour on 1.5.79 and granted CPC scales of pay from 1.9.1979 and duly screened. At the time of opening of Service Book, you have signed on the first page of S/Book and wherein your date of Birth have been noted as 1.10.1940 (1st day of October nineteen forty) which have been accepted by the then IOW/SDGR. You have not submitted the certificate at the time of opening of S/Book and now on 5.2.97 you submitted the same. Being a literate person you should submit the same earlier. The certificate now submitted such distant date getting certificate from School Authority declaring your date of Birth as 1.10.49 is not at all accepted.

Hence, you are asked to submit your explanation for misle ading/by giving different declaration within ten days from the date of receipt of this letter.

for Divisional Rly. Manager(P),
N.F. Railway/Tinsukia.

Copy to:- SE(Works)SLGR for information and taking necessary action please.

for Divisional Rly. Manager(P),
N.F. Railway/Tinsukia.

Attested by
Gopal Choudhury
Advocate
28/9/2000

Regd. A/D

Annexure-B.

To

The Divisional Rly. Manager(¶)
N.F.Railway, Tinsukia

Dated 9.10.98

Ref:- 403/R/P.Case/98 dated 24.0.

Sir,

Reference to your letter cited above, I am giving my explanation, as desired by you, as follows :-

1. That sir, I come to know my date of birth as 1.10.1940 which was informed by Head Clerk, IOW, Simluguri.
2. That after receiving my information regarding date of birth which was incorrect one, I filed an affidavit declaring my actual date of birth as 1.10.49.
3. That at the time of opening of my service book I simply put my signature in the blank page of the service book and submitted my matriculation appeared Admit card.
4. That in the said Admit card my age was 18 (eighteen) years 5(five) months as on 1.3.1968.
5. That according to my Matriculation Admit Card and school certificate my date of birth is 1.10.1949.
6. That I never try to mislead your honour in any wayway.

Attested by
Indranil Gogoi
Advocate
26/9/2002

contd...

Sri Roshanwar Das

Sir, I earnestly request you to
consider my matter and oblige.

Thanking you.

Yours faithfully

Sd/- Bhola Nath Dey

U/CPC SLGN/N.F.Rly.
Khalasi

attested by
Bholanath Dey
Advocate
28/9/2000

Sri Bholanath Dey

13-

Office No.

DUPLICATE

50



Board of Secondary Education Assam, Guwahati

ADMIT

Bhola Nath Dey
 Roll No. 89

To the High School Leaving Certificate Examination
 commenced on 12.3.68 His / Her age on the 1st
 of March, 1968, was 18 Years 5 Months
 X Days.

Note :—Hours of Examination :— { Morning—From 9 a.m. to 12 noon.
 Afternoon—From 1-30 p.m. to 4-30 p.m.

N. B.— Any alteration made in the entries on this Admit Card without the authority of the Board
 renders the candidate liable to disqualification for sitting at this or any subsequent Examinations.

~~Payment 30/10/68~~
 Controller of Examinations
 Board of Secondary Education, Assam
 GOURAHARI, GUWAHATI, Assam
 Date of issue 28/9/68
 Govt. Ex. No. 581021

Attested by
 Indra Nath Dey
 Advocate
 28/9/68

Attested
 by
 A. F. Railway, Dibrugarh
 28/9/68

49

OFFICE OF THE

Baruva Memorial Higher Secondary School.

ANEXURE

C 20
C 2

P. O. Sonar
Dist. Sibsagar
ASSAM

16

Date

Memo No. 111 (30) 71

Certified that Sri Bhola Nath Dey, son of late
Hari Pada Doy, an inhabitant of Bhojo, P.O. Bhojo in the
District of Sibsagar, appeared at the H.S.L.C. Examination
in 1968 under Roll SONARI, NO. 88, but could not come out
successful.

His age according to the Admit Card was 18 (eighteen)
years 5 (five) months on 1.3.68.

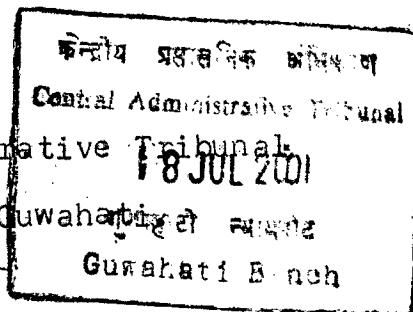
00/00/00/15/2/71

(P. N. Sarma,)

Baruva Memorial
Secondary School
Bongi

Attested
by
S. N. Dey
15/2/71

Attested
by
Graham Chacon
Advocate
28/9/2001



In The Central Administrative Tribunal
Guwahati Bench :: Guwahati Bench
Guwahati Bench

O. A. No. 318/2000

Sri B. N. Dey

- Vs -

Union Of India & Others

In the matter of :

Written Statement on behalf of
the respondents.

The respondents in the above case most respectfully
beg to state as under:

1. That, the respondents have gone through the original application and have understood the contents thereof.
2. That, the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied. The application deserves to be dismissed on the ground of delay.
3. That, in reply to the statement in paragraph 4 (i) it is stated that the applicant was treated as regular Railway employee from August 1987 and not from the year 1982 as stated by this applicant.
4. That in reply to statements in paragraphs 4 (ii) to (iii) it is stated that at the time of opening of service book the applicant did not produce any certificate but verbally declared his date of birth as 01-10-40 and educational qualification as 'read upto

22
Mahan
राज्य विभाग
रेलवे रेल, रेलवे
Divisional Personnel Officer
R. Railway, Thane

Class - X'. It is denied that the applicant was not aware about his date of birth recorded in the service book. The applicant verified his date of birth and educational qualification in the service book.

That it is also stated that the applicant submitted an Affidavit with his letter dated 5-2-97 declaring his date of birth as 10-1-1949 and prayed to make correction in the service book accordingly. It is worthy mentioned that the applicant also submitted a school certificate where his age was recorded as 18 years 2 months as on 31-12-67. Taking the applicants age as 18 years 2 months as on 31-12-67 his date of birth comes as 01-10-1949 which differ from his declaration made in the aforesaid Affidavit. So, want of proper and genuine evidence, the recorded date of birth of the applicant in the ~~service book~~^{on his own declaration can} could not be altered and the same was intimated to the applicant by DRM(P)/TSK letter No. 405-E/P. Case/98 dated 24-9-98.

Copy of the Affidavit and school certificate are enclosed as Annexure-R/1 and R/2 respectively.

5. That in reply to the statements in paragraphs 4 (iv) to 4 (vi) it is stated that the school certificate submitted by the applicant was of doubtful authenticity and could not be relied upon, so explanation was called for. The explanation given by the applicant was not satisfactory. It is also stated that the applicant mentioned that his age was 18 year 5 months when he

23
Thakur

appeared in the HSLC examination in the year 1968 as on 1-3-1968 as per the school certificate of B.P. Baruva Memorial Higher Secondary School dated 15-2-71. The applicant produced the school certificate of Longpatia High School which indicates that he was not a regular student of B.P. Baruva Memorial Higher Secondary School. As no satisfactory explanation could be given by the applicant nor doubt of authenticity of school certificate could be removed by the applicant the claim of the applicant was rejected.

6. That in reply to the statements in paragraphs 4 (vii) to 4 (ix) it is stated that a seniority list was published by the respondent in the year 1995 showing the date of birth of the applicant as 1-10-1940 but the applicant did not give any representation on his date of birth in the seniority list. Moreover, on an enquiry made by the respondent Railway authorities it was found that the applicant did not read in B.P. Baruva Memorial Higher Secondary School. The applicant submitted an affidavit declaring his correct date of birth as 10-1-1949 and submitted a school certificate stating his date of birth as 1-10-1949, ~~arose doubt on the authenticity of the documents~~ ^{is not acceptable} and hence the respondents could not rely upon the aforesaid evidence and hence rejected the claim of the applicant.

7. That in the circumstances of facts the application deserves to be dismissed with cost.

VERIFICATION

I N. N. Thakur

working as

Divisional Personnel Officer

N. F. hly Tinsukia

do hereby verify that the statements made in para 1 to 7 are true to my knowledge and belief.

Guwahati, 25/06/2001

TINSUKIA

Thakur
Signature
Divisional Personnel Officer

प्राप्ति अधिकारी
प.र. नं. २०८, तिनसुकिया
Divisional Personnel Officer
G. S. Railways, Tinsukia