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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Salita
21/12/17

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.5

ORIGINAL APPLICATION NO. 349/2000

Abinash Choudhury, Das APPLICANTS
versus.

Union of India &ors Respondents.

FOR THE APPLICANT(S) Mr. K. N. Choudhury, Mr. K. P. Pathak
ADVOCATE Mr. B.C. Das Mr. P. Bhowmik

FOR THE RESPONDENT(S)

N. I. Ry. Advocate.

Notes of the Registry DATE COURT'S ORDER

24.10.00 Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman.

Heard Mr K.N. Chowdhury, learned sr. counsel for the applicant.

Application is admitted. Issue usual notice. Call for the records.

List on 8.12.2000 for written statement and further orders.

Vice-Chairman

pg

25
25/10/2000

8.12.00

On the prayer of learned counsel for the Railway four weeks time is allowed for filing of written statement. List on 9.1.2001. for filing of written statement and further orders.

Vice-Chairman

lm

Notice freehanded and sent to D18 for being the Respondent No. 1 to 4 vide DINo 2481 to 2484 dtg 6/11/2000.

3/11/00

Received on 3/11/00

SD/ST/ABD

(2)

① Service report are still awaited.

② Mr. Vof's has been filed.

10.1.2001

Four weeks time allowed for filing of written statement. List the case on 9.2.2000 for orders.

Vice-Chairman

nkm

8-1-2000

9-2-2000 A.D. Adjourned to 21/3/2001

M/s

9-2

"Varkalatnama" has been filed by the respondents.

No. B. K. Sharma
Mr. S. Sarma

21.3.01

List on 25.4.01 to enable the respondents to file written statement

Vice-Chairman

pg

Notice has been served on R.No. 1
others are advised

25.4.2001

Four weeks time allowed to the respondents to file written statement. List for orders on 1.6.01.

Vice-Chairman

No. written statement has been filed.

nkm

20.3.01

No. written statement has been filed.

bb

29.6.2001

Four weeks time allowed to the respondents to file written statement. List for orders on 8.8.01.

Vice-Chairman

28.6.01

No. written statement has been filed.

7.8.01By Order
Anita J.

Notes of the Registry

Date

Order of the Tribunal

No. written statement
has been filed.

30
11.9.01

8.8.2001

Four weeks time allowed to the respondents to file written statement. List for orders on 12.9.01.


Vice-Chairman

nkm

12.9.2001

Ms. U. Das appearing for Mr. S. Sarma, learned counsel for the respondents requests for a short adjournment for filing of written statement. Mr. K. P. Pathak, appearing for the applicant states that a number of opportunities have already been given to the respondents to file written statement. He requests for earlier hearing for disposal of the matter.

List the matter on 10.10.2001 for hearing. In the meantime the respondents may file written statement, if any.

16/10/01


Member

bb

8.10.2001

Replies have been submitted on behalf of the respondents.

YAD

10.10.01

Mr. S. Sarma, learned counsel appearing on behalf of the respondents submitted that a rejoinder has been filed by the applicant today and accordingly prays for adjournment. The case is adjourned.

List on 21.11.01 for hearing.


Vice-Chairman

17.10.2001

Rejoinder for and on behalf of the applicant has been submitted.

BB

pg

21.11.01

Mr. P. Bhowmick, learned counsel for the applicant seeks little accommodation on behalf of Mr. K. P. Pathak, learned Sr. Advocate. Prayer is allowed. List on 14.12.01 for hearing.

16/11/01
Member


Vice-Chairman

The case is ready for hearing.

lm

21.11.01

Notes of the Registry	Date	Order of the Tribunal
	14.12.01	At the request of learned counsel for the applicant case is adjourned to 18.1.02 for hearing. K Ullah Member
<i>The case is ready for hearing.</i> <i>22.3.2002</i> <i>Copy of the Judgment has been sent to the Office for issuing the same to the applicant as well as to the Rly. Standing Counsel.</i> <i>HS</i>	18.1.02	Mr.P.Bhowmick learned counsel submits that his Senior Mr.K.P.Pathak, learned counsel who was represented to the case of the applicant is indisposed. and he wants a short adjournment. Mr.S. Sarma learned counsel for the respondents has no objection. List on 15.2.02 for hearing. K Ullah Member
	15.2.02	The applicant has again sought for adjournment on the ground of absence of Sr.counsel. Case is adjourned to 20.2.02 for hearing. No further adjournment shall be granted. Vice-Chairman
	20.2.02	Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court, kept in separate sheets. The application is dismissed in terms of the order. No order as to costs. Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 349 of 2000.

Date of Decision... 20.2.20

Sri Abinash Chandra Das

Petitioner(s)

Sri Pallab Bhowmick

Advocate for the
Petitioner(s)

- Versus -

Union of India & Ors.

Respondent(s)

Sri B.K. Sharma, Senior Advocate

Advocate for the
Respondent(s)

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 349 of 2000.

Date of Order : This the 20th Day of February, 2002.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

Sri Abinash Chandra Das
son of late Purna Chandra Das,
Quarter No. 300/A, Central Ghatanagar,
Maligaon, Guwahati-11.

... . . . Applicant

By Advocate Sri Pallab Bhowmick.

- Versus -

1. Union of India,
represented by the Chairman,
Railway Board, Rail Bhawan,
New Delhi.
2. General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. The Financial Adviser & Chief
Accounts Officer,
N.F.Railway, Maligaon,
Guwahati-11.
4. The Chief Personnel Officer,
N.F.Railway, Maligaon,
Guwahati-11.

... . . . Respondents.

By senior Advocate Sri B.K.Sharma, Railway standing
counsel.

O R D E R

CHOWDHURY J.(V.C)

The controversy pertains to recording of date of birth in the service book. The applicant entered service under the ~~as~~ respondents as Clerk Grade II on 15.9.1955. In the service book his date of birth was recorded as 1.3.1935 on the basis of entry in the Matriculation certificate No.933 under Roll No.545 issued by the Gauhati University. The applicant sought for correction of his age ~~entry~~ in the Matriculation certificate and moved the University authority for correction. By communication

dated 16.6.64 the applicant was informed by the University authority that his correction was allowed and his corrected age was 15 years in place of 19 years on the first of March 1954. According to applicant forthwith he moved for correction of his age in the service book. On the strength of the aforementioned correction he made an application before the Financial Adviser & Chief Accounts Officer, N.F.Railway, Maligaon on 11.5.65 through proper channel for correction of his date of birth and age in the service book according to the correction made by the Gauhati University in the Matriculation certificate. The applicant pleaded that as per the Matriculation certificate his date of birth was to be recorded as 1.3.39 instead of 1.3.35. He submitted number of reminders thereafter for correction of his date of birth. Subsequently he submitted a representation on 26.9.1981, according to him the fifth representation for correction of his date of birth. The Railway authority also enquired the University as to the correction of date of birth of the applicant and University by its communication dated 14.8.90 confirmed that the date of birth of the applicant was corrected in his Matriculation certificate. The respondent No.3 forwarded the case of the applicant to respondent No.4 for correction of the date of birth. By order dated 31.5.91 the claim of the applicant was rejected in terms of the Railway Board's letter dated 16.5.62. The applicant again submitted representation, this time the respondent No.4 forwarded his representation dated 30.8.91 to Railway Board. The Railway Board did not entertain the matter and stated that the matter was to be decided by the N.F.Railway and Railway Board is concerned only in respect of policy matters. The applicant thereafter also pursued the matter.

A

In the meantime the authority served him superannuation notice. The applicant represented which was also turned down. He was superannuated on 28.2.93. He again moved the Railway Ministry. By communication dated 22.11.93 the respondent No.2 informed the Executive Director for its inability to alter the date of birth recorded in the service book for the reasons stated therein. The applicant thereafter also followed the matter. Failing to get appropriate remedy the applicant finally moved this Tribunal by way of O.A. which was registered and numbered as O.A. 127/97. The said O.A was disposed of by order dated 10.12.99 with a direction on the respondents to consider the case of the applicant in the light of the relevant rules. By order dated 25.6.2000 the respondents rejected his prayer for correction of date of birth. Hence this application.

2. Mr P.Bhowmick, learned counsel appearing for the applicant argued the matter at length. The learned counsel strenuously urged that the applicant was denied justice by the respondents and thereby denied him the equal opportunity guaranteed under Article 14 and 16 of the Constitution. Mr Bhowmick submitted that admittedly the date of birth of the applicant was corrected from 1.3.35 to 1.3.39. The earlier age which he furnished to the Railway authority was corrected by the University authority itself and therefore the applicant could not have been superannuated on or before 28.2.97. Mr Bhowmick, the learned counsel also vigorously attacked each and every reasoning given by the respondents in rejecting his representation vide order dated 25.6.2000. Mr B.K.Sharma, learned senior counsel appearing on behalf of the respondents on the other hand submitted that the claim

of the applicant for correction of date of birth is itself a stale claim so much so that his representation for correction of date of birth was turned down as far back as 23.1.1982 and therefore the application is liable to be rejected on the ground of delay and latches. Mr Sharma, the learned senior counsel further submitted that even on merit there was no ground for rectification or for correction of his date of birth as per the policy of the Railways. The learned counsel submitted that as per Rule 225 of the Indian Railway Establishment Code no such application could be considered after 5 years of the limitation prescribed under the rules. Mr Sharma learned counsel submitted that the date of birth of the applicant was corrected by the Gauhati University in June 1964, till 25.9.81 the applicant did not submit any representation. Referring to the representation dated 11.5.65 as was relied upon by the applicant Mr Sharma submitted that no such representation was in fact submitted by the applicant and for that purpose he referred to representation dated 26.9.81 which was received by the department on 28.9.81 also did not mention any earlier representation of 1965. Mr Sharma further referred to Annexure X of the application dated 16.10.89 and submitted that the said application did not contain any whisper of the purported representation dated 11.5.65 which was retained by the applicant and when the applicant filed the same on 25.8.89 the department kept that letter in file for record. Mr Sharma also referred to the Railway Board Circular dated 7.6.62 pertaining to alteration of date of birth and submitted that the employees those who entered Railway service after 1939 the date of birth in all such cases was to be recorded by the Railway servant concerned in his own hand writing as per rule 145-RT. As per the instruction the

request for alteration of date of birth in accordance with Board's letter could not be entertained after the date of issue of the letter. It was also indicated in the communication that in examining such matter the Railway authority was to consider as to whether the Railway servant concerned would have been within the age limit prescribed for entry to railway service at the time entered service with certificate. Mr Sharma lastly submitted as to the limitation of the scope of judicial review on such matter and referred to the decision of the Supreme Court in G.M.Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and others, reported in (2000) 8 SCC 696, Union of India vs. C.Rama Swamy, (1997) 4 SCC 647, Burn Standard Co.Ltd., vs. Dinabandhu Majumdar, (1995) 4 SCC 172 and Secretary and Commissioner, Home Department vs. R.Kirubakaran, 1994 Supp (1) SCC 155. The learned counsel also referred to the decision of this Tribunal in O.A.216/86 (Narakanta Rajkhowa vs. Union of India and ors.), O.A.162/95 (M.Roy Choudhury vs. Union of India & Ors.) and O.A.212/98 (Smt.Anjali Chakraborty vs. Union of India & Ors.). Mr P.Bhowmick, learned counsel for the applicant also referred to the following cases in support of his argument.

- i) Union of India vs. Harnam Singh, (1993) 2 SCC 162.
- ii) Kamakhya Prasad Sengupta vs. Union of India & Ors. G.C.78/88 (CAT, Guwahati Bench)
- iii) Anil Chakraborty vs. U.O.I & Ors. G.C.168/86(T)

3. In this application the Tribunal is basically concerned as to the legitimacy of the action taken by the respondents. From the admitted facts the applicant submitted Matriculation certificate corrected by the Gauhati University which corrected his age that was produced before the authority considered the same and did not accede the prayer of the applicant for correction of the date of birth.

The respondents in its communication mentioned that the applicant did not submit a representation for alteration of his age as per the norms laid down by the Railways. The authority also took note of the fact that the age of the applicant was changed from 19 years to 15 years as on 1.3.1954. The said correction was based on the horoscope submitted by the applicant without taking the Railway authority into confidence. The authority refused to re-open the matter in view of the decision rendered by the Supreme Court. Mr P.Bhowmick however submitted that if there was irrefutable evidence on record there was no justification for the authority to exercise discretion in favour of the applicant. Since the applicant submitted representation in time the ratio of the Harnam Singh covers the case of the applicant submitted Mr Bhowmick. The relevant provision of the rules relating to the date of birth mentioned in Rule 145 of Indian Railway Establishment Code Vol.I (old edition) which was substituted by Rule 225 of Indian Railway Establishment Code Vol.I 1985 are reproduced below :

"225. Date of birth.(1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior class III railway servant and witnessed by another railway servant."

As per the scheme of the rule a person entering railway service is required to declare his date of birth which is not to differ from any declaration for any public purpose before entering railway service. In the case of literate staff the date of birth is to be entered by the Railway servant's own handwriting. The date of birth as recorded

in the service book is binding on all concerned and ordinarily no alteration as such is permissible. Power has been conferred on the authority to re-open the same only on the conditions specified therein. One of the ground is that such correction is permissible where a wrong date came to be entered as furnished by the Railway servant concerned together with the statement of any previous attempts made to have the record amended. Time limit is prescribed by the Railway Board Circular as well as the rules. It is for the authority to be satisfied with the explanation provided it is within time. The reasons assigned for not accepting his application for alteration of date of birth by the respondents on the test cannot be said to be illegal or improper. In judging the situation one more relevant aspect could not be ignored. The applicant when he joined on 15.9.55 as per the earlier Matriculation certificate his age was 20 years but as per his second certificate he was a minor (16 years) on 15.9.55 i.e. the date on which he was appointed in service. In the circumstances it is difficult to sustain the plea of the applicant.

The application is accordingly dismissed. There shall, however, be no order as to costs.

(D.N.CHOWDHURY)
VICE CHAIRMAN

2 OCT 2000

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: AT GUWAHATI

ORIGINAL APPLICATION NO.

349/2000

Sri Abinash Chandra Das

... Applicant.

- Versus -

Union of India

Represented by the Chairman,
Railway Board and Others.

... Respondents.

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Filed by -

Brind Chandra Das
(B.C. DAS)
Advocate

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

filed by :
Bimal Chandra Das
Advocate -
23.10.2000

ORIGINAL APPLICATION NO. 349 /2000

Sri Abinash Chandra Das
Son of Late Purna Chandra Das
Quarter No. 300/A, Central Gotanagar,
Maligaon, Guwahati - 781 011.

.... APPLICANT.

- Versus -

- 1) Union of India,
Represented by the Chairman,
Railway Board, Rail Bhawan,
New Delhi.
- 2) General Manager,
N.F. Railway, Maligaon,
Guwahati - 781 011.
- 3) The Financial Adviser, & Chief
Accounts Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.
- 4) The Chief Personnel Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.

Abinash Chandra Das.

.... RESPONDENTS.

DETAILS OF APPLICATION :1. Particulars of the Order against which the Application was made :-

The instant Original Application is directed against letter No. PNO/AD/CAT/ACD/97 dated 25/07.06.2000 issued by the Office of the Respondent No. 3 rejecting the prayer of the Applicant for correction of his date of birth in terms of Order dated 10.12.1999 passed by the Hon'ble Central Administrative Tribunal, Guwahati Bench at Guwahati in Original Application No. 127/97.

2. Jurisdiction of Tribunal :

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

3. Limitation :

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

4. Facts of the Case :

(i) That the applicant is a citizen of India and a permanent resident of Rampur in Kamrup District

Alimash Chander Das.

contd... p 3.

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3.

of the State of Assam. As such, the Applicant is entitled to all rights and privileges guaranteed by the Constitution of India and other laws of the land.

(ii) That the applicant entered in service in the erstwhile North-Eastern Railway now North-East Frontier Railway on 15.9.1955 as Clerk Grade II as approved by the Office Railway Service Commission, Calcutta vide/Order No. G/92 dated 26.9.92 issued by the Regional Accounts Officer, N.E. Railway, Pandu under No. PNO/AD/65/2092/69 dated 26.9.55.

A copy of the aforesaid Order dated 26.9.55 is annexed hereto and is marked as Annexure - I.

(iii) That the applicant at the time of joining service declared his date of birth as 1.3.1935 (First of March, 1935) on the basis of the age entry in the Matriculation Certificate No. 933 under Roll No. 545 issued by the Gauhati University wherein the age of the applicant was shown as 19 Years as on 1.3.1954 and accordingly his date of birth was recorded as 1.3.1935 in his service Book.

*15.9. 1955 Subm/s-
1939*
A copy of the Matriculation Certificate No. 933 under Roll No. 545, issued by the Registrar, Gauhati University is annexed hereto and is marked as Annexure - II.

(iv) That during the year 1961 following documents

on the basis of the

and records and as per the prescribed Rules/Proforma of the Gauhati University, the applicant came to know that his actual date of birth was 1.3.1939 and not 1.3.55 :-

- (A) Record in Hats Chitha, the birth register maintained by the village Gaonburah of Rampur village Lat No. 20.
- (B) Horoscope of the applicant.
- (C) Date of birth recorded by the father of applicant in the 'Panjika' for the year 1939 at Page 345.
- (D) Certificate issued by the village Gaonburah of Rampur village Lat No. 20 on the basis of birth register and endorsed by the S.D.C., Palashbari Circle.
- (v) That on the basis of the above records and documents the applicant made an application before the Gauhati University supported by an affidavit sworn by the applicant on 25.2.61 praying for correction of his date of birth in the Matriculation Certificate and other relevant records.

A copy of the affidavit dated 25.2.61 sworn by the applicant is annexed hereto and is marked as Annexure - III.

- (vi) That the Gauhati University on receipt of the

Abinash Chandra Das

contd... p 5.

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application of the applicant and after necessary scrutiny was pleased to correct the age entry of the applicant as 15 years only as on 1.3.1954 in the Matriculation Certificate which was intimated to the applicant vide letter No. Cer/Ca/64/852 dated 16.6.64.

A copy of the aforesaid letter dated 16.6.64 is annexed hereto and marked as Annexure - IV.

(vii) That on receipt of the aforesaid letter dated 16.6.1964 in the last part of 1964, the applicant submitted a representation on 11.5.1965 within one year of the correction made by the Gauhati University through proper channel before the Respondent No. 3 who was the Controlling Officer of the applicant praying for necessary correction of his date of birth as 1.3.1939 instead of 1.3.35 in the Service Book of the applicant.

A copy of the aforesaid representation dated 11.5.65 is annexed hereto and is marked as Annexure - V.

(viii) That as no action was taken by the competent authority on the representation of the applicant dated 11.5.65 for a considerable period of time, the applicant submitted several reminders on various dates like 13.3.67, 7.6.68 and 18.3.70 but none of these representations has been disposed of by the competent authority.

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Alimash Chander Das.

Copies of the aforesaid reminder dated 19.3.67, 7.6.68 and 18.3.70 are annexed hereto and are marked as Annexures - VI, VII and VIII respectively.

(ix) That inspite of total inaction and silence on the part of the respondents the applicant persistently kept on insisting for correction of his date of birth in his Service Book. In reply to representation dated 26.9.81 submitted by the applicant, the Respondent No. 3 for the first time informed the applicant that in terms of Railway Board letter No. E(NG) 11.70. BR/I dated 3.12.71 and 4.8.72 the claim of the applicant for correction of his date of birth in his Service Book had become time barred. In this connection it would be pertinent to mention that the Respondent No. 3 while dispossessing of the representation of the applicant did not take into consideration the first application dated 11.5.65 made by the applicant for correction of date of birth.

(x) That the subsequent representation submitted by the applicant for correction of his date of birth was turned down with regret by the Respondent No. 3 without assigning any specific reason of any kind what-so-ever.

(xi) That since the respondents from the very beginnig tried to suppressed the claim of the applicant for reasons best known to them, the applicant represented his case through the N.F. Railway Employees' Union urging

Abinash Chandra Das.

contd...

upon the Union to take up the matter with the competent Authority on the basis of his first application dated 11.5.65. The Respondent No. 3 asked for the personal copy of the first representation of the applicant dated 11.5.65 which was given to the applicant as receipt on the plea of verifying the same. The applicant furnished a copy of his first representation dated 11.5.65 on 9.5.89 which was forwarded to the Administrative Section for necessary action vide forwarding No. PNO/PF/Estt/Policy/65-66 dtd. 11.5.65. When the Office of the Respondent No. 3 was approached by the applicant with the request to return the personal copy of the representation dated 11.5.65, the said Office refused to return the same vide letter No. PNO/AD/70/348/Pt.IV dtd. 16.10.89 and the copy of the representation dtd. 11.5.65 has not been return to the applicant till the date. It has been stated in the aforesaid letter dtd. 16.10.89 that the personal copy of the applicant is a copy of the Original Application dtd. 11.5.65 which has been accepted by the respondents as their office record.

Copies of the aforesaid letters dtd. 9.5.89 and 16.10.89 are annexed hereto and are marked as Annexures - IX and X respectively.

(xii) That the Respondent No. 3 verified the claim of the applicant with the Gauhati University regarding correction of his age in his Matriculation Certificate and the Gauhati University vide letter No. GU/Cer/Misc/90-91/288 dtd. 14.8.90 confirmed the same.

A copy of the aforesaid letter dtd. 14.8.90 is annexed hereto and marked as Annexure - XI.

(xiii) That though the Respondent No. 2 and 4 are

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contd... p 8.

the competent authority to affect alteration of date of birth of the applicant, the office of the Respondent No. 3 forwarded the case of the applicant to the Respondent No. 4 after lapse of 26 years vide letter No. P. No/AD/70/348. Pt-V dated 15/16.1.1991 wherein at paragraphs 5 regarding application dated 11.5.65 it has been stated that efforts were made to trace the relevant file No. DPNO/PF/Estt/Policy (65-66) of PW Section, but the same could not be located at such remote date. It was also observed that the file might have been destroyed being very old.

A copy of the aforesaid letter dated 15/16.1.1991 is annexed hereto and is marked as Annexure - XII.

(xiv) That on receipt of the aforesaid letter dated 15/16.1.1991 the respondent No. 4 rejected the case of the applicant vide letter No. E/71/10(Q) dated 31.5.91, quoting the p last portion of Railway Board Circular No. E(NG) 62 BR 1 /3 dated 16.5.62 which was not applicable to the applicant and was applicable in case of those Railway Employees only who had joined Railway Service before 1939.

A copy of the aforesaid Railway Board letter No. E(NG) 62 BR 1/3 dated 16.5.62 is annexed hereto and is marked as Annexure - XIII.

(xv) That the applicant states that after rejection

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contd....

of his case by the Respondent No. 4 as conveyed to him vide letter dated 31.5.91 the applicant made a fresh representation dated 30.8.91 for review of his case and the said representation was duly forwarded by the Deputy Chief Accounts Officer/G NF Railway, Maligaon to the Respondent No. 4 for reexamination vide letter No. P No/ AD/70/348/ Pt IV dated 31.10.91.

A copy of the aforesaid representation dated 30.8.91 and letter dated 31.10.91 are annexed hereto and are marked as Annexure - XIV and XV respectively.

(XVI) That thereafter the General Manager (P), NF Railway forwarded the applicant's representation dated 30.8.91 to the Executive Director, E(NG) Railway Board vide letter No. E/71/10/8 dated 5.5.92 for examination of the case of the applicant wherein it has been specifically mentioned in paragraph 6 that the applicant had made his first representation on 11.5.1965.

A copy of the aforesaid letter dated 5.5.92 is annexed hereto and is marked as Annexure- XVI.

(XVII) That on receipt of the aforesaid letter dated 5.5.92 the Railway Board vide its letter No. E(NG) 1/92/ BR/7 dated 9.7.92 advised the Respondent No. 4 to decide the matter at his level in the light of the existing Rules and regulation applicable in the matter. It was also

Abinash Baruah Ds.

contd.... p 10.

directed that if any further reference was to be made to the Board details of the precedent cases of Sri Sivajit Kumar Mukherjee, Shri Anil Kumar Chakraborty, Shri Kamakhya Prasad Sengupta as mentioned by the applicant in his representations may also be furnished inter alia advising if on the basis of revised date of birth they would have been under age at the time of appointment which was not complied with by the Respondent No. 4.

A copy of the aforesaid Railway Board letter dated 9.7.92 is annexed hereto and is marked as Annexure - XVII.

(xviii) That since no communications was received from the Respondent No. 4 and the date of retirement of the applicant that is 28.2.93 was fast approaching the applicant again represented his case before the Respondent No. 2 vide application dated 28 27.7.92 and 28.8.92, but the Respondent No. 2 simply refused to consider his case without any assigning any cogent and discerable reason for such refusal and the decision of the Respondent No. 2 was communicated to the applicant vide letter No. E/HQ/WB/55/Pt.III dated 17.2.1992.

Copies of the aforesaid letters dated 27.7.92 and 28.8.92 are annexed hereto and are marked as Annexure - XVIII and XIX respectively.

(xix) That in the meantime the Respondent No. 3 served notice of Superannuation upon the applicant vide order No. 6/312 dated 1.12.92.

Abinash Gaudra Das

contd,.... p 11.

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A copy of the aforesaid notice dated 1.12.92 is annexed hereto and is marked as Annexure- XX.

(XX) That against the aforesaid notice dated 1.12.92 the applicant made further representation to the Respondent No. 3 on 4.12.92 pointing out once again the wrong entry of his date of birth in the Service Book and also referred to his earlier representations for correction of the date of birth.

A copy of the aforesaid representation dated 4.12.1992 is annexed hereto and is marked as Annexure - XXI.

(XXI) That the Respondent No. 2 once again vide letter No. E/71/10(HQ) dated 29.4.93 regretted the case of the applicant for not being able to approve the correction of date of birth of the applicant quoting therein Railway Board letter No. E(NG) 1/92/BR/7 dated 9.7.92 and against the same, the applicant raised ~~xxx~~ objection vide his application dated 11.6.93. Meanwhile the applicant had retired from service as senior Sectional Officer (Accounts) under the Respondent No. 3 . On 28.2.93 (afternoon) at the age of 54 years instead of the prescribed age of Superannuation of 58 years.

A copy of the aforesaid letter dated 29.4.93 issued by the Respondent No. 4 and copy of the letter dated 11.6.93 are annexed hereto and are marked as Annexure - XXII and XXIII respectively.

Amrit Chandan Das

contd....

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(XXII) That the applicant thereafter appealed to the Hon'ble ^{Rey} Minister and at the instance of the Hon'ble ^{Rey} Minister, the Railway Board reopened the case of the applicant and sent his original application to the Respondent No. 2 for remarks vide letter No. E(REP) 11-93/N.F.1/15/91 dated 17.9.93. But the respondent No. 2 gave a biased and incorrect reply vide letter No. E/71/10(Q) dated 22.11.1993.

Copies of the aforesaid letters dated 17.9.93 and 22.11.93 are annexed hereto and marked as Annexures - XXIV and XXV respectively.

(XXIII) That being highly dissatisfied with the action of the Respondent No. 2 the applicant once again approached the Hon'ble Railway Minister vide his application dated 17.12.93 inter-alia contending therein the discriminatory attitude and incorrect view adopted by the Railway authority against the applicant.

A copy of the aforesaid application dated 17.12.93 is annexed hereto and is marked as Annexure - XXVI.

(XXIV) That the Railway Board vide letter No. E(REP) 11-93/NF/15/91 dated 6.7.94 asked the Respondent No. 2 to furnish detail particulars and remarks on similarly situated precedent cases of Sri S.K. Mukherjee, IOW/II and Sri P.K. Mahanan, Confidential Stenographer attached

contd....

Arvind Chander Das

to the CSC/RPF NF Railway, Maligaon whose cases were approved by him and the Railway Board respectively. The Respondent No. 4 in his reply to the Railway Board's letter referred to above furnished detail particular of the case of the applicant vide letter No. E/71/10(Q) dated 21.12.94.

A copy of the aforesaid letter dated 6.7.94 issued by the Deputy Director, Estt.(REP)-II Railway Board and a copy of the letter dated 2.12.94 are annexed hereto and are marked as Annexures - XVII and XXVIII respectively.

(XXV) That after receipt of the letter dated 2.12.94 from the Respondent No. 4, the Railway Board made further enquiry and asked for remarks of the similarly situated case of Sri Sivajeet Kumar Mukherjee IOW/II vide its letter No. E/REP 11-93/N.F./15/91 dated 26.5.95 to which the Respondent No. 4 replied vide letter No. E/TI/10(Q) dated 27.7.95 justifying the correction of date of birth of Sri Mukherjee as well as highly recommending the case of the applicant for considering his case as a Special one. Thereafter, the Respondent No. 4 had been pursuing the case of the applicant by issuing reminders time to time. The last of them being vide D.O. No. E/71/10(Q) dated 8.10.96.

A copy of the aforesaid letter dated 26.5.95 issued by the Deputy Director, Estt. Railway Board and a copy of the letter dated 27.7.97

Abinash Chander Das

contd... p 14.

and 18.10.96 are annexed hereto and are marked as Annexures - XXIX, XXX and XXXI respectively.

(XXVI) That while the matter of correction of date of birth of the applicant was pending before the Railway Board for consideration there was a move for eviction of the applicant from his official Quarter No. 300/A Type II at Central Gotanagar, Maligaon, Guwahati and in the process an eviction case bearing No. EO/MGG/GR/39/94 was initiated by the Estate Officer and N.F. Railway, Maligaon. A notice fixing 28.8.95 for appearance in the case was served upon the applicant.

A copy of the aforesaid notice mentioned above is annexed hereto and is marked as Annexure-XXXII.

(XXVII) That on being served with the aforesaid notice referred to above, the applicant made a representation on 25.10.95 before the Respondent No. 2 stating inter-alia that since the matter of correction of date of birth of the applicant was pending before the Railway Board and he has been sought to be evicted from his official quarter, he prayed that the Estate Officer, N.F. Railway, Maligaon be informed accordingly.

A copy of the aforesaid representation dated 25.10.95 is annexed hereto and is marked as Annexure - XXXIII.

(XXXVIII) That in connection with the eviction of the

Abinash Chandra Das-

contd... p 14.

applicant from his official quarter the Office of the Respondent No. 4 vide letter No. E/71/10(Q) dated 22.11.95 conformed to the Estate Officer, Max N.F. Railway, Maligaon that a case of correction of date of birth of the applicant was pending and under consideration ^{of} the Railway Board.

A copy of the aforesaid letter No. E/71/10(Q) dated 22.11.95 is annexed hereto and is marked as Annexure - XXXIV.

(XXIX) That as the applicant had been awaiting for some favourable action of the competent authority in the matter of correction of date of his birth in the service Book, the applicant received letter No. E/71/10(Q) dated 2.5.96 from the office of the Respondent No. 4. By which the applicant was informed that his case for correction of date of birth was under process and consideration of the Railway Board and that the applicant would be apprised of the decision as soon as the same was received from the Railway Board.

A copy of the aforesaid letter dated 2.5.96 is annexed hereto and is marked as Annexure-XXXV.

(XXX) That thereafter there was considerable delay on the part of the Railway Board in disposing of the case of the applicant for correction of his date of birth. The Respondent No. 3 vide letter No. PNO/AD/70/398-Pt.V dated 5.5.1997 was pleased to inform the applicant that ~~his~~

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Amantha Gauden Deo

appeal regarding correction of his date of birth has been examined by the Railway Board and same has been rejected.

A copy of the aforesaid letter No. P. No/AD/70/398 Pt.V dated 5.5.97 is annexed here to and is marked as Annexure - XXXVI.

(XXXI) That the applicant states that he has been representing for correction of his date of birth since 1965 and the Respondents had assumed him that his case would get due consideration, but the Respondent No. 3 vide letter No. P. No/AD/70/348 Pt.V dated 5.5.97 communicated the decision of the Railway Board about the rejection of his prayer for correction of date of birth of the applicant without any cogent and discernable reason. As such, the applicant has every reason to believe that the Railway Board has not considered the case of the applicant on the basis of the relevant provisions of the Rules.

(XXXII) That the applicant states that under similar circumstances, some employees of the N.F. Railway were given consequential benefits even after their retirement on attaining their superannuation as well as even after the amendment of Rule 145 R.I, one such similarly situated employee Sri Kamakhya Prasad Sengupta had approached this Hon'ble Tribunal in G.C. 78 of 1988 and this Hon'ble Tribunal vide Judgement and Order dated 10.6.89 decided the case of the applicant in his favour allowing correction of his recorded date of birth in his service Book even after

Abinash Chandra Das

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he was rendered underaged on the date of initial appointment according to the amended date of birth. Another similarly situated employee of N.F. Railway namely Sri Anil Kumar Chakraborty had also approached this Hon'ble Tribunal in G.C. 168 of 1986 (T) / Civil Rule No. 585/84. In that case it was seen that as a result of his correction of date of his birth, the applicant became underaged at the time of entry in Railway Service on 5.5.1944. Even then, the Hon'ble Tribunal vide Judgement & and Order dated 29.8.86 allowed the application and directed that his date of birth in Service Book be corrected on the basis of the said Judgement and his date of superannuation be determined on that basis. But in case of the applicant the respondents had adopted a different stand in flagrant violation of all provisions of law. It may be mentioned herein that two other similarly situated persons namely (i) Sivajit Kr. Mukherjee and (ii) Sri P.K. Mahanan, both employees of the N.F. Railway were allowed the benefit of correction of their respective dates of birth with consequential benefits.

(XXXIII) That the applicant states that being aggrieved by the actions of the respondents in correcting his date of birth he approached this Hon'ble Tribunal by filing Original Application No. 127 of 1997, which was disposed of by this Hon'ble Tribunal vide order dated 10.12.1999, whereby this Hon'ble Tribunal was pleased to direct the Respondents to consider the case of the applicant following the relevant Rules as well as the decisions of the Apex

Abinash Chandra Das

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Court. It was also directed that the Respondents shall also consider the fact whether other similarly situated persons have been given the benefits of subsequent correction of the date of birth. As such, this Hon'ble Tribunal was pleased to direct the Respondents to examine the case of the applicant afresh as early as possible at any rate within a period of four months from the date of receipt of the order by passing a reasonable order and shall communicate the same to the applicant.

A copy of the aforesaid order dated 10.12.99 is annexed hereto and is marked as Annexure- XXXVII.

(XXXIV) That the applicant states that the Respondent No. 3 vide letter No. PNO/AD/CAT/ACD/197 dated 25/07.05.2000 was pleased to inform the applicant regarding rejection of the prayer of the applicant for correction of his date of birth.

A copy of the aforesaid letter dated 15/07.5.2000 is annexed hereto and is marked as Annexure- XXXVIII.

(XXXV) That the applicant states that soonafter delivery of order dated 10.12.1999 in Original Application No. 127 of 1997 the applicant submitted an application to the Chairman, Central Housing Committee, N.F. Railway, Maligaon and the Respondent No. 3 wherein he expressed his willingness to vacate his quarter. Thereafter the applicant vide

Abinash Gauden Das contd....

application dated 25.5.2000 renewed his willingness to vacate his quarter and hand over the same to the new allottee.

A copy of the aforesaid application dated 25.5.2000 is annexed hereto and is marked as Annexure - XXXIX.

(XXXVI) That the applicant states that even after submission of the aforesaid applications expressing the willingness of the applicant to vacate his quarter the Respondents never bothered to take possession of the same. Now there is a reasonable apprehension in the mind of the applicant that after rejection of his case for correction of date of birth damage rent over and above the \neq normal rent might be imposed upon him for his alleged unauthorised occupation of his quarter. In this connection it would be pertinent to mention here that the applicant was in occupation of his official quarter on the strength of order dated 20.6.97 passed in Original Application No. 127/97, as such, it cannot be said that the applicant is in unauthorised occupation of his quarter. Therefore, the respondents would not be justified in imposing damage rent upon the applicant over and above the normal rent.

A copy of the aforesaid order dated 20.6.97 is annexed hereto and is marked as Annexure - XL.

(XXXVII) That the applicant states that under the facts and circumstances stated above, the applicant respectfully

Abinash Chander Das

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states that it is pre-eminently a fit case wherein this Hon'ble Tribunal would direct the respondents not to impose damage rent upon the applicant.

5. Grounds for relief with legal provisions :-

(a) For that the action of the Respondents in not acknowledging the receipt of representation dated 11.5.65 of the applicant for correction of his date of birth and subsequent reminders dated 19.3.1967, ~~and~~ 7.6.1968 and 18.3.70 and inspite of clear acknowledgement issued to that effect is highly arbitrary and reprehensible and deserves to be condemned in harshest possible language. It is indeed very tragic as to how the applicant has been made to run from pillar to pose while persuing his claim for correction of his date of birth. The applicant immediately on correction of his date of birth as recorded in Matriculation Certificate by the Gauhati University on 16.6.1964 made a representation on 11.5.1965 and had also made subsequent reminders on 7.6.68 19.3.67 and 18.3.70. There is not even a whisper in letter dated 25/07/05/2000 about receipt of the reminders. This itself shows as to how the respondents have left no stone unturned to deny the legitimate claim of the applicant for correction of his date of birth.

(b) For that the respondents failed to consider the fact that the applicant was entitled to the benefit of Clause III of Sub para (3) of Rule 145 RI of the Indian

Almash Chaudhuri D.S

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Railway Establishment Code Volume 1 as the applicant had approached the authority for alteration of his date of birth on ~~the~~ 11.5.65 and any amendment of the aforesaid Rule after 1965 is not applicable to the applicant.

(c) For that it is no more res integra that a Government Servant who has declared his age at the initial stage of employment is, of course, not precluded for making a request later on for correction of his date of birth. In the instant case it was open to the applicant to claim correction of his date of birth as he was in possession of irrefutable proof relating to his date of birth different from the one recorded earlier in view of the correction made by the Gauhati University in his Matriculation Certificate and the request made for correction of his date of birth was within the time limit prescribed by the relevant Rule.

(d) For that the applicant is entitled as a matter of right to the benefit of the correction of date of birth as per the provisions of clause III of Sub para (3) of Rule 145 RI of the Indian Railway Establishment Code Volume 1.

(e) For that the actions of the respondents in not acknowledging the receipt of representation dated 11.5.65 and subsequent reminders dated 13.3.67, 7.6.68 and 18.3.70 inspite of clear acknowledgement issued by them is highly

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Alimash Gaudes Das

arbitrary and, as such, amounts to denial of equality and therefore is violative of Article 14 of the Constitution of India.

(f) For that the actions of the Respondents in not correcting the date of birth of the applicant in conformity with the correction made by the Gauhati University in his Matriculation Certificate amounts to denial of equal opportunity in matters relating to public employment as guaranteed by Article 16 of the Constitution of India as the applicant had been superannuated four years in advance.

(g) For that the respondents had acted illegally and arbitrarily and in gross violation of the principle of natural justice in not affecting correction of date of birth of the applicant while in case of other similarly situated persons namely Sri Sivajeet Kumar Mukherjee and P.K. Mahanan alteration of date of his birth was affected with all consequential benefits.

6. Details of the remedies exhausted :-

The applicant declares that he has availed of all the remedies available to him under the relevant service Rule etc. in as much as he had made his first representation for correction of his date of birth on 11.5.65 which was followed by reminders dated 19.3.67, 7.6.68 and 18.3.70. The applicant made another representation to the Respondent

Abinash Chandra Deka

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No. 3 on 26.9.87 and on 30.8.91 and to the Respondent No. 2 on 27.7.92 and on 28.8.92 respectively. The applicant made another representation to Respondent No. 2 on 4.12.92 which was followed by representation dated 11.6.93 addressed to the Respondent No. 2, Respondent No. 3 and Respondent No. 4. The applicant ^{also} made a representation to the Hon'ble Minister of Railway, Government of India, New Delhi on 17.12.1993.

7. Matters not previously filed or pending with any OTHER Court :-

The applicant further declares that he had filed Original Application No. 127/97 before this Hon'ble Tribunal in respect of the same cause of action. This Hon'ble Tribunal vide order dated 10.12.1999 had directed the respondents to consider the case of the applicant by following the relevant Rules as well as the decision of the Apex Court, within a period of four months from the receipt of the order (Annexure - XXVII to the O.A.).

8. Relief Sought :-

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

(A) Date of birth of the applicant should be corrected from 1.3.1935 to 1.3.1939 in the Service record of the applicant.

Aman Singh Chaudhary

contd...

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(B) Date of Superannuation should be fixed w.e.f. 1.3.97 on the basis of revised date of birth.

(C) The interim period from 1.3.93 to 1.3.97 should be treated as if the applicant was in duty.

(D) To give all consequential benefit to the applicant upon correction of his date of birth in his Service Book.

9. Interim Order prayed for :-

To direct the respondents to impose normal rent upon the applicant for occupation of his official quarter w.e.f. 1.3.93 to the date of its handing over to new and proper allottee.

10. The application is filed through Advocate.

11. Particulars of the postal order filed in respect of the application fee:-

- (i) Postal Order Number - 495569
- (ii) Date of issue - 23.10.2000
- (iii) Post Office - G.P.O., Guwahati.
- (iv) Payable at - Guwahati.

12. List of enclosures :-

As stated in the Index.

Alimash Gunder Das

VERIFICATION

I, Shri Abinash Chandra Das, Son of Late Purna Chandra Das, aged about 61 years, resident of Quarter No. 300/A Maligaon, Guwahati - 11 do hereby verify that the contents of the paragraphs 1, 4, 6 and 7 are true to my personal knowledge and those made in paragraphs 2, 3, 5, 8 and 9 are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 23/10/2000

Place : Guwahati.

SIGNATURE OF THE APPLICANT

Abinash Chander Das.
Date of birth charged by Ganbat
University in 1961 on the basis
of an affidavit - 114
D.A. - 127-97-
10.12.95

ANNEXURE - I.NORTH EASTERN RAILWAY

OFFICE ORDER NO. G/92 Dated 26th Sept. 1955.

....

The following candidates approved as Office Clerks (55-130/-) by the Railway Service Commission, Calcutta and sent to this Office under D.P.O/PHO's letter No. E/227/III/ 44(e) dtd.5.9.55 on being declared medically fit are appointed as temporary clerk Class-II on Rs. 55/- P.M. in scale 55-3-85- BB-4-125-5-130/-(Pres) with effect from the dates and posted to the Sections noted against each. Their appointment is, however, subject to verification of their character and antecedents, which is being done by DPO/PHO.

<u>Sl.</u>	<u>Name</u>	<u>Dt. of Appointment.</u>	<u>Section to which posted</u>
1.	Sri Sreekanta Deka	19.9.55 F.N.	SA/PNO
2.	" Ardhendu Sekhar Choudhury	19.9.55 F.N.	Expenditure
3.	" Nakul Chandra Choudhury	20.9.55 F.N.	SA/BNGH
4.	" Narendra Nath Sarma	20.9.55 F.N.	SA/PNO
5.	Md. sahidur Rahman	20.9.55 F.M.	SA/DBRT
6.	Sri Haridas Dutta	20.9.55 A.M.	SA/DBRT
7.	Miss Baruna Mukhopadhyaya	21.9.55 F.N.	WA/PNO
8.	Sri Nanda Lal Kar	21.9.55 F.N.	SA/PNO (Tentative measure)
9.	" Biman Kanti Dhar	21.9.55 F.N.	SA/PNO
10.	" Pijush Kanti Ghosh	21.9.55 F.N.	SA/DBRT
11.	Md. Abdul Haque	21.9.55 F.N.	SA/DBRT
12.	Sri Subodh Chandra Sarma	13.9.55 A.M.	SA/PNO
13.	Mess Usha Debi	13.9.55 A.M.	Expenditure

Attested
true
R.C. Jan
Associate

contd...

14. Miss Mamata Sayne	13.9.55 A.M.	Expenditure
15. " Radha Rani Sarkar	13.9.55 A.M.	Books & Budget
16. " Geeta Bhattacharjee	14.9.55 F.N.	Fund
17. Sri Bhola Nath Mazumdar	14.9.55 F.N.	SA/PNO
18. " Padmeswar Das	14.9.55 F.N.	-do-
19. " Diptimoy Nag	14.9.55 F.N.	-do-
20. " Bhupendra Nath Bhattacharjee.	15.9.55 F.N.	-do-
21. " Abinash Chandra Das	15.9.55 A.M.	-do-
22. " Milanendu Choudhury	15.9.55 A.M.	-do-
23. " Arun Kumar Guha	15.9.55 F.N.	C.T.
24. Miss Kamala Nandy	16.9.55 F.N.	Fund.

Sd/- Illegible.
REGIONAL ACCOUNTS OFFICER, Pandu.

NO : PNO/AD/55/2092/64 Pandu dated 26th Sept, 1955.

Copy to D.P.O./PNO : A.A.O/X, A.A.O/F, R.A.O/CT,
A.A.O/B&B : Jr. Accountant SA/PNO : A.A.O/E : Sr. SH/SA/
DBRT : Admin/Bills and Sri Abinash Ch. Das, through SA/PNO
for information and necessary action.

Joining report, medical certificates and matric certificates etc. of the abovenamed are enclosed herewith. Bill preparing Clerks will return the academical certificates to the staff concerned when done with after keeping other papers for record in their personal cases.

Sd/- Illegible.
REGIONAL ACCOUNTS OFFICER, PANDU

ANNEXURE - II.

UNIVERSITY OF GAUHATI

1954

MATRICULATION EXAMINATION

I certify that Abinash Chandra Das Roll No. 545, aged 15 (fifteen) years on the First of March, 1954, duly passed the Matriculation Examination, 1954 of this University and was placed in the Second Division.

GAUHATI, ASSAM

/ Emblem /Sd/- Illegible.
REGISTRAR

The 1st August, 1954

Attested to be true
R. C. D.
Advocate

ANNEXURE - III.

(True Copy)

In the Court of 1st Class Magistrate, Gauhati

A F F I D A V I T

Sri Abinash Chandra Das, S/O Late Purna Ch. Das, Hindu by Caste, University Student aged 21 years 11 months, Village Rampur, Mouza Rampur, P.S. Palasbari, District Kamrup at present residing at Kumarpara, Guwahati.

.... Declarant of Affidavit.

I, Sri Abinash Chandra Das, do hereby solemnly affirm :-

1. That I was born on the 1st day of March, 1939 at Vill. Rampur and that my parents got my horoscope prepared on my birth. This is true to my informations received from my parents and I believe this to be true.
2. That Calculated from the aforesaid date of my birth, my actual age on the 1st March, 1954 is 15 years and that my age shown in my Matriculation Certificate is not the correct age. This is true to my knowledge.
3. That in my Matriculation certificate my age was incorrectly shown to be 19 years which were much more than my actual age and that my actual age on the 1st March, 1954 was only 15 years. This is true to my knowledge.
4. That this affidavit shall be used as evidence of my actual age in connection with my application to the Gauhati University to rectify my age in my Matriculation Certificate.

I, Sri Abinash Chandra Das, do hereby solemnly declare that the statements made above in this affidavit are true to

*Affidavit to be
sent to
R. C. D. P.
Guwahati*

contd...

29.

my knowledge, information and belief. I sign this affidavit this 25th day of February, 1961 at Gauhati.

Sd/- Abinash Chandra Das.

Solemnly affirmed before me by Sri Abinash Ch. Das who is identified by Shri K.R. Choudhury, Advocate, this 25th day of February, 1961.

Sd/- P.B. Dutta.

1st Class Magistrate,
Gauhati.

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ANNEXURE - IV.OFFICE OF THE REGISTRAR :: GAUHATI UNIVERSITY
JALUKBARI :: ASSAM.

No. Cer/Ca/64/852 Dated 16.6.64.

From : C. Das, Esqr., M.A. B.L.,
Registrar.

To

Sri Abinash Chm Das,
Vill - Rampur,
P.O. Rampur,
Kamrup, Assam.

With reference to his application for correction of age entry in the Matriculation Certificate, this is to inform him that the correction has been allowed and the age is corrected to 15 (fifteen) years x months x days in place of 19(nineteen) years x months x days on the First of March, 1954.

His Horoscope and the Matriculation Certificate after necessary correction on it have been returned herewith.

Sd/- C. Das.

Registrar,
Gauhati University.

Attested to
for
B. C. D.
Advocate

uX

31.

ANNEXURE - V.

To

The Financial Adviser & Chief
Accounts Officer, N.F. Railway,
Maligaon.

(Through Proper Channel)

Sir,

Sub :- Prayer for correction of age in Service Book.

Ref :- Correction of age in Matriculation Certificate
from 19 years to 15 years as on 1.3.54 vide
Gauhati University's L/No. Cer/Ca/64/852
dtd. 16.6.64.

With due respect and humble submission, I beg to
state that I have entered in Railway Service w.e.f. 15.9.1955
and since then I am serving in your office as Cg.II.

That Sir, the wrong entry of age in my Matriculation
Certificate has been corrected as 15 years instead of 19 years
as on 1.3.54 by the Gauhati University vide L/No. Cer/Ca/64/
852 dtd. 16.6.64 (Copies enclosed). Accordingly my age of
birth will be on 1.3.1939 instead of 1.3.1935.

Therefore, I pray your kind favour of correcting
my date of birth and age in service book according to the
correction made by Gauhati University in my Matriculation
Certificate.

With best regards.

Enclo : 2 (two).

Dated Pandu,
the 11th May, '65.

No. PNP/PF/Estt/Policy/65-66 Dtd. 11.5.65.

Yours faithfully,

Sd/- Abinash Chandra Das,
Cg.II/P:F. Section.

Forwarded to Admn.

Sd/- Illegible.
11.5.65
AAO/ PF.

Attended to by
for
R. K. D.
AAO/ PF.

ANNEXURE - VI.**To**

The FA & Chief Accounts Officer,
N.F. Railway/Maligaon.

(Through Proper Channel)

Sir,

Sub :- Correction of age/date of birth in
S/Sheet according to corrected age
in Matriculation Certificate by
Gauhati University.

Ref :- My previous application dated 11.5.65
forwarded by AAO/PF under No. PNO/PF/
Estt/Policy/65-66 dtd. 11.5.65.

With reference to my above application, I once
again request you to correct my age/date of birth in my
Service Sheet as 1.3.1939 in place of 1.3.1935 according
to the correction of my previous wrong age/date of birth
in Matriculation Certificate by Gauhati University.

With regards.

Maligaon,
the 19.3.67.

Yours faithfully,

Sd/- Abinash Chandra Das
Cg-II/P.F. Section.

Altered to
B. C. D.
Advocate

ANNEXURE - VII.

To

The F.A. & CAO,
N.F. Railway/Maligaon.

(Through Proper Channel)

Sir,

Sub : Reminder for correction of age/date
of birth in S/Sheet of Sri A.C. Das,
Cg-I.

Ref : My application dtd. 11.5.65 and reminder
dtd. 19.3.67.

With due respect and humble submission, I beg to
request you kindly to refer to my prayer dtd. 11.5.65 and
reminder dtd. 19.3.67 for correction of my age/date of birth
in my service records as 1.3.1939 at an early date and
intimate me accordingly.

In this connection, I beg to state that I declared
my age/date of birth as 1.3.1935 in my service sheet according
to the wrong age entry 19 years on 1.3.1954 in my Matricula-
tion Certificate. But since the previous age entry/date of
birth was a wrong one, and Gauhati University has corrected
it is 15 years on 1.3.1954 in the Matriculation Certificate
and vide L/No. Ver/Ca/64/852 dtd. 16.6.64, accordingly my
date of birth is 1.3.1939.

Therefore, I request you to correct my date of
birth as 1.3.1939 in my service records.

Dated Maligaon,
7.6.68.

Faithfully yours,

Sd/- Abinash Chandra Das.
CG-I , PF Sec.

Abinash
Chandra
Das
CG-I
PF Sec.

ANNEXURE - VIII.

To

The FA & Chief Accounts Officer,
N.F. Railway/Maligaon.

(Through Proper Channel)

Sir,

Sub : Prayer for alteration/correction of recorded date of birth in service sheet.

Ref : 1) My appeal dtd. 11.5.65 and reminder thereof dtd. 19.3.67 and 7.6.68.

2) GU's L/No. Cer/Ca/64/852 dtd. 16.6.64.

With reference to above, I, with due respect and humble submission, beg to state that inspite of representations made through the above quoted letters, neither my date of birth has been corrected in S/Book nor any reply has been given to me as yet.

As such, I beg to state that as my wrong age in Matriculation Certificate has been corrected by Gauhati University, the date of birth recorded in my service book according to wrong age entry in my Matriculation Certificate was also a wrong one. Hence, my date of birth should be corrected as 1.3.1939 in place of 1.3.1935 as per correction made by Gauhati University.

Under the above circumstances, I fervently pray you to consider my case sympathetically and to record my date of birth as 1.3.1939 correcting my previous wrong date of birth in service records.

Dated, Maligaon
18.3.70

Yours faithfully,

sd/- Abinash Chandra Das
CG-I, TA9Goods) Sec.

After 2 d
Abinash
Chandra Das
CG-I, TA9Goods) Sec.

ANNEXURE - IX.**To**

The F.A. & C.A.O.,
N.F. Railway,
7aligaon.

(Through Proper Channel)

Sir,

Sub : Submission of original copy of my application dtd. 11.5.65 in connection with correction of age in service book.

With due respect I am obliged to submit herewith the original O/Copy of my application dtd. 11.5.65 for correction of age in S/book, as desired by you and communicated to me by Sri S. Roy, Sr. S.O. Admn. by Phone on 8.5.89.

Kindly acknowledge receipt.

D.A. :- Original copy of application dt.
11.5.65.

Yours faithfully,

Maligaon
9.5.89

Sd/- Illegible.
(Abinash Chandra Das.)
S.G. CA/cs Insp.

No. P No/JG/Estt/88

Dtd. 9.5.89.

Forwarded for n/a pl.

Received.

Sd/- Illegible.
9/5/89

Sd/- Illegible.
9.5.89
AAO/Insp/MLG

Attested to be
true
B. C. D.
Aman

ANNEXURE - X.N. F. RAILWAY

Office of the F.A. & Chief
Accounts Officer/AD, NF Railway/
Maligaon.

NO. PNO/AD/70/348 Pt. IV

Dated : 16.10.1989.

To

Shri Abinash Chandra Das,
SO/Inspection.

Sub : Original application for alteration of
date of birth.

Ref : Your letter dated 25.8.89.

In reference to your above letter dated 25.8.89
it is intimated that the Original Application dated 11.5.65.
stated to be your personal copy cannot be returned to you
because the said application bears the forwarding file No.
PNO/PF/Estt/Policy/65-66 dated 11.5.65 marked as O/C which
is purely an office record. However, XEROX copy of the
above letter is returned for your personal record.

DA : As above.

Sd/- Illegible.

for FA & Chief Accounts Officer/AD,
N.F. Railway/Maligaon.

Addressed to
for
N. F. Railway
Maligaon

ANNEXURE - XI./ Emblem / GAUHATI UNIVERSITY

Gauhati - 781 018 : Assam : India.

NO. GAU/Cer/Misc/90-91/288

Date : 14/8/90

From : Shri M.C. Bhuyan, M.Sc., LL.B., Ph.D.
 Joint Registrar (Admn),
 Gauhati University.

To

F.A. & Chief Accounts Officer,
 N.F. Rly. Maligaon, Guwahati - 11.

Sub : Correction of date of birth of one Abinash Chandra Das in the Matric Certificate, 1954.

Sir,

With reference to your letter No. AD/COR/MISC/Pt. 111/87 dt. 9.2.90, I am to inform you that the age of one Abinash Chandra Das, Roll Gau. No. 545 was corrected in his Matric Certificate Sl. No. 933 as 15 (fifteen) years on the First of March, 1954 in place of 19 (Nineteen) Years vide this Office letter No. Cer/Ca/64/852 dtd. 16.6.64.

Yours faithfully,

Sd/- Illeble.

Joint Registrar (Admn)
 Gauhati University,
 Guwahati - 14.

Attested to be
 true
 B. C. D.
 Govt. of Assam

ANNEXURE - XII.N. F. RAILWAY

51

FA & CAO's Office,
N.F. Railway, Maligaon,
Guwahati - 781 011.

No. PNO/AD/70/348 Pt. V.

Dated : 15.1.1991.
16

Chief Personnel Officer,
N.F. Railway,
Maligaon.

Sub :- Alteration of date of birth -
A representation by Shri Abinash Chandra
Das, SO(Accounts).

Ref :- Your letter No. E/71/10/Q dt. 30.3.89.

CPO/N.F. Railway, Maligaon forwarded a letter of General Secretary/N.F. Railway Employees Union letter No. EU/SR/MLG-11 dated 22.3.89 addressed to CPO vide their No. E/71/10(0) dtd. 30.3.89 for examination.

The case has been examined and following observations are made :-

Shri Abinash Ch. Das joined as CG-II on 15th Sept/1965 and when he joined his service his age was 19 years on 1.3.1954 as per his Matriculation Certificate.

From the enclosure of Union's above letter dated 22.3.89 it transpires that Shri A. Ch. Das made an appeal for correction of his age on the basis of subsequent correction of his age as 15 years on 1.3.54 in his Matriculation Certificate in the year 1965.

*Alleged to be
true - C
Govt. of*

contd...

Efforts were made to trace the relevant file No. PNO/PF/Estt/Policy (65-66) of PF Section but the same could not be located at such remote date. The file might have been destroyed being very old.

After long 26 years he made his first appeal for correction of his date of birth i.e. in the year 1981 and the appeal was dealt with and reply was given vide No. PNO/CPB/589/ACD dt. 23.1.82 which may be seen in the 3rd 4th enclosure of Union's letter dated 22.3.89.

His second appeal dated 9th Sept/87 (2nd enclosure of Union's letter dated 22.2.89) was further examined but it was not considered which are enclosed as Annexures A, B, C & D and reply was given vide No. PNO/CPB/589/ACD dated 9.4.87, copy enclosed as Annexure - 'E'.

In the context of Railway Board's letter No. E(IN) 1-85/BR/2 dated 7.5.1985 it is submitted that employees concerned must have moved a court of law for alteration of his date of birth before 31.7.73 and also make a representation to that effect to the Railway Administration before the same date i.e. 31.7.1973.

There is no evidence of any Court case moved by Shri Das and the evidence of his representation to Administration in 1965 is also not traceable on office record.

Railway Board's above letter dated 7.5.85 states further though the request of the employee could be entertained it need not necessarily be accepted. Relevant consideration

like why the employee could not have a court or competent jurisdiction before 31.7.73 and whether the employee had derived any advantage by declaring the original date of birth which he would not have got as per the revised certificate are also to be considered.

It may be mentioned that Shri Das was 19 years old on the 1st March, 1954 as recorded in the Matriculation Certificate and if the correction of 15 years of age is accepted it infringe the above contention of the Railway Boards letter dated 7.5.85.

Further a letter was sent to the Railway Board by CPO(Shri V.R. Subramaniam) vide CPO's No. E/71/O(C)-CAT dated 27.4.87.

The third para of the letter refers to a judgement delivered by the CAT/Guwahati in the case of Shri K.P. Biswas - Vs. - Union of India and others, where in the Tribunal held that the representation from literate staff whose date of birth was duly recorded with the consent of the employees concerned should not be entertained if it was not made within 5 years of entry into the Government service.

Shri Das referred further appeal on 17.11.89 at Annexure 'F' enclosing two judgements Annexure 'C' and Annexure 'H'.

Merit of the favourable judgements of the above two cases are closely situated with the case of Shri A.C. Das. The judgement placed Annexure 'C' and Annexure 'H' may kindly be perused.

In examining the merit of the above judgement this office wrote a secret letter to the Registrar, Gauhati University and the University authority in reply has confirmed the correction of his age as 15 years on 1.3.1954.

Shri A.C. Das represented his case personally on 11.11.90. It was explained to him that if his date of birth was changed from 1.3.35 to 1.3.39 then he would not have been eligible for Govt. employment on the date of his recruitment i.e. in the year 1955.

It was also explained to him that the provision of para 225(4)(i) RI make it clear that even if G.M. causes the date of birth to be altered, such alteration shall not result in the Railway Servant being retained in service longer than if the alteration had not been made.

Further it is seen from the letter of CE(P) No. 212-R/82(E) dated 15.12.86 addressed to DRM(P)/ARDJ that Annexure 'I' alteration of date of birth in case of Shri Sibajit Kumar Bhattacharjee, IOW/II under DRM(P)/APDJ has since been accepted.

Shri A.C. Das met Dy. CAO(G) on 14.11.1990 and represented his case personally. It was explained to him that if his date of birth is changed from 1.3.35 to 1.3.39 then he would not have been eligible for Govt. employment on the date of his recruitment i.e. in the year 1955. It was also explained to him that the provisions of para 225(4) (i) RI make it clear that even if the G.M. causes the date of birth to be altered, such alteration shall not result in

the Rly. servant being retained in service longer than if the alteration had not been made.

It was represented by Shri A.C. Das that the provisions of sub-para (iii) under the para referred to above should be made applicable in his case. It was explained to him that the circumstances in which the wrong date came to be entered were not furnished by him within the stipulated period and therefore his appeal cannot be entertained now. It was then contented by Shri A.C. Das that provisions of Railway Board's letter No. E(III)II-70BR/I dated 4.7.72 should be made applicable to him since he had originally applied for change of date of birth in the year 1965 and his application was not dealt with by the Admn. Before the amendment of the rule in 1971 no time limits were stipulated. It was explained to him that even by the application of Railway Board's letter No. E(NG)I-85 BR/2 dated 7.5.85 his case cannot be considered as it is felt that the appeals have not been made in time and his explanation is not considered satisfactory.

Shri A.C. Das then stated that in the case of Shri Sibajit Kr. Mukherjee, IOW/II under DRM(W)/APDJ, the G.M. had approved of alteration of the date of birth subject to his earlier part of his service before attaining the 18 years not being counted for pension. Since the case of Shri Mukherjee was dealt with by CPO's Office and we do not have such cases to rely on as precedents, it is proposed to refer the matter to C.P.O. Shri A.C. Das was informed that subject to FA & CAO's approval the case will be referred to CPO.

43.

In terms of item No. 68 only CPO in Establishment matters 1989 edition has full powers to alter recorded date of birth in respect of non-Gazetted Railway Servants. In view of the full facts of the case as brought out above, the matter may please be examined and decision communicated to this office immediately with the approval of the competent authority.

Enclo :- As above.

Sd/-
(S. Chandrasekharan)
Dy. C.O.(G)
for FA & Chief Accounts Officer/NF Rly.
Maligaon, Guwahati.

Acting as
T. M.
B. C. H.
Hawalda

44.

ANNEXURE - XIII.NORTH-EAST FRONTIER RAILWAYSl. No. 181

No. E/71/0(e)

Pandu, dated 7.6.1962.

To
 CE(S&C),CSTE(CTC)/KCN.
 DCM/KIR, ENC/BBP/PNO,
 All District Officer,
 All Asstt. Officers is independent charge.

Sub :- Alteration in the recorded date of birth.

A copy of Railway Board's letter No. E(NG)62 BR 1/3 dated 16.5.62 on the above subject is forwarded for information and guidance.

Railway Board's earlier letter dated 4.7.60 as referred to was circulated under this office circular No. 332/E/71/III 0(C) dtd. 21.12.60. In this connection, this office circular letter No. E/71/III/0(C) dated 10.3.1961 may also be referred to.

Sd/- Illegible.
 1/6/62.

for Chief Personnel Officer.

(copy of Rly. Board's letter No. E(NG)62 BR 1/3 dtd. 16.5.62)

Sub :- Alteration in the recorded date of birth.

Reference Board's letter No. E(NG) 60 BR 1 dated 4th July, 1960 in accordance with which alteration in the recorded date of birth in the case of Class III employees who did not enter their dates of birth in their service records in their own hand writing at the time of recruitment, could be altered on the basis of date of birth recorded in

After d
 by Mr
 B. C. D.
 Advocate

contd...

the Matriculation Certificate (the authenticity of which is not in doubt), provided the employee concerned had passed the Matriculation Examination before entering Railway Service.

It is clarified that it is not the Board's intention that these instructions should be applied straight way in all cases without any time limit. Normally such cases would be limited to the railway/servants who entered service prior to 1939. In respect of those who entered railway service thereafter, and were literate, the date of birth in all cases should have been recorded by the Railway servant concerned in the service record in this own hand writing in accordance with Rule 145-RI. In the case of the former, the request for alteration in the date of birth in accordance with Board's letter referred to above should not be entertained after one year from the date of issue of this letter. In their cases it should also be examined whether the Railway servant concerned would have been within the age limit prescribed for entry to railway service at the time of entered service with certificate, if not, he should not be allowed the concession of alteration in the recorded date of birth on the basis of Board's letter referred to above.

Prv 1939
Prvt 1939
7.6.62

Sd/- Illegible.
1/6/62

Sd/- Illegible.
1/6/62.

ANNEXURE - XIV,

To
The FA & Chief Accounts Officer,
N.F. Railway/Maligaon.

(THROUGH PROPER CHANNEL)

Sir,

Sub :- Prayer for alteration/correction of recorded date of birth of Shri Abinash Chandra Das, S.O./Insp. according to the corrected age entry in Matriculation Certificate.

Ref :- 1) My Original application dtd. 11.5.65 and last appeal dtd. 17.11.89.

2) Your letter No. PNO/AD/70/348 Pt.V dated 8.7.91.

With reference to your above quoted letter dated 8.7.91 I, with an aggrieved mind, beg to state that since you have not specifically mentioned the reasons and demerit against my case, myself being totally in dark, it is not upto my satisfaction to accept your decision as convincing and justifiable one. Hence, I request you kindly to let me know the reasons and rules under which my alteration of date of birth could not be agreed to.

That Sir, however, I have come to know that you had forwarded my case to CPO/MLG vide your letter No. PNO/AD/70/348 Pt.V dated 15/10.1.91 with a negative view of mis-representation of facts and Codal rules which are not applicable to my case.

That sir, for instance, you have not given importance to the basic point of consideration of treating my case in accordance with rule 145(3)(iii) RI (as stood before amendment),

to be
to

*Attested
true
B. C. D.
D. D. G. T. P.*

contd....

as laid down to Rly. Board's letter No. E(NG)11-70RB/1 dated 4.8.72, since I made my first representation on 11.5.65 before the cut off date 31.7.72. But it has been wrongly mentioned that the "Sub_Para (III) under the Para referred to above (i.e. Para-225(4)(iii) RI as stood after amendment) should be made applicable in my case". Whereas, I pointed out that rule 145(3)(iii) RI will be applicable to my case. Because, as clarified in Rly. Board's letter No. E(NG)II-70 BR/1 dtd. 3.12.71 (Para - 1) "it is open to the competent authority to effect an alteration. No time limit has been given for alteration."

Secondly, as stated in your forwarding letter dated 15/16.1.91 Para 225(4)(i)(RI)ibid Para 145(i) is not relevant and applicable to my case. It is seen that the basic point of the clause has been omitted and overlooked. Because, the full text of the rule is written as under :-

"Wherein his (GM's) opinion it has been falsely stated by the Rly. servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the Rly. servant being retained in service longer if the alteration had not been made for".

As the above rule is applicable only in case of those who "falsely stated" their date of birth, it is not applicable to my case, since I stated my date of birth according to authenticated confirmatory documentary evidence viz. Matriculation Certificate, as laid down in Rukm RB's letter dated 3.12.71 and Railway Ministry's decision on the rule.

contd...

Thirdly, in your letter dated 15/16.1.91, it was stated "It was explained to him that if his date of birth was changed from 1.3.35 to 1.3.39 then he would not have been eligible for Govt. employment i.e. in the year 1955".

That Sir, this is purely a hypothetical decision taken in my case. Had my date of birth been corrected from 1.3.35 to 1.3.39 in the year 1955 the question of eligibility for Govt. employment would have not arisen at that time. Since I entered Rly. service at the age of 20 years 6 months 14 days as on 15.9.55, according to the age entry in Matriculation Certificate, my date of birth stood as on 1.3.35 till the date of correction of the age entry by Gauhati University itself i.e. upto 16.4.64 and now stands as on 1.3.39 from the date of subsequent correction and thereafter. Hence, the question of underage to prescribed service age 18 years will arise only as an effect of correction of my date of birth in service records, which is now ultravires and may be regularised as per extent rules and at the instance of leading precedent of Sri Sibajit Kr. Mukherjee's case approved vide No. E 212-R/82(E) dated 15.12.89. Moreover, there is no specific bar in effecting alteration of date of birth in rule 145(c) RI in case of involvement of underage.

That sir, since no mention was made about the leading precedent of Sri Sibajit Kr. Mukherjee's case in CPO's letter No. E/71/10(Q) dtd. 31.5.91, it is apparent that no instance was taken in considering my case, although

contd...

you had forwarded my case on the issue and it is the instance of Sri Mukherjee's case. It is seen that CPO has simply corroborated your negative points without considering their relevancy and applicability to my case.

That Sir, in the same light of views, CPO has quoted the last portion of the para of RB's circular No. E(NG)62 BR 1/3 dated 16.3.62 omitting the first part thereof (copy enclosed) in which it is specifically written that the circular is applicable only for the Rly. servants who entered Rly. service prior to 1939 and as such not applicable to my case.

That sir, from the above it is evident that a negative view and mis-representation of rules have undermined the merit of my case which may kindly be reviewed from impartial point of natural justice and recommended it to CPO/MLG for reviewing his former decision and accordingly his necessary approval to the alteration of my date of birth as 1.2.1939 for the shake of justice.

That sir, my service has already been reviewed by the review committee comprising of FA & CAO, CPO and SDGM and allowed to retain in service beyond 55 years of age / 30 years of service vide letter No. AD/CON/ Review dtd. 27.8.86 (copy enclosed). Hence unless my appeal is allowed and conceded to, I shall be compelled to retire from service at the age of 54 years before the normal age of superannuation, which will be a violation of extant service rule and order given by Rly. Administration itself.

That Sir, I would like to bring it to your kind notice that my original personal office copy of application dated 11.5.65 has already been accepted as "purely on office record" vide your letter No. PNO/AD/70/348 pt. IV dated 16.10.89, which has not yet been returned to me. So, as it become necessary, you are requested to return it to me at an early date.

That Sir, in consideration of the above injustice so far done in regard to dealing with my case, I am submitting herewith a fresh appeal to CPO/PNO through proper channel, separately which may kindly be forwarded with your necessary recommendation on the basis of the merit enumerated above.

That sir, with the above submission, I fervently request you kindly to review my case as per extent rule 145(3)(iii) RI (stood before amendment), RB's letter No. E(NG)11-70BR/1 dated 4.8.72 (copy has already been submitted), clarification given in RB's letter No. E(NG)11-70 BR/1 dated 3.12.71 (Para - 1) (copy already enclosed) and similarly situated case of Sri Sibijit Kr. Mukherjee, IOW/II under DRM(P)/APDJ approved vide letter No. E-212/82(E) dated 15.12.86 (copy already enclosed) and to forward my appeal to CPO/PNO (who is the competent authority to sanction) submitted along with this separately with your favourable recommendation for effecting alteration of recorded date of birth as 1.3.1939.

With best regards.

Enclo : Two.

One application
(in Duplicate)
addressed to CPO/MLG.

Yours faithfully,

Sd/- Abinash Chandra Das
S.O.(A/Cs)/Inspection,
FA & CAO'S Office,
N.F. Rly./Maligaon.

51.

NO. PNO/JG/Estt/91

dtd. 30.8.91

Forwarded to AAO/AIMN with a seperate copy of application (in duplicate) addressed to CPO/Maligaon dtd. 30.8.90 for necessary action.

Sd/- Illegible.
30/8
AAO/INSPECTION
O/O N.F. Rly. Maligaon.

NORTH-EAST FRONTIER RAILWAY

6

OFFICE OF THE
FA & CHIEF ACCOUNTS OFFICER
NF RAILWAY : MALIGAON

NO.PNO/AD/70/348 PT-IV

Dated 31.10.91

To
Chief Personnel Officer
N.F. Railway/Maligaon.

Sub : Appeal of Shri Abinash Chandra Das,
Sr. S.O. (A/Cs) for alteration of
date of birth.

Ref : Your letter No. E/71/10(Q) dtd. 31.5.91.

The decision as conveyed through your letter No. E/71/10(Q) dated 31.5.91 was communicated to Shri Abinash Ch. Das, Sr. S.O.(A/Cs), and ~~as~~ he has again represented his case stating that the points as brought out in his application have not been given the consideration as such the same may be reviewed as prayed for by him.

2. On examination of Railway Board's letter No. E/NG/62-BRI/3 dated 16.5.62, *prima facie* it appears that the instructions contained therein are applicable in his case also, relevant portion of which is quoted below :

"In respect of those entered Railway service thereafter (i.e. after 1939) and were literate, the date of birth in all cases would have been recorded by the Railway servant concerned in the service record in his own handwriting in accordance with Rule 145-RI".

However, against Rule 225(4)(i)-RI as quoted you in your letter under reference, Shri Das has represented that

*After rec'd to
Ans for
Ans. C.W.
Ans. C.W.
Ans. C.W.*

contd...

the case is not applicable in his case, as he has not recorded his date of birth falsely at any stage.

3. The circumstances under which the case of Shri Sibaji Kumar Mukherjee, Ex- IOW/II were dealt with and decided upon by CFO's Office are not known to this office and as such this office is not in a position to make any comments on this decision.

The application of Shri Das dated 20.8.91, addressed to you is sent herewith for re-examination and further decision please.

Enclo : One application.

Sd/-

31/x/91
(S. Chandrasekaran)
Deputy Chief Accounts Officer/G
N.F. Railway/Maligaon.

ANNEXURE - XVI.NORTHEAST FRONTIER RAILWAY

XO

Office of the
General Manager (Personnel)
Maligaon, Guwahati - 11.

NO. E/71/10/8,

Dated : 5.5.1992.

To
The Executive Director-E (NG)
Railway Board,
Rail Bhawan,
New Delhi.

Sub : Correction of date of birth of Shri Abinash Ch. Das, Sr. S.O.(Accounts) attached to FA & CAO, N.F. Railway, Maligaon.

Enclosed please find an appeal dated 30.8.91 along with its enclosures submitted by Shri Abinash Ch. Das, SR. S.O. (Accounts) of FA & FAO's Office, Maligaon, on the above subject.

Shri Abinash Ch. Das joined in Railway Service as CG/II with effect from 15.9.55. He was 20 years 6 months and 14 days old at that time according to the/recorded in his Matriculation Certificate issued by the University of Gauhati. Shri Das applied to the University of Gauhati for alteration of his date of birth from 19 years to 15 years. His date of birth was corrected by the Guwahati University authority in the original Matriculation Certificate after 10 years of his joining advancing his date of birth by four years. Shri Das accordingly claimed that his date of birth should be recorded by the University.

It was pointed out to Shri Das that if his date of birth was changed from 1.3.35 to 1.3.39 then he would not have been eligible for Govt. employment on that date of his

*After 10 years
from 1.3.35
to 1.3.39
ACW*

contd...

recruitment, i.e. in the year 1955. It was also made it clear to him that in terms of Para 225(4)(i)-RI even if the G.M. causes the date of birth to be altered, such alteration shall not result in his being retained in service longer than if the alteration had not been made. Shri Das on being informed of the above rulings, preferred another appeal dtd. 30.8.91 which has been enclosed herewith. ✓

Shri Das in his appeal on 30.8.91 quoted the instances of two cases where the date of birth was decided by the G.M. and the Hon'ble CAT, Guwahati.

The perusal of those cases mentioned by Shri Das reveals that his case is slightly different from those which have been decided by the G.M. and the Hon'ble CAT, in as much as in all these cases date of birth initially recorded at the time of appointment was without any support of age proof certificate and the date of birth indicated in the School Certificate/Admit Card was produced by them later for acceptance of ~~hix~~ the administration, whereas Shri Das requested for acceptance of alteration of his date of birth as corrected by the Guwahati University in the Original Matriculation Certificate after 10 years of his joining, advancing his date of birth by 4 years.

The only point in favour of Shri Das is that Shri Das represented for alteration of his date of birth, as 11.5.65 as will be seen from his letter dated 11.5.65 to FA & CAO and FA & CAO's letter No. PNO/AD/70/348 dated 16.10.89 to him (copies enclosed) i.e. within one year from the date

contd....

of correction of the date of birth by the Gauhati University and it was well in advance of the issue of Board's Circular No. E(NG)II-70 BR/1 dated 4.8.72, in which it was decided by the Board that such of the employees who were already on employment on 3.12.1971 would be given an opportunity to represent against their recorded date of birth upto 31.7.1973 and their cases should be examined in terms of the rules as they stood before the amendment of Rule 145-RI made by Board's letter No. E(NG)II 70-BR/1 dated 3.12.71 could be considered but the same was not done during the relevant time.

In view of the circumstances explained, since the change of date of birth at this distant date will attract various stipulations of the Railway Board laid down by them from time to time including Para 4 of Rule 225 of Indian Railway Establishment Code, Volume-I, this case is forwarded to the Railway Board for their decision whether in this instant case where the date of birth in the Matriculation Certificate has been changed by the Guwahati University after 10 years advancing his birth by 4 years can be accepted by the Rly. Administration.

Recently Rly. Board vide their letter No. E(NG)I-91/BR/5 dtd. 4.12.91 have given their decision in respect of correction of date of birth of Shri P.K. Mohanan, Confdl. Steno. This may please be perused in this connection.

Enclo : As above.

Sd/-
(N.R. Chakraborty)
Dy. Chief Personnel Officer (NG),
for GENERAL MANAGER (P)

ANNEXURE - XVII.

X3

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

NO. E(NG) 1/92/BR/7 Rail Bhawan, New Delhi dtd. 9.7.92.

The General Manager (F)
Northeast Frontier Railway,
Maligaon, Guwahati.

Sub : Correction of date of birth of Shri Abinash
Ch. Das, Senior S.O.(A/Cs) attached to FA &
CAO/ N.F. Railway, Maligaon.

Reference your letter No. E/71/10/8 dtd. 5.5.92 on
the above subject.

2. In this connection, it may be stated that such cases should be decided at your level in the light of existing Rules and Regulations applicable in the matter (viz. Rule 225 R.I.). Reference to Board should be made only in those cases where Railway recommends any relaxation of the existing Rules or clarification is required on a matter of policy. If any further reference is made to the Board in this case, details of the two cases (S/s Sibajit Kr. Mukherjee, IOW under BRM (P)/APDJ, Anil Chakraborty, O.S./C.S.T.E. Office/N.F. Railway - Case No. 168/1986(T) & Kamakhya Prasad Sengupta/Tally Clerk - case No. GC-78 of 1988) mentioned by Sh. Das may also be furnished inter alia advising if on the basis of revised dates of birth they would have been undergo at the time of appointment.

Sd/-

(Mrs. Anju Banerjee)

JOINT DIRECTOR ESTABLISHMENT (N) 11
RAILWAY BOARD.

Attacted to
true
by - C. I.
Advocate

To
 The General Manager,
 N.F. Railway, Maligaon.
 Guwahati - 781 011.

Respected Sir,

Sub : Prayer for correction of recorded date of birth in S/Records of Sri Abinash Chandra Das, Sr. S.O.(Accounts) attached to FA & CAO/Maligaon according to Matriculation Certificate.

Ref : 1. My application dtd. 11.5.65 and 17.11.89 addressed to FA & CAO/Maligaon and dtd. 30.8.91 addressed to CPO/Maligaon.

2. FA & CAO/Maligaon's letter No. NG/AD/70/ 348/Pt.V dtd. 15/16.1.91 and PNO/AD/70/ 348/Pt.IV dtd. 31.10.91 addressed to CPO/MLG.

3. CPO/Maligaon's letter No. E/71/10/ dated 31.5.91 addressed to FA & CAO/Maligaon.

With due respect and humble submission, I beg to approach you as the highest and supreme competent authority of this Railway, with an aggrieved heart, for not receiving timely justice as yet, from FA & CAO/ Maligaon and CPO/ Maligaon on the above subject since 1965, inspite of my persistent efforts and pursuasion, and so beg for your personal intervention in this matter to decide it early by your self, as I am on the verge of retirement and only 7 months left to the retirement on 28.2.1993, according to wrongly recorded date of birth in S/records.

1. That Sir, I entered Rly. Service on 15.9.1955 under FA & CAO through service commission, at the age of 20 years 6 months 14 days according to my Matriculation

Attested to by
 from C. P. Sircar
 B. M. N. Sircar

contd...

Certificate (19 years on 1.3.1954). Accordingly, my date of birth was recorded as 1.3.1935 which was subsequently detected as a wrong one according to my actual date of birth. But I had no any way out at that time to establish it against the authenticated confirmatory documentary evidence of University Certificate. So, I tried formally to get it rectified by pointing out it to the University Authority and Gauhati University corrected my age/ date of birth lately in the year 1964, in the body of the Matriculation Certificate as 15 years in place of 19 years as on 1.3.1954 and vide L/No. Cer/Ca/64/852 dtd. 16.6.64 (copies enclosed). According to corrected date of birth/under age of 1yr. 5 m. 14 days involved on the date of appointment.

That Sir, as I have come to know, to ascertain the authority of this correction of age/date of birth, FA & CAO confidentially referred the matter to Gauhati University vide Letter No. AD/Con/Misc/Pt.III/87 dtd. 8.2.90 after 26 years of correction and it was confirmed by G.U. vide letter No. CER/MISC./90-91/283 dtd. 14.8.90 (Copy enclosed).

2. That Sir, I represented my case to FA & CAO/MLG through proper channel vide my application dtd. 11.5.1965 under the forwarding No. PNO/PF/Estt/Policy/65-66 dtd. 11.5.65 of AAO/PF, to correct date of birth in S/record according to corrected Matriculation Certificate long before the amendment of relevant rule 145-RI and 145(3)(iii) RI and cut off date , representation 31.7.1973 for alteration of recorded date of birth as provided in RB's L/No. E(NG)11-70 BR/1 dtd. 4.8.1972 (copy enclosed).

Moreover, I submitted reminder thereof vide my application dated 19.3.67, 7.6.68 and 18.3.70 (copies enclosed) on which I have not yet received any reply from the Railway authority concerned, ~~nor~~ Thereafter also, I have been trying to get my recorded date of birth corrected by submitting time to time application and reminder but without any avail. In most of the cases of my application, the authority has maintained silence and few rare cases sometimes gave me vague reply without showing any reason and demerit of not agreeing to allow my case.

3. That Sir, though no reply has been given to my original application dated 11.5.65 as yet, my personal office copy of this application has also been taken from me by FA & CAO's Office and it has been ~~also~~ refused to return to me treating it "as a purely office record" vide FA & CAO's letter No. PNO/AD/70/348/Pt.V dtd. 16.10.89 (copy enclosed). As such, original personal copy of the application dated 11.5.65 is also in the custody of FA & CAO's Office.

4. That Sir, from my bitter experience it is realised that both the FA & CAO's Office and CPO's Offices have been taking a negative and delatory policy. Because, FA & CAO's Office has forwarded my case to CPO's Office after 26 years only in the year 1991 vide L/No. PNO/AD/70/348/Pt.V dated 16.1.91 and a negative reply was given by CPO's Office vide L/No. E/71/10/Q dtd. 31.5.91, the ~~ex~~ rules cited and circular quoted therein are not being in conformity with the codal provisions and RB's circular in the sense and spirit and as such not relevant and applicable in my case. So, I preferred

another appeal on 30.8.91 (copy enclosed) through proper channel and it was forwarded by FA & CAO to CPO under L. No. PNO/A^D/70/348/Pt.V dated 31.10.91 and although eleven months is running to submit it and there is only 7 months to my retirement according to recorded date of birth no reply has been given to me as yet.

5. From the above, it is evident that, Accounts and CPO's Office have taken an indifferent view on my case or otherwise to suppress my genuine case and frustrate my legitimate claim for correction of recorded date of birth by delatory policy and mis-representation of actual facts and relevant rules by keeping it pending without positive action till the date of my retirement.

6. That Sir, regarding merit and genuiness of my case, I beg to state briefly for your appraisal and kind consideration that (1) my date of birth, as stated above, has been recorded in service sheet on the basis of the authenticated confirmatory documentary evidence issued by the competent authority, according to the prescribed rule and Rly. Ministry's decision laid down in note (a) under concerned rule and para 2(i) (a) of RB's L/No.E(NG) 11-70 BR/1 dt. 3.12.71 (Copy enclosed) (2) Since I applied to correct my recorded date of birth in the year 1965, long before the amendment of the rule 145-RI and 145 (3) (iii) RI and cut off date 31.7.1973 provided in RB's L/No.E(NG) 11-70 BR/1 dt. 4.8.72 (Copy enclosed) my case should be considered and decided in tems of rule 145(3) (iii)

I as stood before amendment. It is clarified in RB'S letter dt. 31.12.71 " It is open to the competent authority to effect alteration. No time limit has been given for alteration" In para 145 (3) it is specifically laid down " It shall however be open to the presedent in the case of a gazetted Railway servant, and general manager in the case of a non- gazetted Railway sergeant to couse the date of birth to be altered". (3) It is for the administrative lapse that my case was not dealt with and decided in the year 1965 in terms of relevant rule 145 (3) (iii) RI and I might not be held at fault and responsible for that. So, I should not suffer for the fault of the administration. (4) As I have already cited in my application dt. 30.8.91 that my case is similarly situated ~~to~~ with that of Sri Sibajit Kr. Mukherjee, IOW/II under DRM $\frac{1}{2}$ ALDJ, whose recorded date of birth was altered and approved by G.M. from 1928 to 1933 vide L/No.213-R~~282~~ (E) dt. 15-12-86 (copy enclosed)treating is under age period prior to attaining of 18 years as not being counted for pension. I have cited and submitted the copies of judgements of two cases allowed by Honourable CAT of Guwahati in respect of alteration of recorded date of birth of Sri ANIL Kr. Chakraborty OS CSIE's Office and Sri Kamakhy Prasad Sengupta Tally clerk. In these two cases under-age involved on the date of appointment on the basis of the altered/revised date of birth. Those cases were decided in the year 1986 & 1988 respectively in terms of old rule 145(3) (iii) RI as they applied for alteration of date of birth before the amendment/and cut off date 31.7.73. The other two cases were also similarly situated with that of mine.

5. In this context I beg to bring it to your kind notice that a similarly situated case of Sri P.K. Mahanan, Confidential Steno attached to CSC/Maligaon has recently been allowed by Railway Board vide L/No. E(NG) I-91/BR/5 dated 4.12.91 by amending his date of birth from 26.9.46 to 19.11.48 although his date of birth was corrected after 14 years of service and applied for alteration of date of birth after 15 years of service. He joined Rly. Service on 26.5.75. It was a time-barred case and which could not decide by CPO's Office in terms of existing Rule 225-RI and RB's L/No. E(NG)I-85/BR/2 dtd. 7.5.86. Rule 225-RI was relaxed in his case. It was accepted under GM(B)/MLG Memorandum No. E/71/10(Q) dated 13.2.92. So, I request you to consider my case in the light of this case without discrimination (synopsis of the above cases enclosed).

6. In the concerned codal rules and regulations issued by Rly. Br. there is no specific bar that alteration of recorded date of birth cannot be effected in case of involvement of under age at the time of appointment on the basis of revised/ altered date of birth.

7. According to Pension Rules, underage period of service prior to attaining of 18 years is treated as non-qualifying service for pensionery benefits.

8. With the above humble submission, I being on the verge of retirement, and helpless like a drawing man, pray for your sympathetic gesture of intervening in the case and save me from this life and death question by approving my

date of birth as 1.3.1939 in terms of old rule 145(3)(iii) RI (As stood before amendment) as laid down in RB's L/No. E(NG)11-70 BR/1 dtd. 4.8.72 read with the clarification given in RB's L/No. E(NG) II-70/RB/1 dated 3.12.71 on the Rule 145-RI, & 145(3)(iii) RI and at the instance of the case of Sri Sibajit Kr. Mukherjee IOW under DRM(P)/ARDJ, Sri P.K. Mahanon, Confdl. Steno attached to CSC/Maligaon and judgement of Hon'ble CAT of Gauhati as mentioned above, treating my underage period of service prior to attaining the age of 18 years as not countable for pensionary benefits.

With best regards.

Enclo :-(12 in 17 sheets)

Yours faithfully,

Dated Maligaon,
27th July, 1992.

Sd/- Abinash Chandra Das,
Sr. SO (Accounts)
FA & CAO's Office/MLG.

ANNEXURE - XIX.

To
 The General Manager,
 NF Railway, Maligaon,
 Guwahati - 781 011.

Respected Sir,

Sub : Prayer for correction of recorded date
 of birth of Sri Abinash Ch. Das, Sr. SO
 (Accounts) attached to FA & CAO, NF Rly.
 Maligaon.

Ref : My application dated 27.7.92 submitted
 through SPO/Welfare/Maligaon.

I, with due respect and humble submission, I beg to submit this humble prayer in continuation of my previous application dated 27.7.92 submitted through SPO/Welfare/Maligaon on the proposed day for interview with you as informed by GM(P)/Maligaon vide L/No. E/HQ/W/B/55/pt.III dated 27.7.93, on which date I could not see due to your non-availability at H.Q. Office. Hence, I beg to submit it for your kind appraisal of present position of my case for giving your favourable and due consideration to approve my case at an early date which is lying undecided since the year 1965. Because, I am on the verge of retirement and if an early favourable decision of my case is not given, I shall have to retire from service after 5 months on 28.2.93.

2. That Sir, it is known from GMP's recent reply to FA & CAO vide L/No. E/71/10(Q) dated 11.8.92 with reference to my reminder dated 20.7.92, which was forwarded under FA & CAO/Maligaon's L/No. PNO/AD/70/348/Pt.IV dated 28.7.92 and communicated to me vide letter of even number dated 19.8.92

*Abinash Ch.
 Advocate*

contd....

that my case is in correspondence with Railway Board and I shall be apprised of the position of the case as soon as final decision is received from Railway Board.

3. That Sir, I have come to know that my case was already once referred to Railway Board vide GM(P)/MLG's L/No. E/71/10/8 dtd. 5.5.1992 which was self contradictory and inadequate in furnishing with required information and necessary recommendations for due consideration and favourable decision of my case by the Board. It is evident from Railway Board's reply to GM(P)/Maligaon vide L/No. E(NG)1-92/BR/7 dated 9.7.1992.

4. That sir, it is known that my case was referred to Railway Board stating inter alia the merits of my case in para-6 of GM(P)'s letter that I represented for alteration of date of birth on 11.5.65 within one year from the correction of date of birth by Gauhati University and it was well in advance of the issue of Board's Circular No. E(NG)11-70/BR/1 dtd. 4.8.72 in which it was decided by Board that such of the employees who were already on employment on 3.12.1971 could be given upto 31.7.1973 an opportunity to represent against their recorded date of birth upto 31.7.1973 and their cases should be examined in terms of rules as they stood before the amendment of Rule 145-RI made by Board's letter No. E(NG) 11-70 BR/1 dated 3.12.71, could be considered but the same was not done during the relevant time.

5. That Sir, from the above documentary evidence,

it is proved beyond doubt that my case was not decided in the year 1965 in terms of old Rule 145-RI due to lapse of the Railway Administration as a result of which it is still lying pending without a favourable decision...;

6. That Sir, while mentioning the above merits, no recommendation for approval of my case in terms of old rule 145-RI, in relaxation of existing amended Rule 225-RI was made to Railway Board.

7. That Sir, in para-7 of GM(P)'s letter referred to Rly. Board, it is known to be stated that the change of date of birth at this distant date will attract various stipulations of the Rly. Bd. laid down by them from time to time including Para-4 of Rule 225 of Indian Railway Establishment Code, Volume - I.

It is in contradiction to above mentioned merits and circumstances and so not relevant and applicable in my case. In this context, I may be allowed to state that since Rly. Administration is responsible for the delay in deciding my case, any kind of complicity involved with amended rules at this distant date, should please be regularised, as a special case, in relaxation of time existing rule and stipulations, by the Administration itself.

However, it will not be out of place to mention here that an old case pertaining to the year 1965 which has been kept pending undecided due to lapse of the Administration may not in any circumstances be dragged under the

stipulations of existing Rule 225-RI and regulations, which have come into existence only in the year 1971 and become effective after the rest cut-off date 31.7.1973 for representation of alteration of date of birth allowed by Rly. Board.

That Sir, as mentioned in the last para of GM(P)'s letter dated 5.5.92, that only recently a current time bared case of Sri P.K. Mahanan, Confdl. Steno attached to CSC/RPF/MLG was allowed by Rly. Board vide L/No. E(NG)1-91/BR/5 dtd. 5.12.91 amending his date of birth from 26.3.46 to 13.11.48 which was communicated vide GM(P)/MLG's Memo. No. E/71/10(Q) dated 13.2.92. He entered Rly. service on 26.9.1975 and got birth corrected in Secondary School leaving ~~xxx~~ cert. of his date of/competent authority after 14 years of service on 16.8.89 and applied for alteration of date of birth after 15 years. Existing Rule 225-RI and RB's circular dtd. 7.5.85 were relaxed in his case. GM(P)/MLG referred his case to Rly. Board under L/No. E/71/10(Q) dtd. 28.5.90.

Moreover, alteration of date of birth in all the three precedent cases cited by me, in my application dated 20.7.92 (viz. case of Sri Anil Kr. Ghakraborty, OS/CSTE's Office, Kamakhya Prasad Sengupta, Tally Clerk) was allowed after retirement from service according to wrongly recorded date of birth and all of them involved underage at the time of appointment on the basis of revised/ altered date of birth. (A synopsis of the above cases is enclosed for your kind appraisal).

In the light of the above instances, I solicit your kind favour of deciding my case without discrimination

of Rules and justice in consideration to my correction of date of birth by Gauhati University in the year 1964 within 9 years of service and my representation for correction of recorded date of birth in S/records within one year of correction.

8. That Sir, it is known that Railway Board have in the meantime replied to GM(P)'s letter No. E/71/10/8 dated 5.5.92 vide L/No. E(NG) 1-92/BR/7 dtd. 9.7.1992 wherein it is advised to decide my case at this Rly. level on the light of existing rules and regulations applicable in the matter (Viz. Rule 225-RI which is the amended form of old rule- 145-RI). Herein clear indication for relaxation of existing Rule 225-RI has also been given stating that reference to Rly. Bd. should be made only those cases where Railway recommends any relaxation of the existing rules or clarification is required on a matter of policy. Since my case should be decided in terms of old Rule 145-RI, as stood before amendment, relaxation of the existing Rule 225-RI and regulations is automatic. Otherwise, if it is deemed necessary, your honour is requested to relax it at your discretion on the merit of my case and at the instance of the case of Sri P.K. Mohanan, as mentioned above.

9. That Sir, my case has not been closed by Rly. Board. Rather, due to deciding it had been indicated by advising to furnish the details of the precedent leading cases mentioned by me in my application dated 30.8.91, inter alia if on the basis of the revised date of birth

they would have been underage on the date of appointment, if further reference is made to Board in the case.

10. That Sir, specific codal provisions for alteration of recorded date of birth are laid down in Rule 225(4) RI which is the amended form of old Rule 145(3) R I. There are three sub rules to the main rule. There is no change in the Rule 145(3)(i) and 145(3)(ii) with that of its amended form 225(4)(i) and 225(4)(ii). Only the bracketed portion of the clause of the the Rule 145(3)(iii) has been amended by substituting Clause (which should not be entertained after completion of the probation period, or three year service, which ever is earlier) in place of clause (which should ordinarily be submitted within a reasonable time after joining service) of the old Rule. It is seen that while there was no time limit for representation for alteration of date of date of birth in the Rule 145(3)(iii) R I which is applicable in my case, a time limit of three years has been incorporated in the amended Rule 225(4)(iii) R.I. Rule 225(4)(i) is not applicable in my case,because I did not declare my date of birth "falsely" at any stage and Rule 225(4)(ii) is applicable only in case of illiterate staff. So, I pray to you to relax the amended clause of Rule 225(4)(iii) R.I which is not relevant to me in view of my applicablen dated 11.5.65.

11. That Sir, the circumstances under which the wrong date came to be entered in my service record and under age involved according to revised date of birth were beyond

my control since it relates to the mistakes committed by Gauhati University concerned in my Matriculation Certificate.

12. That Sir, according to the Pension Rules (Para-416) of qualifying service, my underage period will automatically be treated as infructuous for counting for pensionary benefits. So, I pray you to regularise my ~~sex~~ underage period as infructuous for pensionary benefits at the instance of Sri Sibajit Kr. Mukherjee, IOW/II under DRM(P)/APDJ which case has been approved by General Manager in the year 1986 vide L/No. 213-R/82(B) dtd. 16.12.86 treating his underage period as not countable for pensionary benefits.

13. That Sir, my service has already been reviewed by the competent authority in the year 1986 allowing me to remain in service beyond 55 years of age/30 years of service as communicated vide AAO/AD's L/No. AD/Con/Review dated 27.8.96 (SN.5) (Copy enclosed). If my case is not considered and allowed, I shall have to retire from service at the age of 54 years (on 2.1.93) even before the normal age of superannuation.

14. That Sir, all the above authentic informations are furnished on the basis of documentary evidence referred to therein and as such stand beyond doubt.

15. With the above humble submissions, I beg to pray your honour that since I have complied to all the conditions of alteration of recorded date of birth laid down in Rly. Rule 145(3)(iii)-RI, your honour will be kind enough to alter

my date of birth as 1.3.1939 in place of 1.3.1935 in relaxation of the existing Rule 225(4)(iii)-RI, treating my under age period not being counted for pensionary benefits at the instance of the case of Shri Sibajit Kr. Mukherjee, Sri P.K. Mohanah, Sri Anil Kr. Chakraborty and Sri Kamakhya Prasad Sengupta, at an early date, as I am ~~in~~ in great anxiety of mental troubles, and thereby save me from impending danger of illegal retirement from service on 28.2.93 to which only 5 months left. For this act of kindness of your magnanimous self, I shall ever remember you with gratitude.

With best regards ;

Enclo : 2 (two).
Dated : 28.8.92.

Yours faithfully,
Sd/- Abinash Chandra Das.
Sr. SO (Accounts)/ Insp.

ANNEXURE : XX.OFFICE OF THE FA & CHIEF ACCOUNTS OFFICER/AD : : :
N.F. RAILWAY / MALIGAON.

OFFICE ORDER NO. G/312

Dated 01.12.1992.

The following staff will retire from Railway service on attaining the age of superannuation with effect from the date shown against each.

<u>S/No.</u>	<u>Name & designation</u>	<u>Date of retirement</u>
1.	Shri Salil Kr. Roy Choudhury Sr. S.O. (A)/TA(Gde)	31.01.1993 (AN)
2.	" Jaharlal Acharjee, AA/TN	31.01.1993 (AN)
3.	" Sunil Ch. Mazumdar, AA/EGA	31.01.1993 (AN)
4.	" Sushil Kr. Mazumdar, AA/TA(CG.)	31.01.1993 (AN)
5.	" Nishi Kanta Das, AA/TA(M)	31.01.1993 (AN)
6.	" Krishna Ghosh, AC/BLST	31.01.1993 (AN)
7.	" Abinash Ch. Das, SO/Inspection	28.02.1993 (AN)
8.	" Smti. Gita Bhattacharjee, AA/R(C)	28.02.1993 (AN)
9.	Smti. Mitrada Baruah, AC/TA(Code)	28.02.1993 (AN)
10.	Shri Mahadev Ch. Deb Chowdhury, AA/GSA	28.02.1993 (AN)
11.	" Phuleswar Gogoi, Sr.ISA/SV	31.03.1993 (AN)
12.	" Anil Kr. Chakraborty, JAA/PF	31.03.1993 (AN)
13.	" Uttam Ch. Das, AA/TA(CG)	31.03.1993 (AN)
14.	" Phanindra Nath Kakati, SV	31.03.1993 (AN)
15.	" Babindra Nath Gaon, AA/TA(CG.)	31.03.1993 (AN)
16.	" Sarat Prasad Das, AA/TA(M)	31.03.1993 (AN)
17.	" Chandan Mohan Talukdar, AA/TA/Gds.)	31.03.1993 (AN)
18.	Md. Phirajuddin Ahmed, AA/TA(M)	31.03.1993 (AN)
19.	Smti. Rena Bala Dey, Peon/Admn.	31.03.1993 (AN)
20.	Shri Satish Ch. Bardhan, SE/SV Sec.	30.04.1993 (AN)

contd...

After read & do
Date 27/12/92
B. D. S. Sec.

21. Shri Dhirendralal Bhattacharjee, SV 30.4.1993 (AN)
 22. Smti. Anjali Chatterjee, O/Typist 30.04.1993 (AN)
 23. Shri Ram Saran Bhattacharjee, AA/CSA 30.04.1993 (AN)
 24. Shri Mukunda Nath Sarma, AA/E 30.04.1993 (AN)

Sd/- Illegible.
 For FA & Chief Accounts Officer /AD
 N.F. Railway/Maligaon.

NO. PNO/AD/85/549 Dt- I

Dated 01.12.1992.

Copy to :-

1. SAO/Books
 2. JAO/SV
 3. AAO/CSA
 4. AAO/ENGA
 5. AAO/PF & PN They are requested to take back the
 6. AAO/ADM identify Card, Medical Card, pass.
 7. AAO/R(C) if any from the staff concerned on
 8. AAO/EGA the last working day and send the
 9. AAO/INSPECTION same to AAO/Admin.
 10. AAO/Type
 11. SAO/T
 12. AAO/TA(M)
 13. AAO/TA/Cg.
 14. AAO/TA/Gds.
 15. AAO/DSA/BLST/
 Calcutta - 15
 16. AAO/SPB (23 copies)
 17. CHS/Central Hospital/Maligaon.
 18. EP/MLG & TNO
 19. eknpmic
 20. Staff concerned through Branch Officers.

Sd/- Illegible.
 for FA & Chief Accounts Officer/AD
 N.F. Railway/Maligaon.

ANNEXURE - XXI.

To
The FA & Chief Accounts Officer,
N.F. Railway/Maligaon.

(Through Proper Channel)

Sir,

Sub :- Correction of recorded date of birth as 1.3.1939 in place of 1.3.1935 of Shri Abinash Ch. Das, Sr. S.O.(A/Cs)/Insp according to Matriculation Certificate.

Ref : 1) My application dtd. 11.3.1965, 17.11.89, 30.8.91, 20.7.92 and 13/16.11.92.

2) My application addressed to CPO/N.F. Rly/ Maligaon (through proper Channel) dtd. 30.8.91, 20.7.91 & 13.11.92.

3) My application to General Manager, N.F. Railway/Maligaon dtd. 27.7.92, 28.8.92 & 12.11.92.

4) Your last Interim reply No. PNO/AD/70/348 Pt. IV dtd. 19.8.92.

5) Your office order No. G/312 dtd. 1.12.92 communicated under No. PNO/AD/85/549 Pt-I dtd. 1.12.1992.

With reference to your office order showing my superannuation from service on 28.2.93 (AN).

I beg to state with respect that since my case of correction of recorded date of birth is still lying pending undecided since the year 1965 and GM(P)/MLG has assured vide L/No. E/71/10/0 dtd. 11.8.92 communicated vide your L/No. PNO/AD/70/348 Pt.IV dtd. 19.8.92 that my case is in correspondence with Rly. Board's and I will be apprised of the position of my case as soon as final decision is received from Rly. Boards, it is illegal and arbitrary to show my date

contd....

Abled to
the P.O.P
P. C. S
P. P. O. C. S
P. P. O. C. S

of superannuation as on 28.2.93 in the above order and hence not acceptable.

That Sir, I beg to request you kindly to inform me the decision of the Rly. Boards first if already referred to and if not, in case, my case cannot be decided favourably allowing my correction of date of birth as 1.3.39 in place of 1.3.1935 at this Rly. level, I request you to forward it to Rly. Board for decision furnishing details of the cases of Shri Sibajit Kr. Mukherjee, IOW/II under DRM(P)/APDC, Sri Anil Kr. Chakraborty, OS/CSTE Office and Sri Kamakhya Prasad Sengupta, Tally Clerk, precedent leading cases already mentioned by me in my application dtd. 30.8.91, inter alia advising if on the basis of revised date of birth they would have been under age at the time of appointment, as advised by Rly. Board vide L/No. E(NG)I/92/BR/7 dtd. 9.7.92 in reply to GN(P)/MLG's L/No. E/71/10/8 dtd. 5.5.1992.

In this context, I beg to state that I personally met G.M. on 28.8.92 and represented my case vide my application dated 27.7.92 and 28.8.92 through SPO/Welfare/MIG on which no reply has been received as yet.

The copies of this application docketed to GM and CPO/KIC are also enclosed herewith for forwarding to them.

Your decision on my case well in advance of the crucial date 28.2.93 is solicited.

Enclo : Two copies.

Dated Maligaon,
the 4th December, 1992.

Yours faithfully,
Sd/- Abinash Ch. Das,
Sr.SO/Inspection.

contd...

Copy to :-

- 1) GM/MIG for information with reference to my interview with him on 30.8.92 and 28.8.92 submitted through SPO/Welfare, earnestly requesting him to consider my case and allow alteration of my recorded date of birth from 1.3.1935 to 1.3.1939.
- 2) Copy to CPO/N.F. Rly/Maligaon for information with the request of deciding my case favourably by allowing alteration of date of birth from 1.3.1935 to 1.3.1939 early before the crucial date i.e. 28.2.93.

Dated Maligaon
the 4th December, 1992.

Sd/- Abinash Chandra Das.

Sr.SO/Inspection

ANNEXURE - XXII.N. F. RAILWAY

Office of the
GENERAL MANAGER (P)
MALIGAON, GUWAHATI - 11

No. E/71/10(Q)

Dated 25.04.1993.

To
Shri Abinash Chandra Das,
Ex. Sr. SO(A/cs)/Inspection
FA & CAO/MLG.

Sub : Correction of date of birth of Shri Abinash
Ch. Das, Ex Sr. SO (A/Cs) attached to PF &
CAO/Maligaon.

Ref : Your appeal dated 22.02.93.

This issues was originally referred to the Railway Board under this office letter No. E/71/0(Q) dtd. 5.5.92. Board under their letter No. E(NG)I/92/ER/7 dtd. 9.7.92 has indicated as under :-

"In this connection it may be stated that such cases should be decided at your level in the light of existing rules and regulations applicable in the matter (viz. Rule - 225 TI) reference to Board should be made only in these cases where Railway recommends any relaxation of the existing Rules or Clarification is required on a matter of policy."

In terms of Board's instructions the case was further examined by the General Manager and your request for correction of date of birth was not accepted.

Sd/- S.C. TAPADAR.
SPO/RP

for GENERAL MANAGER (P)/MLG.

Attached to
N.C. V.
B. Advocate

ANNEXURE - XXIII.

To

The General Manager,
N.F. Railway/Maligaon,
Guwahati - 781 011.(For kind personal attention of
Shri G.K. Khare, GM)The Chief Personnel Officer,
N.F. Railway/Maligaon,
Guwahati - 781 011.(For personal attention of
Sri N.N.S. Rana, CPO)The FA & Chief Accounts Officer,
N.F. Railway/Maligaon,
Guwahati - 781 011. (For personal attention of
Sri R. Shadan, FA & CAO)

Respected Sir,

Sub : Correction of recorded date of birth
of Sri Abinash Chandra Das, Sr. SO(A/Cs)
attached to FA & CAO/N.F. Rly./Maligaon
(declared retired w.e.f. 1.3.1993).Ref : 1) GM(P)'s L/No. E/71/10/Q dtd. 29.4.93.
2) FA & CAO's L/No. PNO/AD/66/284 Pt.III
dated 25.5.93.
3) My application dtd. 4.12.92 addressed
to FA & CAO and copy to GM and CPO.

With due respect, I beg to state that your reply
vide letter (1) communicated vide letter (2) under reference
and received by me through postal dak on 8.6.93 is self
contradictory, misleading, misconstrued and confusing one
having no relevancy with your previous letter No. E/71/10/Q
dated 11.5.92, communicated through FA & CAO's L/No. PNO/ED/
70 Pt.IV dtd. 19.8.92. Hence, your decision for not considering
and accepting my case suffers from injustice and biasness and
as such not acceptable.

That Sir, you have received the RB's L/No. E(NG)
1/92/7 dtd. 9.7.1992 on 15.7.92 and receiving this letter,

*Attested to be
true
D. C. D.
D. Advocate*

contd...

FA & CAO was informed to intimate me vide your letter dtd. 11.8.92 that my case was in correspondence with Railway Board and I would be apprised of the position of the case as soon as final decision is received from Railway Board. So, reference to Railway Board's letter dated 9.7.92 and quotation from this letter is self contradictory and not relevant and acceptable. Because, as stated in your letter dated 11.8.92, ~~xfk~~ if my case has been already referred to Railway Board for decision, for the second time, and the matter was in correspondence with Railway Board, the question of GM's decision for not considering and accepting my case may not arise without receiving/obtaining Railway Board's decision first.

Further more, I beg to state that I already mentioned about the Railway Board's letter dated 9.7.92 in my application dtd. 28.8.92 submitted to GM, to which no heed was given for consideration.

That Sir, since a bias view has been taken in deciding my case, it is apparent that the real sense and spirit of Railway Board's letter dtd. 9.7.92 has been misconstrued. Because, Railway Board have not closed my case rather advised to submit details of the precedent leading cases mentioned and copy submitted by me.

You have only quoted the first position of the Board's letter in your letter dtd. 29.4.93 omitting the relevant portion of advice for submitting~~g~~ details of my case and details of the similarly situated previous cases

mentioned by me. It is apparent from this letter that since you did not recommend my case to be decided according to the old rules 145 RI, as stood before amendment, and in relaxation of the existing ~~amendment~~ amended Rule 225-RI, though it is for the lapse of the Railway Administration that my case has not been decided in the year 1965, only the normal procedure for dealing with the general current cases, (i.e. such cases) governed by the amended rule 225- RI of alteration of date of birth has been pointed out. No specific rule for dealing with my case has been advised. So, your interpretation of the Rly. Board's letter appears to be not correct.

That Sir, the quotation from Railway Bd's letter reveals itself your lapses of (1) not recommending my case for consideration in terms of old rules 146-RI, in relaxation of the existing amended rule 225-RI, (2) not furnishing details and all relevant papers of my case, (3) not submitting the details of the precedent cases mentioned and submitted by me, as asked for, in Railway Board's letter dated 9.7.98.

That Sir, in your letter dated 29.4.93 you have not mentioned any specific ground and specific clauses/sub-clause of the codal rules according to which my case has not been considered and accepted, which is yet to be known from your end. In this connection my application dated 4.12.92 may kindly be referred to.

In the above context, I fervently pray to you once again kindly to intimate on the Rly. Board's final decision of my case which is already in correspondance.

If Railway Board's decision is yet to be obtained, the case kindly be sent to Railway Board for decision with the details of the cases as asked for, in Board's letter dated 9.7.92.

With best regards,

Yours faithfully,

Dated Maligaon,
the 11th June/1993.

Sd/- Abinash Chandra Das.

Sr. SO (Accounts)
PA & CAO's Office/Maligaon
(Declared retired w.e.f. 1.3.93)

ANNEXURE - XXIV.

No. E(REP)II-93/N.F. / (15) / 91 N.Delhi Dated 17.9.1993.

The General Manager (P),
Northeast Frontier Railway,
Guwahati.

Sub : Correction of date of birth of Shri Abinash Ch.
Das, Sr. S.O. (Accounts), N.F. Railway.

A original representation dated nil received from Shri Abinash Chandra Das, Sr. S.O. on the above subject is enclosed. The Ministry of Railways (Railway Board) desire to have your Railway's comments in details thereon immediately. The case have been sponsored by Shri Tarun Gogoi, Minister of State, Food Processing Industries and Shri Bhubaneswar Kalita, MP to the Minister of Railways.

While sending your Railway's reply please indicate whether the employee belongs to SC/ST community.

DA/ As above.

Sd/-
(Sheela)
for Director, Estt. (PRB)
Railway Board.

17.9.93

Attelle to h
Dr.
P. C. V.
Advocates

ANNEXURE - XXV.N. F. RAILWAY

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OFFICE OF THE
GENERAL MANAGER (P)
MALIGAON :: GUWAHATI - 11

No. E/71/10(Q)

Dated 19-11-93.

To
The Executive Director (Estt.),
Railway Board,
Rail Bhawan,
New Delhi.

Sub : Correction of date of birth of Shri
Abinash Ch. Das, Sr. SO Accounts,
N.F. Railway.

Ref : Board's letter No. E(REP)II-93/NF(25)/92
dated 17.9.93.

The representation of Shri Abinash Chandra Das,
Ex. Sr. SO(A) forwarded to GM(P)/Mlg by Railway Board vide
letter under reference dated 17.09.93 is sent to you with
parawise remarks.

(1) Shri Abinash Chandra Das joined as Cg-II on 15th Sept/1955 and when he joined his service his age was 19 years on 1.3.1954 as per Matriculation Certificate. Shri Das applied to Guwahati University for alteration of his date of birth from 19 years to 16 years and the date of his birth was corrected by University authority of Guwahati in original Matriculation Certificate advancing his date of birth by four years.

(2) At the time of entry in service in 1955 his age was 19 years on 1.3.1954 as per his Matriculation

*Attached to the
P. C. D.
B. H. S. C.*

contd...

Certificate. As such there was no mistake or wrong in date of birth on record.

(3) No comments.

(4) As per records, after a long 16 years he made his first appeal for correction of his date of birth i.e. in the year 1981 and the appeal was dealt with and reply was given to him.

(5) & (6) The statement is not correct. The copy of his prayer for correction of date of birth dated 11.05.1963 was not seized arbitrarily for concealing the fact of any lapse from administration side. The above prayer was taken for tracing the old dated file of 1965-66 which could not be traced from FA & CAO's office of this Railway at the remote date.

Regarding para 7 to 10. The detailed facts were stated vide this Railway's letter No. E/71/SN-146/10/Q dated 5.5.92. In this connection Railway Board's letter No. E/(NG)/1/92/ER/7 dtd. 9.7.92 may please be connected (A xerox copy is enclosed).

The case of correction of date of birth of Shri Das has carefully been examined at the level of CPO and then GM and this Railway finds no grounds to alter the recorded date of birth of Shri Das.

Shri Das does not belong to SC or ST community.

DA/2 (two).

Sd/-
(A. K. BRAHMO)
Dy. CPO/IR.
for GENERAL MANAGER (P)/MLG.

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ANNEXURE - XXVI.

To

The Hon'ble Minister for Railways,
 Government of India, (For kind personal notice
 NEW DELHI. of Shri C.K. Jaffar Shariff,
 Railway Minister).

Hon'ble Sir,

Sub : Correction/alteration of recorded date of birth of Sri Abinash Ch. Das, Sr. SO(A/Cs) attached to FA & CAO, N.F. Railway, Maligaon.

Ref : 1) My humble/ appeal dated nil and 21.6.1993 on the above subject submitted to you through the Hon'ble Minister of State for Food processing Industries Sri Tarun Gogoi and Hon'ble M.P. Sri Bhubaneswar Kalita.

2) Director of Establishment (RRB) Railway

Board L/No. E(REP)II-93/N.F. / (15) / 91 dtd. 17.9.1993 addressed to GM (P), N.F. Railway, Guwahati.

Reference to above, with due respect and humble submission, I beg to highlight a few important points of merits of my case which are suppressed by GM(P), N.F. Railway, in his comment given vide L/No. E/71/10(Q) dtd. 22.11.1993, on my application sent by the Director of Establishment (RRB), Railway Board, vide letter mentioned above, resultant to your order, with a view to mislead you and the Railway Board, in considering my case for giving justice.

In GM(P)'s comments, it has been stated that -

(1) that I applied forst for correction of date of birth in the year 1981 after 26 years of correction of date of birth by Gauhati University. It is completely different view and suppression of true fact ;

contd...

Attended to by
 Mr. C. K. Jaffar Shariff
 B. C. S.
 Advocate

(2) that I entered service in 1955 at the age of 19 years on 1.3.1954 and as per Matriculation Certificate. So, there was no mistake or wrong in date of birth on record.

(3) that my personal office copy of application dated 11.5.1965 was not seized arbitrarily for concealing the lapse of Administration. It was taken to trace out the old file of 1965-66 which could not be traced at the remove date etc.

That Sir, contending the above ~~mistake~~ misleading, incomplete and incorrect comments I beg to furnish documentary evidence against them to prove that these are not true

That Sir, G.M. (P), N.F. Railway had already confirmed to the Railway Board, the Executive Director- E(NG) vide L/No. E/71/1098 dtd. 5.5.1992 (para - 6) (copy enclosed) enclosing the copy of my representation dtd. 11.5.65 and F.A. & CAO's L/No. PNO/AD/70/348 dtd. 16.10.89 given to me that I represented for alteration of date of birth on 11.5.65 within one year from the date of correction of the date of birth by the Gauhati University and it eas well in advance of the issue of Boards Circular No. E(NG)-11-70/BR/1 dtd. 4.8.72, in which it was decided by Board that such of the employees who were already on employment on 3.12.1971 would be given an opportunity to represent against their recorded date of birth upto 31.7.1973 and their cases should be examined in terms of rules as they stood before the amendment of the rule 145-RI made by Board's letter No. E(NG) II-70BR/1 dtd. 3.12.71 could be considered but the same was not done during the relevant time.

contd...

Secondly, F.A. & CAO in his letter No. PNO/AD/70/348 Pt. IV dtd. 16.10.89 (copy already enclosed) has specifically intimated me by refusing to return my personal office copy of application dtd. 11.5.65 which was taken from me that my personal copy cannot be returned to me because the said application bears the forwarding file No. PNO/PF/ESTT/Policy/ 65-66 dtd. 11.5.65 marked as O/C which is purely an office record.

Thirdly, F.A. & CAO, while first forwarded my case to CPO/Maligaon vide his L/No. PNO/AD/70/348 ~~dtm~~ Pt.V dtd. 15/16/1.1991, it was stated in para- 5 as under :-

"Efforts were made to trace the relevant file No. PNO/PF/Estt/Policy (65-66) of P.F. section but the same could not be located at such remote date. The file might have been destroyed being very old."

Fourthly, F.A. & CAO in his comments on my application submitted to you which was sent by Railway Board to GM(P), N.F. Railway and G.M.(P), sent it to F.A. & CAO, it was interalia, stated against para-5 vide his L/No. PNO/AD/70/348 Pt. IV. Dtd. 6.10.93 as under (copy enclosed).

"The statement is not correct. The copy of his prayer for correction dated 11.5.65 is enclosed as Annexure-'C' for proving the fact it was not seized arbitrarily concealing the fact of any lapse from Administration's side. The above prayer bore the number of dealing office file bearing the mark of O/C and it was taken for tracing the file of 1965-66 which could not be traced from Provident Fund Section of this office at the remote date."

With the above documentary proof, I beg to submit before your honour to consider and decide -

(1) Whether I applied in 1965 or not, (2) Whether my case was dealt with and decided in the year 1965, (3) Whether any reply to my prayer dtd. 11.5.65 has been given to me upto now, (4) Whether my personal office copy of application dated 11.5.65 was taken by F.A. & CAO or not, (5) Whether my personal office copy dated 15.11.65 has been returned to me as yet, (6) Whether it is still in the custody of F.A. & CAO or not, (7) Whether my case has been considered on the basis of the copy of application dated 11.5.65 taken from me or not.

That Sir, the above are the administration lapses to decline me to give legitimate justice. Because failure to trace the relevant file No. PNO/PF/Estt/Policy/65-66 or destroying it by Railway Administration may not be a valid ground and demerit for not considering my case.

(2) That Sir, the corrected copy of my Matriculation Certificate, Gauhati University's intimation letter No. Cer/Ca/64/852 dtd. 16.6.64 and Gauhati University's reply to F.A. & CAO confirming correction of my date of birth vide L/No. GU/Cer/Misc./90-91/288 dated 14.8.90 are self explanatory to prove whether a wrong date of birth had been recorded in my service record or not. (The copies of the above letter are already enclosed).

Moreover, it has been confirmed by F.A. & CAO, in his letter No. PNO/AD/70/348 Pt-V dated 15/16.1.1991 (Para-16) addressed to CPO as under :-

contd...

"In examining the merit of the above judgement, this office wrote a secret letter to the Registrar, Gauhati University and the University authority in reply has confirmed the correction of his age as 15 years on 1.3.1954."

(3) It has been admitted in G.M.(P)'s letter No. E/71/10(Q) dated 22.11.93 (para-5) and F.A. & CAO's L/No. PNO/AD/70/348 pt.IV dated 6.10.93 (para-5) (copy enclosed) that my personal office copy of application dated 11.5.65 was taken from me to trace out the old file No. PNO/PF/Estt/P Policy/65-66 which could not be traced at the remote date. Since it has not been returned to me as yet and it has been refused to return to me, is it not an arbitrary action on the part of this Railway Administration.

That Sir, Rule 145(3)(I)-RI ibid Rule 225(4)(I) RI as mentioned in GM(P)'s letter No. E/71/10/8 dated 5.5.1992 (para-3) is applicable only in case of those who state falsely their date of birth. Since I did not state my date of birth falsely but according to Matriculation Certificate, the confirmatory documentary evidence, this rule is not applicable in my case.

That Sir, precedent similar cases of Sri Sibajit Kr. Mukherjee, IOW/II under CPN(W)/APRJ, whose case has been allowed by the then GM of this Railway, as intimated under Chief Engineer (P)'s L/No. 213-R/82(R) dated 15.12.86 (copy already submitted), treating his under age period of service prior to attaining 18 years of age as not countable for pension, the case of Sri Anil Kr. Chakraborty, OS,

CSTE's office and Sri K.P. Sengupta, Tally Clerk was allowed by the Hon'ble CAT of Gauhati (copy of judgement has already been submitted) although they involve underage on the date of appointment on the basis of revised date of birth. My case is similar to them in this respect that the above three cases also involved underage at the time of appointment on the basis of revised date of birth. (2) Their cases were allowed on the basis of the Matriculation Certificate. Nowhere the authenticity of University's Matriculation Certificate has been destroyed. (3) Their cases have been decided in terms of old Rule 145-RI as stood before amendment even after the amendment of the rule as Rule 225-RI.

That Sir, GM(P) has not given any remarks and details of the above cases, as asked for, in Railway Board's letter No. E(NG)1/92/BR/7 dtd. 9.7.1992 (copy already enclosed).

That Sir, G.M.(P) is silent to give his comments against my allegation that he has hoodwinked me by his letter No. E/71/10(Q) dtd. 11.8.92 which he intimated me that my case was in correspondence with Railway Board and I would be apprised of the position as soon as Board's final decision would be received.

That Sir, there is a specific provision and rule for treating underage period of service below 18 years of age as non-qualifying service for pensionary benefits in the pension rule, 1950 (para- 416).

That Sir, there is no specific Rule or provision

in the codal Rule 145-RI ibid 225-RI dealing with recording of date of birth add alteration of date of birth that correction/alteration of date of birth cannot be allowed in case of involvement of underage on the date of appointment according to revised date of birth.

That Sir, as seen the above instance the Hon'ble G.M. of this Railway also was misguided by furnishing confusing and distorted information of my case as a result of which he refused to consider my case.

That Sir, I beg to draw your kind attention to a similar case with that of mine, of one Sri P.K. Mohanan, Confdl. Steno attached to CSC/REF/N.F. Railway, Maligaon which has been recently allowed by Railway Board vide L/No. E(NG)1-91/BR/5 dated 4.12.91 (copy already enclosed) although his date of birth was corrected by the competent authority of State Education Board after 14 years of entering Railway service and he applied for correction of his recorded date of birth after 15 years of service. His case has already been cited to Railway Board for perusal in G.M(P)'s letter No. E/71/10(Q) dtd. 5.5.92 (last para).

With the above humble submission of documentary proof. I pray to your honour to exert your good offices to give me justice by the Railway Board and allow correction/alteration of my date of birth as 1.3.1939 in place of 1.3.1945 and thereby relieve me from acquire mental agony and financial hardship, from which I have neen suffering

contd....

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93.

since last March '93 as I have not yet taken any retirement benefits with the hope of getting justice from your end.

With best regards,

Enclo :-

Maligaon,
Dated the 17th Dec'93.

Yours faithfully,

Sd/- Abinash Chandra Das
Sr. SO (Accounts) attached to
FA & CAO, N.F. Railway,
Maligaon, Guwahati - 781 011.

Copy to the Executive Director (RRB), Railway Board, New Delhi, for information and early favorable action with reference to his letter dtd. 17.9.93 cited under reference. He is fervently requested kindly to consider my case in terms of Rule 145(3)(III)-RI, at the instance of the precedent similar cases already cited and on merit of my corrected Matriculation Certificate.

Yours faithfully,

Sd/- Abinash Chandra Das
Sr. SO (Accounts)
Attached to FA & CAO,
N.F. Railway, Maligaon.

Address :-

Abinash Ch. Das,
QRS No. 300/A,
Central Gotanagar,
Maligaon,
P.O. Guwahati - 781 011.
Dist. Kamrup (Assam).

ANNEXURE - XXVII.

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

NO. E(REP) II-93/NF(15)/91 New Delhi dated 6.7.94.

The General Manager (P),
Northeast Frontier Railway,
Guwahati.

Sub : Correction of date of birth of Shri
Abinash Chandra Das, Sr. SO (Accounts)
N.F. Railway.

Ref : Your Railway letter No. E/71/10(G) dated
22.11.1993.

In a fresh representation addressed to Minister
for Railways submitted by Shri Abinash Ch. Das, precedents
have been quoted wherein the cases of S/Shri Sibajit Kumar
Mukherjee, IOW/II under DRM(W)/APDJ, N.F. Railway and P.K.
Mohanan, Confidential Steno to CSC/RPF/N.F. Railway are said
to have been considered for age relaxation.

The detailed position of the cases of S/Shri
Mukherjee and Mohanan alongwith requisite documents may
accordingly be furnished to this office urgently as the
position is required to be put up to M.R. at the earliest.

D.A. : As above.

Sd/-
(R.K. MEENA)

Deputy Director, Estt(Rep)-II
Railway Board.

After read to
from
B. C. A.
Advocate

ANNEXURE - XXVIII.

N. F. RAILWAY

OFFICE OF THE
GENERAL MANAGER (P)
MALIGAON : GUWAHATI.

NO. E/71/10(Q)

Dated : 29/11/94
2-12

To
 The Director, Estt (REP) II,
 Railway Board,
 Raily Bhawan,
 New Delhi.

Sub : Correction of date of birth of Shri
 Abinash Chandra Das, Sr. SO(Accounts),
 N.F. Railway.

Ref : Board's letter No. E(REP) II-93/NF(15)/91
 dated 6.7.1994.

With reference to above, the detailed position of the case of S/Shri Sibajit Kr. Mukherjee, IOW/II under DRM(W)/N.F. Rly/APDJ and P.K. Mohanan, Confld. Steno attached to CSC/RPF/N.F. Rly. Maligaon is furnished hereunder enclosing the relevant documents as asked for consideration.

Shri Mukherjee entered Railway service on 16.6.1949 declaring his date of birth as 1.6.1928 at the age of 21 years and 15 days (Xerox copy of S/Book is enclosed as Annexure-'I'). He had passed final School Examination of Calcutta University in the year 1953 wherein his date of birth was recorded as 1.3.1933 reducing his his age by 4 years 9 months. His representation for correction of date of birth according to his School Final Examination Certificate was not allowed and as a result he was retired from Railway Service w.e.f. 31.5.86 (AN)i.e, w.e.f. 1.6.1986. He was paid the retirement benefits

contd...

*Address to W
H. C. S.
R. C. S.
Advocate*

also. He then immediately represented his case to GM and the then GM has examined his case de novo in GM's observation note on the PP/20 and 21 of File No. 213-R/82(E) (Xerox copies and type copies thereof are enclosed as Annexure 'A' & 'B') and approved correction of his date of birth as 1.3.1933 in place of 1.6.1928 subject to his earlier underage period of service before attaining 18 years of age not being counted for pension. He was allowed to resume duty. (Xerox copy of the Final order No. 213-R/82(E) dated 15.12.1986 issued by the Chief Engineer (P) and DRM(P)/APDJ's order No. E/283/1(EN)-AP/Pt.II dtd. 8.1.87 are enclosed as Annexure '5' & '6' .

Shri P.K. Mohanan, Confdl. Steno attached to CSC/RPF/N.F. Rly./ Maligaon, entered Rly + Service on 26.5.75 at the age of 20 years 8 months according to his Certificate dated of birth 26.9.1946. After about 15 years of service his date of birth was corrected as 19.11.48 by Commissioner of Government Examination, Trivandrum, Kerala on 8.8.89 (xerox copies of proceedings dated 8.8.89 and school certificate are enclosed as Annexure - '6' & '7'). Sri Mohanan submitted an appeal dtd. 7.5.90 (copy enclosed as Annexure '9' to correct his recorded date of birth as 19.11.48 in place of 26.9.46 already recorded in his service records. Since his case could not be decided at this end in terms of Bd's L/No. E(NG)I-85/BR/2 dated 7.5.85, it was referred to Rly. Board vide this office letter No. C/71/10(Q) dtd. 28.5.90 and 18.7.91 (Xerox copy enclosed as Annexure - '10 & '11') and Rly. Board communicated approval to the alteration of his

contd...

date of birth from 26.9.46 ~~fixx~~ to 19.11.48 vide Letter No. E(NG) I-91/BR/5 dated 4.12.92.

In the above two cases, the existing Rules 225 R-I are relaxed. In the case of Shri Mukherjee, the underage period of 1 year 8 months 15 days till his attaining of 18 years of age has been regularised as non-qualifying service for pension.

Sri Abinash Ch. Das, Sr. SO(A/cs) attached to F.A. & CAO of the Railway entered service on 15.9.1955 at the age of 20 years 6 months 14 days according to age recorded in his Matriculation Certificate as 19 years as on 1.3.1954 (date of birth being 1.3.1935). His original Matriculation Certificate has been corrected by Gauhati University on a later date in the year 1964 correcting his age as 15 years on 1.3.1954 in place of 19 years (date of birth as 1.3.1939) (Xerox copy of Matriculation Certificate, Gauhati University's Letter No. Cer/Ca/64/852 dtd. 16.6.64 and GU/Cer/Misc/90-91/200 dtd. 14.8.90 are enclosed as Annexure - 11, 12 & 13) reducing his age by 4 years. He represented his case within one year of his correcting of date of birth requesting his FA & CAO to correct his date of birth in S/records as 1.3.1939 vide his application dated 11.5.1965 (xerox copy enclosed as Annexure - 14) before the amendment of relevant Rule 145 R-I vide Rly. Board's L/No. L(NG)II-70-BR/1 dtd. 3.12.71 (correction slip No. 303 RI) and before the out off date 31.7.1973 for representation for correction of date of birth as provided in Rly. Bd's L/No. L(NG)11-70 BR/1 dated 4.8.1972. His case would have been decided in the year 1965 in terms

of relevant Rule 145 RI but it was not done done so at that time. According to the corrected date of birth Shri Abinash Das would compute underage of 1 year 5 months 14 days on his date of appointment on 15.9.1965 where it should have been 18 years.

Shri Das represented his case to GM but was regretted vide L/No. L(NG)MW/LU/55 dated 17.12.92 and L/No. L/71/10(Q) dtd. 29.4.1993 (Xerox copy enclosed as Annexure- 15 and 16). In this connection as extract of FA & CAO's verbatim observations, CPO's views and GM's decision is enclosed for ready reference (Xerox copies of PP Notes enclosed). He has retired from service on 20.2.1993 (AN) i.e. w.e.f. 1.3.1993, According to his original date of birth recorded in service records.

... In view of above facts Rly. Board requested to re-examine the case and to communicate decision as early.

Enclo :- 1g 19 (Nineteen).

Sd/-
(N.R. Chakraborty)
DY. CHIEF PERSONNEL OFFICER
for GENERAL MANAGER (P)/MLG.

ANNEXURE - XXIX.

GOVERNMENT OF INDIA
 MINISTRY OF RAILWAYS
 (Railway Board)

NO. E(REP)II-93/NG/15/91 Raily Vawan, New Delhi, the 26.5.95.

The General Manager (P),
 North East Frontier Railway,
 Guwahati.

Sub : Correction of date of birth of Sh. Abinash
 Chandra Das, Sr.SO(Accoubts)/NF Railway.

Ref : Your letter No. E/71/10(Q) dtd. 2.12.94.

The details regarding alteration of date of birth
 of S/Sh. Sibajit Kr. Mukherjee, IOW/II and P.K. Mohanan, Confdl.
 Steno in connection with above cited case have been received
 with your above quoted reference.

The case has been examined by the Board and it is
 seen that General Manager has been delegated powers to alter
 the date of birth in the case of Gr.'C' and 'D' railways
 servants in the following three conditions :-

- (i) There in his opinion, it had been falsely stated
 by the railway servant to obtain an advantage
 otherwise inadmissible, provided that such alter-
 ation shall not result in the railway servant
 being retained in service longer than if the
 alteration had not been made, or
- (ii) there, in the case of illiterate staff, the General
 Manager is satisfied that a clerical error has
 occurred, or
- (iii) there a satisfactory explanation (which should
 not be entertained after completion of the

Attested to
 true copy
 A.C. ✓
 J. D. C. C. D.

contd...

probation ~~of the~~ 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. (Rule 225

In the case of Shri Sibajit Mukherjee, it is however, seen that as a result of GM/NF Railway's decision to amend his date of birth, he was rendered underaged at the time of initial appointment. This was not in accordance with the spirit of rules.

Your specific comments/remarks in this ~~matter~~ context may be furnished by return as the position is required to be put up to Board urgently.

Sd/-

(R.K. MEENA)

Dy. Director, East.(REF)-II,
Railway Board,
New Delhi.

ANNEXURE - XXX.

N.F. RAILWAY

117

Office of the
General Manager (P),
N.F. Railway, Maligaon.

NO. E/71/10(Q)

Dated, Maligaon, 27.7.95

To
The Dy. Director, Eatt (REP) II,
Railway Board,
Rail Bhawan,
New Delhi.

Sub : Correction of date of birth of Sri Abinash
Chandra Das, Sr. SO (Accounts), N.F. Railway,
Maligaon.

Ref : Your letter No. E(REP) II-93/NF/15/91 dated
26.5.1995.

Reference to show specific comment/remarks are
furnished hereunder, as asked for, in connection with the
above case.

The justification for approving alteration in
date of birth of Sri Sibajit Kr. Mukherjee, IOW/II of this
Railway has been explained in PP 20 and PP 21 in the concerned
file No. 213-R/82 (E) by the General Manager (copy already
enclosed with this office letter of even No. dated 2.12.1994)
which is self-explanatory and may kindly be looked into.

The spirit of relevant rules of alteration of
date of birth has not been infringed by approving alteration
in date of birth of Sri Mukherjee by the General Manager.

This case was approved by G.M. on the merit and
authenticity of the case in terms of relevant rules 145(3)III-
RI. The amended rule 225-RI is not applicable in his case.

*After to d
true
R. C. V.
Advocate*

contd...

since Sri Mukherjee represented his case before the amendment of Rule 145-RI as rule 225 RI and before the cut off date 31.7.1973 for representation for alteration in date of birth as provided in RB's letter No. E(NG) II-70 BR/1 dated 3.12.71 and 4.8.72 respectively. His case was processed earlier but delayed for decision.

In this context, attention is invited to Railway Board's clarification on Clause (III) of sub-para (5) of the relevant rule 145 RI as provided in RB's letter dated 3.12.71, wherein it is clarified "it is open to the competent authority to effect an alteration. No time limit has been given for alteration."

Sri Mukherjee was already in service w.e.f. the year 1949. So, his length of service was limited to the permissible period by regularising his underage period of service, prior to attaining of 13 years of age, as infructuous for pensionary benefit in terms of extent rules and provisions of qualifying service of pension rules. Thus the full interest of the Railway Administration has been protected as per extent rules.

In reply to remarks as laid down in the last but one para, attention is invited to the Statutory relevant rules of alteration in date of birth. The rule is not specific and clear, rather completely silent on the point whether alteration cannot be caused in case it renders under aged on the date of appointment according to the revised date of birth.

11 (b)

The statutory rules of recording date of birth on new appointment and alteration in date of birth, after appointment are basically different from each other, because the natural meaning of alteration/correction of date of birth denotes change in original position which may be either higher or lower than the original date of birth subject to regularisation of it as per extent rules on the merit of the case.

Accordingly when the original date of birth of Sri Mukherjee, was altered by the G.M. rendering him underaged the underage period was regularised as infructuous. After this, virtually, the condition of the case of Shri Mukherjee becomes on par with that of Shri P.K. Mohanan whose case was approved by the Rly. Board under the same natural justice without discrimination, Shri Mukherjee was not given any extra benefit than Shri Mohanan. In both the cases, the authenticity of the competent authority to record and correct date of birth has not been destroyed. In both the cases service period was extended according to the revised date of birth. So, relevant rules were not violated in the case of Shri Mukherjee.

Further, it will be worth mentioning here the cases of Shri K.P. Sengupta and Shri Anil Kr. Chakraborty of this Mailway as referred to in Jt. Director, Estt.(N) II, Railway Board's letter No. E(BG) 1/92/BR/7 dated 9.7.1992, in which cases alteration in date of birth was allowed by the Hon'ble CAT/Guwahati. In those two cases also, they were rendered underaged on the date of initial appointment according

to amended date of birth. From these cases, it is seen that decision was taken by the Hon'ble CAT/Guwahati in terms of relevant rules 145(3)(iii) RI and in terms of RB's letter dated 4.8.72 even after the amendment of the rule 145-RI. The authenticity of the Matriculation Certificate issued by the competent authority viz. University has not been destroyed in these cases. As the orders and decisions of the Hon'ble CAT were complied to and carried out by this railway, so the decision of the Hon'ble CAT are equally applicable and legally binding in the similarly situated cases of Shri Mukherjee and Shri A.C. Das, Sr. SO (Accounts), as well.

Shri Mukherjee entered Rly Service at proper age. The clause (I) and (II) of the sub rule (3) are not applicable in his case. Because, the conditions as laid down in these rules do not cover the circumstances under which Shri Mukherjee entered Rly. Service and the wrong date of birth came to be entered in S/Book.

In this context, attention is invited to the clarifications given in the RB's L/No. E(NG) II-70 dated 3.12.71. Wherein, on the procedure of recording date of birth on entering railway service has been clarified. "the rule is not specific on the point whether the mere declaration given by the person should be accepted or, it should be accepted on production of confirmatory documentary evidence. The rule is also silent as to what confirmatory documentary evidence should be accepted for this purpose." So, if mere declaration should have been accepted, Shri Mukherjee and Shri A.C. Das could have declared their date of birth to cover the minimum services age, avoiding the risk of becoming

underaged at the time of entering Rly. Service according to amended date of birth.

Normally, such cases of alteration ~~of~~ in date of birth are very rare. This is the only genuine case that the G.M. was certified beyond reasonable doubt to effect alteration with strict application of relevant rules. So, it is not obvious from examination of the relevant rules as to what specific points the rule has been infringed.

Contrary to the provisions, as laid down in rule 145(1) RI, it is clear that the original date of birth declared by ~~wrong~~ Shri Mukherjee, differed for public purposes, as soon as, proved wrong according to school Final Examination Certificate, the authenticated documentary evidence issued by the competent authority. So, it lost its entity while the new date of birth was recognised for public purposes. Naturally, he should not posses two different date of birth, viz. one for service purpose and the other for all public purposes as an ordinary citizen of India.

Under the circumstances, since the fundamental spirit of the rules of alteration in date of birth is to establish and record the actual and correct date of birth supported by the confirmatory documentary evidence, the correct date of birth of Shri Mukherjee was approved by the M.G. and was recorded in his S/Book in terms of para(4) of rule 225 of IREC, Vol. 1(1985 edition).

The case of Shri A.C. Das is a genuine one and bears more merits than the cases of Shri Mukherjee and Shri

P.K. Mohanan. Because he declared his original date of birth according to the authenticated documentary evidence and preferred claim of its alteration on the basis of the same document issued and corrected by the same competent authority. Similar to the cases of Shri S.K. Mukherjee, Shri P.K. Mohanan, Shri K.P. Sengupta and Shri Anil Kr. Chakraborty, the authenticity of the confirmatory documentary evidence issued by the Gauhati University must not be destroyed in the case of Shri Das as well. He represented his case at proper time and before the amendment of the relevant Rule 145-RI as rule 225-RI and before ~~fix~~ the cut off date allowed for representation vide RB's L/No. E(NG) II-70 BR/1 dated 3.12.71 and 4.8.72 respectively. He did not declare his date of birth falsely, at any stage. Wherever, the staff concerned is not responsible for not processing and non-including of his case in relevant ~~fix~~ time, which should have been decided long before the amendment of the rules. His case is of special nature that originated in abnormal circumstances. So, it deserves special consideration.

With the above specific comment/ remarks, the Railway Boards are requested to treat the case of Shri A.C. Das as a special one and decide it at the earliest in the light of the cases of Shri S.K. Mukherjee and Shri P.K. Mohanan, and communicate the decision urgently since more than 28 months have already elapsed awaiting decision of the Board.

Sd/- 27/7
 (C. SAIKIA)
 Dy. Chief Personnel Officer (NG)
 for General Manager (P)
 N.F. Railway, Guwahati.

ANNEXURE - XXXI.

NORTHEAST FRONTIER RAILWAYS

C. Saikia
Cy. CPO/NG

OFFICE OF THE
GENERAL MANAGER (P),
MALIGAON :: GUWAHATI - 11.

DO NO. E/71/10(Q)

Dated : 18.10.96

My dear Meena,

Sub : Correction of date of birth of Shri Abinash
Ch. Das, Sr. SO (Accounts), N.F. Railway,
Maligaon.

Ref : 1) Your letter No. E(REP) II-93/NF/15/91
dated 6.7.94 and 26.5.95.
2) This office reply letter No. E/71/10(Q)
dated 2.12.94, 27.7.95 followed by reminder
dated 11.9.95, 6.12.95, 27.6.96 and D.O.
dated 19/20.2.96.

Reference to above, I would like to bring it to your
personal notice that the case of correction of recorded date
of birth of Shri A.C. Das, Sr. SO (Accounts) of this Railway
is effecting abnormal delay to decide and dispose of at
Railway Board's level. Since Shri Das will superannuate from
service w.e.f. 1.3.97 according to his revised date of
birth and these are only 4 months left, it will be an glaring
denial of both administrative and natural justice to him, if
his case is not decided during this period.

As already mentioned in this office reply, letters,
due to administrative lapses the case was not processed and
decided in the year 1965 in terms of relevant statutory rules
145(3)(iii) RI long before the amendment of the rule in the
year 1971 which was relaxed upto 31.7.73.

The case was not initially processed and it was

*Heated to
true
B. C. D.
for the sake of*

contd...

formerly turn down without giving due consideration and taking discriminatory view to its merits, although the staff concerned is not responsible, in any way, for not deciding and disposing of the case. But as mentioned in this office reply letter and in the judgements of the Hon'ble CAT, Guwahati many similarly situated cases of alteration in date of birth have already been approved by this railway, before and after the amendment of the relevant Rule 145-RI as rule 225 RI and even after the submission of the above this case deserves special consideration since it applies official complicity.

Since the staff concerned has been persistently appealing this office for early favourable decision of the case would be pleased if you kindly look into the case personally for special consideration treating it as a special case and communicate Board's decision at an early date without further delay.

With best wishes,

Yours sincerely,

Shri R.K. MEENA,
Dy. Director, Estt.(REF)-II
Railway Board,
New Delhi.

Sd/-
18/10
(C. SAIKIA)

ANNEXURE - XXXII.FORM - L

BEFORE THE ESTATE OFFICER :: N.F. RLY :: MALIGAON.

SUMMONS

Acting under the provision of Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

EVICTION CASE NO. EO/MLG/Qr./39/94Sr.DEN/N.F. Rly,
Maligaon. ... Petitioner.

- Vs -

Sri Abinash Ch. Das ... Opp. Party.

Plot No. Sr.SO/FA & CAO/MLG.

Qr. No. 300/A Type II

at Central Gotanagar, Maligaon.

To

- 1) Sri Abinash Ch. Das
Sr. SO/F.A. & CAO/ MLG
Qr. No. 300/A Type II
at Central Gotanagar, Maligaon.

2) Sr.LEN/N.F. Rly./Maligaon.

The date of hearing of the aforesaid case has been filed on 23.8.95 at 11.30 hrs. You are hereby called upon to appear before the undersigned on the said date either in person or through any of your duly authorised representative to produce documentary and all evidences in support of your claim on the plot/Qrs. in question.

Take notice that in default, the case will be heard and determined ex parte.

Given under my hand and seal on this _____ day of _____

Sd/- Illegible
Estate Officer, N.F. Rly.
Maligaon.

Attested to
for
B. C. D.
Also
Attest

126
ANNEXURE - XXXIII.

Date : 25/10/95.

To
 The General Manager (P),
 N.F. Railway, Maligaon.

Respected Sir,

Sub : Prayer for intimation to the Hon'ble Estate Officer, N.F. Rly. about the long pending case of correction of date of birth of Shri Abinash Ch. Das, Sr. SO (Accounts) at present awaiting Rly. Board's decision.

Ref : 1) Railway Board's letter letter No. E(REP)II-93/N.F./15/91 dtd. 26.5.95 addressed to you.
 2) Your reply L/No. E/71/10(Q) dtd. 27.7.95 and reminder thereof dtd. 11.9.95.
 3) The Estate Officer, N.F. Rly. Maligaon's Eviction Notice No. EO/MLG/QR/94 dtd. 19.7.95.

Reference to above, with due respect, I beg to state that since a case of correction of date of birth is under process and active consideration at Rly. Board's level, I am in occupation of Rly. Qr. No. 300/A, Type-II at Central Gotanagar, Mlg. awaiting Board's decision.

That Sir, I am sorry to inform you that the Hon'ble Estate Officer has served me with the above eviction notice (Xerox copy enclosed) to vacate the Qrs.

In thos critical situation, I have no alternative than to pray to your honour to intimate the Hon'ble Estate Officer about the pending case for his kind appraisal and consideration.

With best regards,

Yours faithfully,

Enclo : One.

Sd/-

(Abinash Chandra Das)
 Sr. SO (Accounts) FA & CAO's
 Office.
 Qr. No. 300/A, Central Gotanagar,
 Maligaon.

Copy to the Hon'ble Estate Officer, N.F. Railway, Maligaon for his kind information and necessary action.

(Abinash Chandra Das)

*Abinash Chandra Das
 Advocate
 B.C. D.*

111.

ANNEXURE - XXXIV.

N. F. RAILWAY

Office of the
GENERAL MANAGER (P),
GAUHATI- 11.

NO. E/71/10(Q)

Dated 22.11.1995.

To
The Estate Officer,
N.F. Railway,
Maligaon.

Sub : In the matter of pending case of correction of date of birth of Sri Abinash Ch. Das, Sr. SO (Accounts).

Ref : 1) Your Eviction Case notice No. EO/MLG/Qr/39 dated 19.7.95.
2) Sri A.C. Das representation dtd. 25.10.95.

Reference # to above, it is confirmed that a case of correction of date of birth of Sri Abinash Ch. Das, Sr.SO (Accounts) is lying pending and under consideration of the Railway Board.

Sd/- Illegible.
22/11/95
for GENERAL MANAGER (P) / MLG.

After read to
and
B. C. K.
Advocate

128
ANNEXURE - XXXV.N. F. RAILWAY

Office of the
GENERAL MANAGER (P),
N.F. Railway, Manigaon.

NO. E/71/10(Q)

Dated : 2.5.96.

TO
Shri Abinash Chandra Das,
Sr. SO(Accounts),
Attached to FA & CAO,
N.F. Rly./Maligaon.

Qrs. No. 300/A, Central Gotanagar,
Maligaon, Guwahati - 11.

Sub : Correction of date of birth of Shri Abinash
Chandra Das, Sr.SO (Accounts).

Ref : Your application dtd. 20.2.1996.

Reference to above, it is intimated that your case
of correction of date of birth is under process and at present
under consideration of the Railway Board. You will be apprised
of the decision as soon as it is received from the Railway
Board.

Sd/-

(K. Sreekumaran)
Asstt. Personnel Officer (Engg),
for General Manager (P)
N.F. Railway, Maligaon.

After ¹ to ²
true
P. C. D.
Advocate

ANNEXURE - XXXVI.

OFFICE OF THE
FA & Chief Accounts Officer,
N.F. Railway/Maligaon.

NO. PNO/AD/70/348 Pt-V

Dated : 05-05-97.

Shri Abinash Chandra Das,
Ex. Sr. SO (A)
Qr. No. 300/A, Central Gotanagar,
Guwahati - 11.

Sub : Correction of date of birth.

G.M/P/MLG vide his letter No. E/71/10(Q) dated 20.04.97, informed that your appeal regarding correction of date of birth has been examined by Board and the same has not been agreed to as prayed for.

This is for your information.

Sd/- Illegible.
5/5/97
for FA & CAO Accounts Officer/Admn.
N.F. Railway/Maligaon.

Attested to be
true
B. C. D.
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 127 of 1997.

Date of Decision : This the 10th day of December, 1999.

HON'BLE MR. JUSTICE D.N. BARUAH, VICE-CHAIRMAN.

Shri Abinash Chandra Das,
Son of Late Purna Chandra Das,
Qr. No. 300/A by Central Gotanagar,
Maligaon, Guwahati - 781 001.

.... Applicant.

By Advocate Mr. S. Sarma.

- Versus -

1. Union of India,
represented by Secretary,
Govt. of India,
Ministry of Railway,
Rail Bhawan,
New Delhi.
2. Railway Board,
represented by the Director,
Estt (REP) II,
Railway Bhawan,
New Delhi.
3. General Manager (P),
N.F. Railway,
Maligaon, Guwahati - 781 011.
4. The Chief Personal Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.
5. The Dy. Chief Personal Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.
6. The F.A. & Chief Accounts Officer,
N.F. Railway, Maligaon,
Guwahati - 781 011.

.... Respondents.

By Advocate Mr. B.K. Sharma, Railway Standing Counsel.

Attested to
New C. D. 7/2
A. Adv. C. D. 7/2

contd...

O R D E RBARUAH J. (V.C.)

The applicant has approached this Tribunal for correction of his date of birth. At the time of entering into service he showed his date of birth 1.3.1935 as per Matriculation Certificate. But the said Matriculation Certificate was corrected by the University of Gauhati showing his date of birth as 1.3.1939. Immediately after correction the applicant made a request to the authority for correction of his date of birth. As this was not done he submitted a representation in the year 1965 itself. The said representation was not disposed of. Ultimately Railway Board rejected the claim of the applicant. Hence the present application.

2. In due course the respondents have entered appearance and filed written statement.

3. Heard Mr. S. Sarma, learned counsel appearing on behalf of the applicant and Mr. B.K. Sharma, learned Railway Standing Counsel.

4. The contention of the applicant is that his correct date of birth is 1.3.1939 and not 1.3.1935. Mr. Sarma submits that as per the Railway rule he was entitled to get the benefit of correct date of birth. However, Mr. Sharma disputes that he is not entitled to get the said benefit. If the date of birth 1.3.1939 is accepted then

contd...

he was under aged at the time of entry therefore he is not entitled to get the benefit of both sides. Mr. B.K. Sharma further submits that the representation was not submitted in the year 1965. To counter this submission Mr. Sharma submits that similarly situated persons had been given such benefits but denied the same to the applicant.

5. On hearing the counsel for the parties it is felt that the matter requires further examination by the Railway authorities. Therefore the application is disposed of with direction to the respondents to consider the case of the applicant following the relevant rules as well as the decision of the Apex Court. The authority shall also consider the fact whether persons similarly situated have been given the benefit of subsequent correction of the date of birth. This must be done as early as possible at any rate within a period of four months from the date of receipt of this order by passing a reasoned order and shall communicate the same to the applicant.

6. With the above direction the application is disposed of.

7. Considering the facts and circumstances of the case, I, however, make no order as to costs.

Sd/- D.N. BARUAH.

VICE-CHAIRMAN

Attested to be
true
R. C. K
Advocate

ANNEXURE - XXXVIII.

Office of the
F.A. & Chief A/Cs. Officer,
N.F. Railway/ Maligaon.

NO. PNO/AD/CAT/ACD/97

Dated : 25.05.2000
07

To

Shri Abinash Ch. Das,
Ex. Sr. SO (A/Cs),
Rly. Qtr. No. 300/A,
Central Gotanagar, MLG.
Guwahati - 11.

Sub : Prayer relating to compliance with Hon'ble CAT/Guwahati's judgement dated 10.12.1999 in the case of O.A. No. 127/97 between Shri Abinash Chandra Das, Ex. Sr. S.O.(Accounts) Vs. U.O.I. (Ministry of Rlys.) and Others, for correction of date of birth from 1.3.1935 to 1.3.1939.

Ref : Judgement of CAT/GHY in O.A. No. 127 of 1997 in the case of Shri Abinash Chandra Das, son of Late Puran Chandra Das, Vs. U.O.I. & Others.

The judgement of the CAT in the case of Shri Abinash Chandra Das referred to above has been examined once again based on relevant rules as well as decision of the Apex Court. The observations are appended below :-

The competent authority has pursued CAT/GHY above order dated 10.12.99, where Hon'ble Tribunal directed the Railway authority to consider the case of the applicant following the relevant rules as well as the decision of the Apex Court and also consider the fact whether persons similarly situated have been given the benefit of subsequent correction of the date of birth.

All the records available in connection with this

contd...

Attestd of P. V.
Mr. C. D.
Advocate

case along with Railway Board's instructions relevant to the case and Rule 145 RI has been taken into consideration.

On the records it appears that Shri A.C. Das was appointed as clerk Gr. II under RAO/PNO vide RAO/PNO's office order No. PNO/AD/55/2092/64 dated 26.09.55. At the time of appointment the date of birth of Shri A.C. Das was recorded as First March of Nineteen thirty five (01.03.1935) under clear signature of Shri A.C. Das based on his Matriculation Certificate submitted by him, wherein his age was shown as 19 years only as on 1.3.1954, this had been done as per rule 145 RI.

On the records it is seen that Shri Das made his 1st representation in the year 1981 i.e. after 26 years of his service and that representation was disposed of in terms of Rly. Board's letter No. E(NG) II 70/BR/1 dtd. 3.12.71 and 4.8.72 and Shri Das was replied vide FA & CAO/Maligaon letter No. PNO/CPO/589/ACD dated 23.1.82.

The next appeal of Shri A.C. Das dated 27.2.87 was disposed of which was communicated vide FA & CAO/Maligaon's letter to him as under :-

"Your above quoted appeal has been carefully examined by the competent authority in the light of the directives issued by the Rly. Board vide their letter No. No. E(NG) 1-85/HR/2 dated 7.5.85, and it is held that the case is a time barred one and also it is not indicated whether the change of date of birth done by the Registrar,

GU in your Matriculation Certificate on 16.6.64 was done at the instance of the court of Law."

The representation of Shri Das dated 20.11.92 again examined and GM did not agree to alter his date of birth.

It is seen that his case was different from those which had been considered by the GM and Hon'ble CAT/Guahati. In the matter of persons similarly situated, the cases have been examined and it is observed that in all such cases the date of birth recorded at the time of their appointment was without any support of age proof certificate and the date of birth indicated in the school certificate/Admit Card was produced by them later on for acceptance of the administration, whereas, he has requested for acceptance fax of the alteration of his recorded date of birth as corrected by the Guahati University in the Original Matriculation Certificate, which differs from the certificate he submitted at the time of appointment advancing his recorded date of birth by four years.

His case was again re-examined by the Railway Board on his representation to the Hon'ble Railway Minister and was regretted on the following ground :-

1. He did not represent for correction of his date of birth in time as provided for the rules. Subsequently, when an opportunity to make representation for correction in the date of birth

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was given upto 31.7.73 in the Ministry of Railway's letter No. E(NG)II/BR/1 dated 4.8.72, Shri Das did not make any representation in view of this, the representation for alteration in the recorded date of birth could not be accepted towards the end of service. The Supreme Court in their judgement in Union of India -vs- Harmam Singh in Civil Appeal No. 502 of 1993, SLP No. 11151 of 1992 circulated in Railways in the Ministry of Railways letter No. E(NG)I-92/BR/12 dated 31.5.92 upheld the time limit prescribed in the rule for making representation for change in the recorded date of birth indicating that such representation are required to be made within the time limit prescribed in the Rules.

2: The ex-employee has already taken advantage of the recorded date of birth at the tune of his entry in the service which he could not have otherwise been given on the basis of revised date of birth.

According to the statement of Shri A.C. Das, he made his 1st representation for alteration of date of birth in the year 1965 i.e. after ten years of his service. It appears from annexure 4 to original application filed in the Hon'ble CAT/Guahati (O.A. No. 127/97) that Registrar, Guahati University corrected his age from 19 years to 15 years as on 1.3.54 on his application based on his horoscope he neither applied to G.U. through proper channel nor informed the matter

to Railway authority at that time. It is not established from records that he made his 1st appeal in the year 1965. As such his appeal dated 11.5.65 cannot be taken into consideration as it is not only belated but also in-acceptable due to the above facts.

It is seen from Annexure 3 of OA, that he had shown an affidavit on 25.2.1961 for the purpose of alteration of his date of birth wherein he declared himself as University student concealing the fact that he is a Railway servant. Certainly it is a unbecoming on part of a Railway servant and violation of service conduct rules.

He has furnished a list of similarly situated cases vide annexure 'B' of his letter dated 12.1.2000. It is seen that all the 8 cases were decided on merit before the Hon'ble Supreme Court's judgement dated 9.2.93 in Civil Appeal No. 502 of 1993 U.O.I. Vs. Harnam Singh. But the present case is devoid of any merit. Hence, alteration of his date of birth from 1.3.1935 to 1.3.1939 cannot be accepted.

Sd/-
07/6/2000
(M.K. Sungh)
Dy. F.A. & CAO /G
For FA & CAO, / Admn. N.F. Railway,
Maligaon.

To
 The Chairman,
 Central Housing Committee,
 N.F. Railway, Maligaon,
 Guwahati - 11.

Sir,

Sub B- Vacation and handing over of Qr. No. 300/A Type-II at Central Gotanagar, Maligaon by Shri Abinash Ch. Das, Ex- Sr. S.O. (A/Cs.).

In continuation of my previous application dated 11.12.1999 on the same subject, I with due respect and humble submission, beg to state that I am willing to vacate the above Qrs. and as such, I may kindly be allowed to hand it over to the proper allottee at an early date.

In this context I beg to inform you further that I had to retire from service in the year 1993 instead of 1997 and a case of correction of date of birth was pending with the Rly. Board. As soon after my retirement I was served with eviction notice from Qrs. (copy enclosed). I intimated it to G.M.(P) and he was kind enough to confirm it to the Hon'ble Estate Officer, vide L/No. E/71/10(Q) dated 22.11.1995 (copy enclosed) that a case of correction of date of birth was lying pending and under consideration of Rly. Board. So the eviction proceeding was stopped henceforth.

Railway Board regretted my case in the year 1997 and so I was compelled to seek justice in the Hon'ble Central Administrative Tribunal, Guwahati. On 20.6.97, the Hon'ble CAT after hearing the counsels of both parties, passed an order (copy enclosed) directing the Railway Authority that

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 C. A
 Advo. Adv.

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"the applicant shall not be evicted on the basis of his retirement". In the O.A. No. 127/97 I prayed for recovering normal rent of Qrs.

On 10.12.99 the Hon'ble CAT/GHY has given its final judgement of the case (copy enclosed) directing the Rly. Authority to consider my casw within four months. So since the Qrs. is released by Hon'ble Tribunal, I tendered my willingness to vacate ot on 11.12.1999.

With the above, I fervently pray you to allow me to hand over the Qrs. to the new proper allottee at the earliest so that I may be released from my obligation.

With best regards.

Enclo :- As stated above.
(4) Four.

Dated : Maligaon
the 25th May/2000.

Yours faithfully,

Sd/- Abinash Chandra Das
Ex-Sr. S.O. (Accounts)
Qr. No. 300/A
Central Gotanagar, MLG
Guwahati - 11.

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ANNEXURE - XL.CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. NO. 127/97

Sri Abinash Ch. Das. ... Applicant.

- Versus -

Union of India & Ors. ... Respondents.

Mr. C. Choudhury, S. Samma, J. Samma.
.. Advocates for Applicant.

Mr. M.K. Choudhury .. Advocate for the Respondents.

Date Court Orders

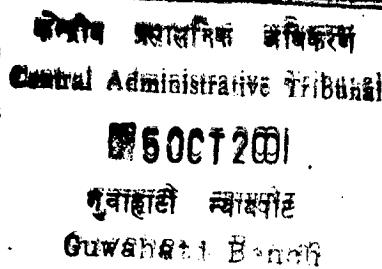
20.6.97 Heard Mr. C. Choudhury, learned counsel for the applicant. The application is admitted. Mr. M.K. Choudhury, learned Railway Counsel, receives notice. No formal notice need be sent. Four weeks time for written statement. Mr. C. Choudhury shall furnish the copies during the course of the day.

List on 25.7.97.

Mr. C. Choudhury submits that the applicant has already received notice of eviction. Mr. M.K. Choudhury, on the other hand submits that there is no proposal for evicting the applicant. On hearing the counsel for the parties the respondents are directed that the applicant shall not be evicted on the basis of his retirement.

Sd/- VICE CHAIRMAN.

Attested & ✓
true
A. C. V.
Advocadi



Filed by
Abinash Chandra Das
3-10-2001
V/41
Deputy Chief Accountant Officer
Guwahati
Malison

THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

O.A. No. 349 of 2000

Shri Abinash Chandra Das ... Applicant

- Versus -

The Union of India & Ors. ... Respondents

- WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS

The answering Respondents beg to state as follows:

1. That the answering Respondents have been served with the copies of the above O.A. They have gone the same and have understood the contents thereof. Save and except the statements which are specifically admitted herein below, other statements made in the O.A. are categorically denied. Further the statements which are not borne on records are also denied and the Applicant is put to the strictest proof thereof.
2. That with regard to the statements made in paragraph 4(i) to 4 (iii) of the O.A. the answering Respondents do not admit anything contrary to relevant records.
3. That with regard to the statements made in paragraphs 4(iv), (v) and (vi) the O.A., it is stated that the date of birth of the Applicant was recorded as per Rules of the Railways as 1.3.35. In this connection, the provisions relating to date of birth as

incorporated in the Railway Establishment Code may be referred to which envisages that the date of birth has recorded in accordance with those rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. The alteration of date of birth made in the matriculation certificate of the Applicant was made by the Gauhati University and the Railways was not a party to the same. such correction was made without the knowledge of the Railways.

4. That with regard to the statements made in paragraph 4(vii) of the O.A., it is stated that the Applicant submitted the alleged representation on 11.5.65 i.e. almost after a year of correction made by the University. In fact, the Applicant made it known to the Railway Administration only in early 80s that he had submitted a representation dated 11.5.65. A vigorous search was made to trace out the same to find out as to whether such a representation in fact was submitted or not, but could not be located. By that time, the Petitioner had completed more than 15 years of service. Even assuming it to be correct that the Applicant had actually made an appeal on 11.5.65. same was time barred being beyond five years of limitation prescribed under the Rules. Moreover, if the changed date of birth of the Applicant was/is to be accepted, he would not have been eligible to be appointed in Railway service being under aged. Thus the Applicant cannot claim benefit of service at both the ends.

5. That with regard to the statements made in

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paragraph 4(viii) of the O.A., the answering Respondents reiterates and reaffirm the statements made above. The alleged inaction on the part of the Respondents on his appeal dated 11.5.65 is not admitted. There is no record available to establish the claim of the Applicant that he had submitted reminders dated 19.8.67, 7.6.68 and 18.3.70 to his representation dated 11.5.65 and its subsequent reminders. His appeal dated 26/28.9.81 was dealt with in reasonable time with a reply to him vide office letter No.PNO/CPB/589/ACD dated 23.1.82.

6. That with regard to the statements made in paragraph 4(ix) of the O.A., it is stated that the appeal preferred by the Applicant was treated as first appeal and was disposed of in terms of the Railway Board's letters mentioned by the Applicant. It will be pertinent to mention here that in his appeal dated 26/28.9.81, the Applicant did not refer to his alleged representation dated 11.5.65. Thus the question of giving cognizance to the same did not arise.

7. That with regard to the statements made in paragraph 4(x) of the O.A., while denying the contentions raised therein, it is stated that the averments made are vague. The correction of his date of birth was not called for under the facts and circumstances of the case.

8. That with regard to the statements made in paragraph 4(xi) of the O.A., it is stated that it is a fact that his appeal for alteration of date of birth

was represented by the General Secretary, N.F. Railway Employees' Union, Maligaon vide letter dated 22.3.89 through which for the first it came to the notice of the Railway administration that the Applicant had made the alleged representation on 11.5.65 when the General Secretary of the Union annexed two letters of the Applicant dated 11.5.65 and 9.9.87. He did not mention in the letter dated 9.9.87 regarding his earlier alleged reminders dated 19.8.67, 7.6.68 and 18.6.70.

9. That with regard to the statements made in paragraph 4(xii) of the O.A., the answering Respondents beg to state that the letter at Annexure-XI dated 14.8.90 was addressed to the FA & CAO in reference to his letter dated 9.2.90. It will be pertinent to mention here that FA & CAO is not the authority regarding alteration and/or correction of date of birth. In any case such correspondences do not clothe the Applicant with the right of getting his date of birth altered in the service book.

10. That with regard to the statements made in paragraph 4(xiii) of the O.A., it is stated that all the complaints made by the Applicant were addressed to the FA & CAO and as such, those complaints have been dealt with by his office and disposed of accordingly. A copy of the General Secretary, Employees' Association letter No. EU/SR/MLG-II dated 22.3.89 addressed to CPO was sent to FA & CAO by the address vide his letter No. E/71/10(C) dated 30.3.89 with a request to examine and submit all connected papers and files at an early date.

Accordingly, the case was further examined and full history of the case was sent to CPO vide office letter No. PNO/AD/70/348 Pt-5 dated 15/16.1.91 for his disposal as annexed by the Applicant.

11. That with regard to the statements made in paragraph 4(xiv) of the O.A., it is stated that the Applicant was appointed in the Railway service on the basis of his declaration and documents produced at the time of his appointment. Now if his case is considered for alteration of his date of birth, he would not have attained the prescribed age for Government service. Further, the consideration of his claim will entitle him excess length of service. Thus the claim of the Applicant is not at all tenable. The other contentions raised by the Applicant are denied.

12. That with regard to the statements made in paragraph 4(xv), (xvi) and (xvii) of the O.A., the answering Respondents do not admit anything contrary to the relevant records.

13. That with regard to the statements made in paragraph 4(xviii) of the O.A., it is stated that the General Manager after going through the details of the case refused to accede to the request of the Applicant for alteration of his recorded date of birth in the service book.

14. That with regard to the statements made in paragraph 4(xix) of the O.A., it is stated that as per recorded date of birth in the first page of the service book under the signature of the Applicant

himself he was served with the notice of superannuation with effect from 28.2.93 as per rule. Since the appeal of the Applicant towards alteration of his date of birth in the service records was rejected by the competent authority concerned under intimation to the Applicant, there was no question of retaining the Applicant in his service beyond the date of superannuation.

15. That with regard to the statements made in paragraph 4(xx) of the O.A., the answering Respondents do not admit anything contrary to relevant records.

16. That with regard to the statements made in paragraph 4(xxi) of the O.A., it is stated that the Applicant retired from Railway service with effect from 28.2.93 on completion of fifty eight of years as per recorded date of birth in the service book. He also submitted the prescribed pension booklet duly filled in in his own hand writing and signed by him on the basis of which his all settlement dues have been paid and pension payment order has also been issued vide PPO No. Pen/Accounts/884(S) dated 13.9.94. It is worth mentioning that as per the claim of the Applicant, he was supposed to work four years more that is upto 28.2.97, had his appeal for alteration of date of birth been accepted. His appeal has been rejected with the approval of the General Manager who is the highest competent authority in the Zonal Railways and the same was communicated to the Applicant under FA & CAO/Admin./NF Railway's letter no. PNO/AD/3/48 Pt.IV

dated 16.12.92. Thus it was known to the Applicant that the existing channel of reviewing his appeal has already exhausted and the papers of his retirement with effect from 28.2.93 as per his recorded date of birth in the service book was initiated accordingly. The Applicant accepted all his retirement and pensionary benefits.

17. That with regard to the statements made in paragraphs 4(xxii) to (xxix) of the O.A., the answering Respondents do not admit anything contrary to the relevant records. It appears that the Applicant pursued the matter at all levels even after his retirement and acceptance of such retirement by him.

18. That with regard to the statements made in paragraphs 4(xxx) of the O.A., it is stated that the Railway Board also examined the case of the Applicant and did not agree to alter the date of birth recorded in the service book of the Applicant.

19. That with regard to the statements made in paragraph 4(xxi) of the O.A., it is stated that after the alleged appeal submitted by the Applicant in 1965, he started agitation the matter only from 1981 i.e. after a long lapse of about 16 years. Within these 16 years, many records have been abolished due to some natural process and change of dealers/officers took place due to retirement/transfer and other causes. Even after submission of the alleged appeal in 1965, the Applicant remained silent in the matter and did not pursue the same. In any case, the change of alteration

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रेलवे लोका विभाग (पा.)
रेलवे लोका विभाग, राजस्थान, राजस्थान-1
Deputy Chief Accounts Officer (G.I.)
G.P. Rly. Mails and Accounts Department

of date of birth is not tenable.

20. That with regard to the statements made in paragraph 4(xxxii) of the O.A., the answering Respondents reiterate and reaffirm the statement made hereinabove. As per the provisions of the Railway Rules holding the field, the case of the Applicant is not admissible and the change of his date of birth is not called for. Each case is decided on its merit and no two cases can be said to be similar. The Railways are bound by the Rules and regulations holding the field and also the law laid down by the Hon'ble Courts. Further one illegality cannot give rise to another illegality.

21. That with regard to the statements made in paragraph 4(xxxiii) and (xxxiv) of the O.A., the answering Respondents do not admit anything contrary to relevant records and reiterate and reaffirm the statements made hereinabove.

22. That with regard to the statements made in paragraph 4(xxxv) of the O.A., it is stated that the Applicant has retained the Railway quarter in question for the last more than seven years and he is liable to pay damage rent.

23. That the answering Respondents state that the Applicant, who is a literate staff was appointed in the Railways on the basis of his application submitted by him enclosing therewith all the required documents. The matriculation certificate depicting his case as 19 years as on 1.3.54 (DOB-1.3.35) was also submitted. On

राजस्व विभाग (४१),
 राजस्व विभाग, राजिकाल, विभाग
 Deputy Chief Executive Officer (C.E.O.)
 S.P. & Mr. Mukund Guntakal

the basis of such certificate his age was above 18 years and was thus eligible as regards age and got selected. Upon appointment in the Railways, the Applicant also recorded his date of birth in the opening page of the service book as 1.3.35 under his clear signature and thumb impression. Such DOB was also reflected in his various service records including seniority lists published from time to time. There was no representation from the Applicant against such recording of DOB in service particulars and seniority list.

24. That the answering Respondents submit that the DA is barred by limitation and delay and laches on the part of the Applicant. The Hon'ble Tribunal will be reluctant to interfere in the matter so as to unsettle the settled things.

25. That the answering Respondents submit that under the facts and circumstances stated above, the OA is not maintainable and liable to be dismissed with costs. The answering Respondents crave leave of the Hon'ble Tribunal to produce the relevant documents and the files at the time of hearing of the case. The answering Respondents further crave leave of the Hon'ble Tribunal to refer and rely upon the WS file in the earlier OA viz. OA No. 127/97.

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VERIFICATION

I Shri ROBIN DEKA, aged about 41 years, son of Late K.H. DEKA, resident of Maligaon, Guwahati-II, presently working as Dy CAO/6 _____, N.F. Railway do hereby verify and state that the statement made in paragraphs 154, 6 to 9, 11-15 17 to 25 are true to my knowledge and those made in paragraph 5 10 and 16 being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal. I am also authorised to competent to sign this verification on behalf of all the Respondents.

And I sign this verification on this 30th day of September 2001.

✓ Algebra.

Deputy Chief Accountant (CA),
N.F. Railway, Maligaon, Guwahati-
Deputy Chief Accounts Officer (CA)
N.F. Rly. Maligaon, Guwahati-
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केन्द्रीय नियन्त्रित Central Administrative Tribunal
17 OCT 2000
मुख्य वकील Guwahati Bench

Given by the applicant
Sri Abinash Chandra Das
through : -
Pollakbar Bhattacharjee
Advocate, 10/10/2000.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

IN THE MATTER OF:-

O.A. No. 349/2000

Sri Abinash Chandra Das,

... Applicant.

VERSUS

Union of India & Ors.

-AND-

IN THE MATTER OF:-

Rejoinder for and behalf of the applicant abovenamed.

The applicant abovenamed most respectfully sheweth:

1. That the applicant has gone through the copy of the written statement filed by the Respondents in the case and have understood the contents thereof.
2. That save and except the statements which are specifically admitted herein below the other averments made in the written statement of the Respondents are to be deemed to have been denied by the applicant. The applicant entered North East Railway Service on 15/9/55 as clerk Class II declaring his date of birth as 01-3-1935 on the basis of the Matriculation Certificate No.933. But during 1960-61, the

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Abinash Chandra Das

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applicant came to know that his actual date of birth as recorded in the Hath Chitha, the birth register maintained by the village Gaon Burah of Rampur Village, Lat No.20 was 01-3-1939. The applicant accordingly approached the Gauhati University on 25/2/1961 for rectification of his date of birth in the University records. On receipt of the application of the applicant, the Gauhati University being satisfied with the documentary evidence placed before it, recorded the applicants age as 15 years as on 01/3/1954. Under intimation to the applicant vide letter No.Cer/Ca/64/852 dated 16/6/64. As the said letter was originally sent to the applicant's home address at village Uttar Rampur near Barpeta, the applicant received the same at the later part of 1964 after the letter being redirected to the applicant's proper address and approached the respondents vide his representation dated 11/5/1965 for correction of his date of birth in his service book. As no action was taken by the authorities on the representation of the applicant, the applicant made several representation and sent reminders to various authorities on various dates like 19/3/67, 07/6/68 and 18/3/70. In reply to a representation dated 26/9/1981 submitted by the applicant the Respondents informed the applicant that in terms of the Railway Board letter No. R(X) 11-70/BB/1 dated 03/12/71 and 04/8/72, the claim of the applicant for correction of date of birth in the service book became time-barred. However, subsequently when the applicant represented the matter through North Frontier Railways Employees Union, the Respondents asked for the applicant's personal copy of the representation. The copy of the representation dated 11/5/1965 being supplied by the applicant, the Respondents wrote to the Gauhati University to verify the matter of correction of applicant's date of birth and the Gauhati University vide letter No.Gu/Cer/Misc/90-91/288 dated 14/8/90 confirmed the said correction. Thereafter, also the authorities failed to take any positive step towards correction of the applicant's date of birth in his service book and remained totally silent

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Ashok Chander Das

(3)

in the matter. Under the above circumstances, it is not at all correct to state that the application filed by the applicant before this Hon'ble Tribunal is time-barred. The matter deserves to be decided on merit. The applicant further state that the instant case of the applicant is not hit by section 21 of the Administrative Tribunals Act, 1985.

It is pertinent to mention herein that the Respondents had referred to the xerox copy of the application dated 11/5/1965 of the applicant by keeping the personal copy of the letter dated 11/5/1965 for their official record vide letter dated 16/10/89.

A photocopy of the Hath Chita maintained by the Gaon Burah of Village Rampur, Lat NO.20 is annexed herewith and marked as ANNEXURE-XLI.

4. That the statement made in paragraph 3 of the written statement is not an answer to the averments made by the applicant in paragraph 4(iv) 4(v) and 4(vi) of the application. The Respondents have made an attempt to cancel their negligence and total inaction in dealing with the matter of correction of date of birth of the applicant in his service book and other relevant records. So far the correction of the date of birth of the applicant in the seniority list published by the Railway Administration is concerned, the applicant states that all along the applicant had been approaching the authorities for correction of his date of birth in his service book and other relevant records since 11/5/1965 when he first represented the matter. On being approached by the applicant, the authorities refused to correct his date of birth in the seniority list, published in the year 1991.

5. That with regard to the statements in paragraph 4 of

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Abinash Chandra Das

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the written statement, the applicant states that there is no Rule which bares the correction of date of birth on consideration of authorities and relevant documents. Had there been such Rule, the Respondents ought to have referred to the same specifically in the written statement and in absence of any scope for correction of the date of birth of employee in the official records, the Respondents by letter No.AD/COM/MISC/Pt-III/87 dated 9/2/90 would not have enquired with the Gauhati University along the correction of date of birth of the applicant in his Matriculation certificate. After getting confirmation about the correction of the date of birth of the applicant from the Gauhati University vide their letter No.GU/CER/MISC/90-91/255 dated 14/9/90, the Respondents changed their stand and started explaining to the applicant referring falsely to paragraph 225(4) (i) RI of the Indian Railway establishment code Volume 1,1985 that even if the General Manager caused the date of birth to be altered, such alteration would not result in the applicant being retained in service longer than if the alteration have not been made. In this connection, the applicant begs to state that the paragraph 225 (4)(i) RI as well as 145(3) (i) RI of the Indian Railway Establishment Code Volume 1 1985 are not applicable in case of the applicant who never declared his date of birth falsely in official records at the time of entering his service and as such is covered by Rule 145 (iii) RI only the Sub-Rule 3(iii) RI which reads as under:

"It shall, however be open to the President, in case of the Gazetted Railway Servant, and, a General Manager in the case of a non-Gazetted Railway Servant to cause the date of birth to be altered.

(i) not relevant.

(ii) not relevant.

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Abinash Gauden Ds.

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(iii) Where a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) 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 records amended.

Further, it may be mentioned here that although one Shri Anil Kumar Chakravarty who was appointed in July, 1944 in Railway Service, remained silent for about 30 years without submitting any representation to the Respondents in the matter of correction of his date of birth from 16th July, 1926 to 1st December, 1928 and his prayer was turned down by the authorities, said Shri Chakravarty appeared before this Hon'ble Tribunal in Guwahati Case No.168 of 1986 (T) and this Hon'ble Tribunal by its Judgment dated 29/8/1986, passed in the said case pleased to direct the Respondents to enter the correct date of birth as 1st December, 1928 in the service record of said Shri Chakravarty and also pleased to give direction to the authority to determine the date of superannuation on that basis, and as such, the applicant in the above case is also entitled for correction of his date of birth from 1/3/1935 to 1/3/1939 in the light of the aforesaid case and on the basis of the Matriculation Certificate as corrected by the Gauhati University who had submitted representation on 11/5/1965 i.e., just after one year from the date of confirmation of correction of his date of birth in Matriculation Certificate by the Gauhati University.

Moreover, it is not the case of Railway Authorities that some employees were given benefit of correction of date of birth on the intervention of this Hon'ble Tribunal. On certain occasion, for example, in the case of one Sri P.K.

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Alinash Gauden Das

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Mahanan the Railway Authorities on its consideration entertained time barred case of correction of date of birth condoning the delay on its own discretion and gave full consequential benefit arising out of correction of date of birth of the employee in the official record.

Sri P.K.Mahanan confidential steno attached to CSE/RPF/N.F.Rly/Maligaon entered Rly Service on 26/5/1987 at the age of 28 years 8 months according to his certificate of dated birth 26/9/1946. After about 15 years of service, his date of birth was corrected as 19/11/1948 by Commissioner of Government Examination, Trivandram, Kerela on 9/8/89. Sri Mahanan submitted an appeal on 7/5/1990 to correct his recorded date of birth on 19/11/48 in place of 26/9/46 already recorded in his service records. Since, his case would not be decided at this end, it was referred to Railway Board vide office letter No.F/71/10(Q) dated 28/5/90 and 18/7/91 and ultimately Railway Board communicated approval to the alteration of his date of birth from 26/9/46 to 19/11/48 vide letter No.E(N) F-91/BB/5 dated 4/12/91.

Similarly, one Shri Sibajit Kumar Mukherjee entered Railway Service on 16/6/1949 declaring his date of birth as 1/6/1928 at the age of 21 years and 15 days. He had passed final school examination of Calcutta University in the year 1953 wherein his date of birth was recorded as 1/3/1933 reducing his age by 4 years 9 months. His representation for correction of date of birth according to his School final examination certificate was not allowed and as a result, he was retired from Railway Service w.e.f. 31/5/1986 (AM) i.e., w.e.f. 1/6/1986. He was paid the retirement benefits also. He then immediately represented his case to the General Manager, Railway and the then General Manager has examined his case and ultimately approved correction of his date of birth as 1/3/1933 in place of 1/6/1928 subject to his earlier underage period of service before attaining 18 years of age

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Abinash Chander Das

(7)

not being counted for pension. He was also allowed to resume duty.

In the above two cases, the existing Rule 225 R-I was released. In the case of Sri Mukherjee, the undergo period of 1 years 8 months 15 days till his attainment of 18 years of age has been regularised as non-qualifying service for pension.

On the other hand, the applicant submitted his representation in the year of 1965 (I.R. 11/5/1965) to the competent authority for correction of his date of birth in service records long before the amendment of the relevant Rule 145-RI to as Rule 225-RI i.e., within one year of his correcting of date of birth on the basis of Matriculation Certificate which was duly corrected in the year of 1964 by the Gauhati University and the same is duly admitted by the Deputy Chief Personnel Officer for General Manager (R)/MLG which is confirmed from his letter vide No.IR/71/10/(Q) dated 29/11/1994(2/12/1994) communicated to the Railway Board for re-examination his case and to communicate decision at the earliest whereas Sri P.K. Mahanan submitted his representation for correction of his service records after the amendment of the Rule in the year of 1990 i.e., after the new Rule 225 R I came into force and as such the case of Sri P.K. Mahanana was time barred since he did not submit any representation during the time limit, prescribed in the relevant statutory Railway Rule 225-RI and Note 5(a) to FR 56(m) which came into force in the year of 1979 and even then his corrected date of birth was recorded in his service book by giving all consequential benefits by the Railway Board. Thereafter, the grounds accorded by the Railway Authority for their inability to accept the correct date of birth of the applicant are not all tenable in law. The applicant further begs to state that vide the said letter the Railway Board directed the General Manager (P) North East Frontier Railway,

Contd....p/

Abinash Chander Das.

(8)

Maligaon to furnish the details of the precedent cases, namely (i) Sri Sibajit Kumar Mukherjee, (ii) Sri Anil Kumar Chakravarty and (iii) Sri Kamakhya Prashad Sengupta, if any, further reference is made by the North East Frontier Railway to the Railway Board of cases connected with correction of date of birth. The General Manager for fear of being exposed, maintained total silence and the particulars of the aforesaid cases were never furnished to the Railway Board, but he simply refused to consider his case without showing any reason and without obtaining the Board's decision. Instead, the General Manager himself passed a cryptic order rejecting the prayer of the applicant without considering the same. But subsequently, inspite of the applicant's case being strongly recommended by the Deputy Personnel Officer, N.F.Railway for the General Manager highlighting all the provisions of law in favour of the applicant, the Railway Board rejected the prayer of the applicant by a non-speaking arbitrary order dated 5/5/1997. The applicant reiterates and reaffirm the statement made in paragraph (13) of the Rejoinder.

It is pertinent to mention herein that the Deputy Chief Personnel Officer (MG) for General Manager (P) N.F.Railway Gauhati had specially recommended the case of the applicant to the Railway Board vide his letter No.F/71/10/(Q) dated 27/7/1995 which reads as follows:

" The case of Shri Abinash Chandra Das (the applicant) is a genuine one and bears more merit than the cases of Shri Mukherjee and Shri P.K. Mahanan. Because, he declared his original date of birth according to the authenticated documentary evidence and preferred claim of its alteration on the basis of the same document issued and corrected by the same competent authority. He represented his case at proper time and before the amendment of the relevant Rule 145-RI as Rule 225-RI and before the cut off date allowed, for representation vide R.D.'s letter No. R(NC)11.70 BB/1 dated 3/12/71 and

Contd... p/



(9)

4/8/72 respectively. He did not declare his date falsely, at any stage. Moreover, the Staff concerned, is not responsible for not processing and no-deciding of his case. In relevant time, which would have been decided long before the amendment of the Rules. His case is of special nature that originated in abnormal circumstances. So it deserves special consideration.

With the above specific comments/recommendation, the Railway Board was requested to treat the case of the applicant as a special one and to decide it the earliest in the light of the cases of Shri S.K. Mukherjee and Sri P.K. Mahanan and to communicate the decision urgently since more than 2 months have already lapsed awaiting decision of the Board, as such it is a flagrant discrimination and denial of natural justice to the applicant by regretting his case without showing any reason and giving any opportunity to be heard to the applicant and belatedly after inordinate delay in deciding the case of the applicant by the General Manager(P) North Frontier Railway as well as the Railway Board inspite of having strong recommendation from their own authority in favour of the applicant. The applicant further begs to state that the Respondents vide letter dated 18/10/96 asserted that the case of the applicant was not initially processed and it was formally turned down without giving due consideration and adopting a discriminatory attitude, although the staff concerned is not responsible, in any way, for not deciding and disposing of the case. But as mentioned in this office reply letter and the Judgment of the Hon'ble CAT Guwahati many similarly situated cases of alteration in date of birth have already been approved by this Railway before and after the amendment of the relevant Rule 145-RI as Rule 225 R-I and even after the submission of the deserves special consideration since it implicates official complicity.

6. That the applicant begs to state that after the date

Contd....p/

Abinash Guandar Das

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(10)

of birth in Matriculation Certificate being corrected by the competent authority the Respondents have not legal right to question it. The corrected Matriculation Certificate being authentic document, the Railway Authority can not refuse to act on it. It is incorrect to say that only on the basis of Horoscope of the applicant, the University corrected his date of birth. Moreover, if the Respondents refused to accept the corrected date of birth only on the ground that they did not get any opportunity of being heard in the matter, then the authority should not have made secret quarry from the Gauhati University about the authenticity of the correction of the date of birth of the applicant as has been claimed by him.

7. That as regard the statement made in paragraph 5 of the written statement, the applicant states that the averments made therein shown that the representation dated 11/5/1965 submitted by the applicant was never taken by the authority with due seriousness and the entire matter did not get due consideration/attention due to the laches and negligence of the concerned officers in the Railway and in order to conceal the leches, negligence and total inaction of their part, the Respondents have turned down to question the submission of any such representation dated 11/5/1965 by the applicant. It is relevant to mention herein that the personal copy of the said representation which was later on obtained by North Frontier Railway from the applicant, is also missing from records for which the authority failed to take any steps in the matter. This fact establishes the total negligence on the part of the Respondents in general and the concerned officers in particulars.

8. That with regard to the statements made in paragraph 5 of the written statement, the applicant further states that after correction of the date of birth of the applicant in his Matriculation Certificate, the University vide its letter

Contd....p/

Abinash Gauden Das

(11)

dated 16/6/1964 intimated the applicant about the same but the applicant received the said letter after about 5(five) months because of the letter was sent to the permanent home address at the village and Post office: Rampur, District: Kamrup, Assam and the same was by mistake sent to village Rampur near Barpeta, presently under Barpeta District and the applicant received the letter only after the same being redelivered to the actual home address of the applicant. Although, the Respondents are harping upon the delay on the part of the applicant in submission the representation for correction of his date of birth the Respondents themselves have failed to act upon the said representation and to dispose of the same even after 25 years of its submission. Moreover, there are instances where inspite of there being unexplained delay of more than 15 years in exactly similar cases, the Respondents have condoned such delay and recorded the correct date of birth giving full consequential benefits to the Railway Employee.

9. That with regard to the statements made in paragraph 6 of the written statement the applicant states that the Respondents have failed to give a befitting reply to the averments made in paragraph 4(ix) of the application as the Respondents can not have any plausible explanation for their total inaction with regard to the representations of the applicant submitted to the Respondents and were duly received by the concerned authorities. When the Respondents themselves can not explain the delay in disposing of his first representation of the applicant dated 11/5/1965, how they can question the delay of the applicant in filing the representation in 1965 after coming to know about the correction of his date of birth by the Gauhati University in the year 1964.

Moreover, since the applicant had submitted aforesaid three representation i.e., 19/3/67, 7/6/68 and 18/3/70 to the

Contd....p/



(12)

concerned authorities by referring to his first representation dated 11/5/1965 all the said representations as well as in subsequent representation also and the Respondents also admitted and asserted the claims submitted on 11/5/1965 in many occasion vide documentary evidence (as annexed in original application) which were also duly received by the Railway Authorities concerned and as such his fourth representation dated 28/9/81 to the concerned authorities can never be treated as his first representation as alleged by the Respondents in their written statement. Since the Railway Administration observed complete silence with effect from 1965 to 1981 on his first application dated 11/5/65, there was no way out than to submit a fresh application for alteration of recorded date of birth in service records as reminder of his earlier representations and by this, the applicant was successful to break the silence of the Railway Authority for the first time since the year of 1965. The said application of 1981 was also submitted within the time limit of five years for correction of recorded date of birth as provided in Note 5 to R.R.56(m) which was incorporated in the years of 1979 as asserted by the Hon'ble Supreme Court in case of Shri Harnam Singh -VS- Union of India & Ors (Civil Appeal No. 502/1993.

10. That the applicant further states that in connection of the Respondents that the representations of the applicant were duly disposed of by the Railway Administration and the decision that the request of the applicant for change of the date of birth was not acceptable for the same being time barred was duly communicated to him is not tenable in law in as such in making such statement, the authorities appear either to have totally forgotten the existence of applicant's representation dated 11/5/65 or have purposefully sought to ignore it.

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A handwritten signature in black ink, appearing to read "Abinash Chander Das." The signature is fluid and cursive, with a prominent 'A' at the beginning.

(13)

11. That with regard to the statement made in paragraph 7 of the written statement, the applicant begs to reiterate and reaffirm and averments made in paragraph 4 of the original application. The applicant kept of submitting representation after representations just to point out to the authorities that when some of his colleagues were given full relief/benefit in exactly similar cases in total disregard to the rules mentioned and quoted by the Respondents in their written statement the applicant was illegally discriminated against. The authorities tactfully avoided the discrimination part and kept on harping on the delay in submitting representations by the applicant for correction of his date of birth.

12. That with regard to the statement made in paragraph 8 of the written statement, the applicant states that it was the Railway Authorities which caused all the delay in considering the matter of correction of the date of birth of the applicant in the service book and other relevant records for which the applicant approached the Railway Authorities as far back as in 1965 and hence it is only for the delay and negligence of the Railway Authorities, the applicant has been compelled to continue with the occupation of the quarter provided to him by the Railway Authorities. Once, the case of the applicant is finally disposed of by this Hon'ble Tribunal, the applicant has no intention to continue in possession of the Railway quarter thereafter.

The evasive reply of the Respondents in saying that the cases of Sri Kamakhya Prashad Sengupta, Sri Anil Kumar Chakravarty, Sri Sibajit Kumar Mukherjee and Sri P.V. Mahanan as well as that of Sri K.P. Sengupta are not similar to the case of the applicant lay bare the callous, attitude of authorities in dealing with the representation of the applicant. Moreover, the statement of the Respondents are self contradictory : because in one hand, they assert that the cases of

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(15)

by the S.D.O. Palasbari Circle and also an affidavit sworn in by the applicant on 25/2/61 (already described in paragraph 4(iv) of the original application) and the said documents were furnished by the applicant Gauhati University as per their prescribed form and therefore, he claimed for its correction on the basis of the same corrected document, issued and corrected by the same competent authority on 11/5/65 to the competent authority, Before the amendment of the relevant Rule 145-RI to Rule 225 R-I of the Indian Rail-Way Establishment Code Volume 1,1985, i.e., within the prescribed period of time as laid down in the said Rules. The applicant further begs to state that under the above circumstances, he has got a legitimate right of correction of his date of birth from 1/3/35 to 1/3/39 in his service record on the basis of the said authenticated confirmatory documentary evidence i.e., matriculation certificate in which date of birth was duly corrected from 1/3/35 to 1/3/39 in his service record on the basis of the said authenticated confirmatory documentary evidence, i.e., matriculation certificate in which his date of birth was duly corrected from 1/3/35 to 1/3/39 by the Gauhati University in the year of 1964 and in the light of other aforesaid similar cases. The Respondent No.2 had passed the impugned order dated 5/3/97 to liable to be get aside and the Respondents may be directed to effect the correction of the date of birth of applicant in his service book and also be directed to give all benefit to the applicant consequent upon the correction of his date of birth in the service book for the ends of justice, otherwise, the applicant will suffer irreparable loss and injury. It is pertinent to mention herein that although the applicant had received the retirement benefits but he had received the same under objection since his matter of correction of date of birth was not decided by the Respondents for a long period of time.

Photocopy of the abstract of birthday of the applicant

Contd....p/

Alinsh Gumber Das

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the other persons named above are quite different from that of the applicant and on the other hand, they state that those cases being from distant dates, the detailed history of those cases can not be located and more light can be thrown. The question remains as to without the detailed history of those cases how the authorities assert that those cases are not similar to that of the applicant. So far the case of Shri K.P.Sengupta is concerned the applicant affirms that said Sri Sengupta was found to be underaged by one month and fourteen days after correction of his date of birth but even then Sri Sengupta's date of birth was corrected and he is given full benefit consequent upon the correction of his date of birth. Similarly, the then General Manager, Railway also approved correction of the date of birth of one Shri Sibajit Kumar Mukherjee from 1/3/1933 to 1/6/1928 on the basis of School Final examination certificate subject to his earlier undergo period of service before attaining 18 years of age not being counted for pension. In view of the above, the applicant submits that in his case, the authorities have acted most arbitrarily and deprived the applicant of his legitimate right.

13. That with regard to the statements made in paragraph 9 of the written statement, the applicant begs to reiterate and reaffirm the averments made in paragraph 6 of his original application. The applicant declared his original date of birth on the basis of confirmatory documentary evidence, the age entry in Matriculation Certification which was duly corrected by Gauhati University on the basis of not only on his Horoscope; but also on the basis of some other valid documents such as record in Hath Chithas, the birth register, maintained by village Gaon Burah of Rampur Village, Lat No.22, date of birth recorded by the father of the applicant, the "panjika" for the year 1939 at Puja 345 and a certificate dated 2/3/61 issued by the village Gaon Burah of Village Rampur, Lat No.22 on the basis of birth register and endorsed

Contd....p/



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from the "Panjika" of 1939, noted down the father late Purna Chandra Das : Photocopy of the prescribed form, issued by the Registrar, Gauhati University and the photocopy of the letter dated 8/7/94 issued by the applicant to the Respondent No.6 are annexed herewith and marked as ANNEXURE-XLII, XLIII AND XLIV respectively.

14. That with regard to the statement made in paragraph 10 of the written statement, the applicant begs to state that since he has been continuously submitting representations with effect from 1965 to the Respondents for correction of his date of birth and his aforesaid case of correction of date of birth was pending and under consideration of the Railway Board till 5/5/97 and therefore, he has been continuously submitting application to the concerned authority intimating about his pending case before the Railway Board and he had prayed for consideration for using his quarter till disposal of the case.

15. That with regard to the statement made in paragraph 11 of the written statement the applicant begs to state that since the case of the applicant's correction of recorded date of birth was pending for about 4 years before the Railway Board without any final decision regarding his correction of date of birth, the applicant, finding no alternative had submitted an application to the Chief Labour Commissioner, Government of India, Sharan Bhawan, New Delhi on 1/11/96 by post, praying before him for his personal intervention to decide and dispose of the case at his discretion at any early date. But about 5 months have been elapsed from issuing his aforesaid application to the said Chief Labour Commissioner, the applicant was never intimated by the said Labour Commissioner regardly any further proceeding pending before his till date, but the applicant, in the mean time came to know

Contd....p/

Prakash Chander Das

(17)

from the office of the Respondent No.6 in the last part of August, 1997 that the Chief Labour Commissioner, Government of India, Sharan Bhawan, New Delhi had sent back his said application to the Office of the Regional Labour Commissioner (Central) Rajgarh Road, Chadmari, Guwahati-3 for his early disposal. The applicant enquired about his said application and further proceeding on 31/3/97 and the applicant had found that no further progress of the proceeding was initiated by the Regional Labour Commissioner, Guwahati and therefore on the same day immediately had submitted an application for withdrawal of his said application dated 1/11/96 which was duly received by the Officer-in-Charge of the Labour Commissioner, Guwahati since he had not received any intimation from the said office for which the applicant was compelled to file the aforesaid Original application before this Hon'ble Tribunal and under the above circumstances, the applicant is no longer willing be proceed further with the application, filed before the said Learned Regional Labour Commissioner (Central), Guwahati-3 since the Labour Commissioner is not the competent authority to decide the correction of his aforesaid date of birth and no case has been registered before any Labour Commissioner or Industrial Tribunal till date or the Labour Commissioner also did not issue any notice to the applicant nor he had hold any conciliation proceeding regarding the said matter and also not referred the aforesaid matter to the Industrial Tribunal till date of early disposal.

16. That with regard to the statements made in paragraph 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the written statement, the applicant begs to state that is a fact which was duly admitted by the Respondent No.5 himself vide his letter dated 29/11/1994 (2/12/94) (already annexed as ANNEXURE-28 in the Original Application) issued to the Respondent

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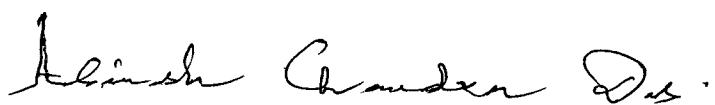
(18)

No.2 that the applicant represented his case to the Respondents within one year of his correcting of date of birth by the Gauhati University, requesting the Respondent No.6 to correct his date of birth in Service records as 1/3/1939 vide his application dated 11/5/1965 before the amendment of relevant Rule 165-RI vide Railway Board's letter No.L(NG) 11-70-BB/1 dated 3/12/71 and before the cut off date 31/7/73 for representation for correction of date of birth. The Respondents also admitted through the said letter that the case of the applicant could have been decided in the year 1965 in terms of relevant Rule 145-RI, but it was not done so at that time. The Respondents also requested the Railway Board (Respondent No.2) to re-examine the case and to communicate decision at the earliest.

It is pertinent to mention herein that even after strong recommendation of the Respondent No.4 to the Respondent No.2 for correction of the date of birth of the applicant in his service book, the Respondent NO.2 remained silent without passing any order in the said matter of the applicant for a considerable period of time and therefore, a detail report was again submitted through two letters vide dated 27/9/85 and 18/10/96 by giving strong recommendation in favour of the applicant regarding correction of his date of birth, the relevant portion of the letter is described as follows:-

" The case of Shri Abinash Chandra Das is a genuine one and bears more merits than the cases of Sri Mukherjee and Sri P.K.Mahanan He represented his case at proper time and before the amendment of the relevant Rule 145-RI as Rule 225-RI and before the cut off date allowed for representation vide letter dated 3/12/71 and 4/8/72. He did not declare his date of birth falsely at any stage. Moreover, the staff concerned is not responsible for not processing and non deciding of his case in relevant time, which would have been decided long before the amendment of the rules. His case

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A handwritten signature in black ink, appearing to read "Abinash Chander Das".

(19)

is of special nature that originated in abnormal circumstances. So it deserves special consideration".

The Respondents were also requested to treat the case of the applicant as a special one to decide it at the earliest in the light of the cases of Sri Sibajit Kumar Mukherjee and P.K. Mahanana and also requested the Railway Board to communicate the decision urgently since more than 28 months have been already elapsed awaiting decision of the Board.

From the aforesaid three letters of the Respondent No.2, it is confirmed that there is no negligence or laches on the part of the applicant in seeking relief of correction of his date of birth from the Respondents by filing representations in time and as such, there is no material defect in the Original application; but on the other hand due to undue delay, laches and negligence and arbitrariness and discrimination on the part of the Respondents the matter was kept pending for such a long time and ultimately, the Respondent No.2 had passed the impugned order dated 5/5/1997 without showing any specific reason and without examining the relevant portion of Rules and without examining other similar cases as already mentioned and as such, the said order is liable to be set aside which is quite illegal and improper.

The applicant further begs to state that his application is not at all on outcome of his after thought and he never claimed through his representation an undue and unlawful benefit by correcting his date of birth in his service record as alleged by the Respondent in their written statement which is his a matter of right and he is entitled to get the said correction on his date of birth from 1/3/1935 to 1/3/1939 on the basis of his matriculation certificate as duly corrected by the Gauhati University which is a confirmatory authenticated documentary evidence. In the even of

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(20)

correcting the applicant's date of birth as 1/3/1939 in place of 1/3/1935, he will become underaged for 1 year 5 months and 14 days which may be treated as infructuous for pensionary benefits like similarly situated precedent cases as already mentioned in the foregoing paragraphs.

The applicant further begs to state that since the applicant submitted his first representation on 11/5/1965 before the Respondents for correction of his date of birth in his service record, i.e., within one year of his correcting of date of birth by the Gauhati University, i.e., within prescribed time limit and as such, the question of delay in filing representation to the competent authority as per Rules does not arise at all. It is the duty and responsibility on the part of the Respondents to explain the delay as to why the matter was pending for such a long period of time, i.e., since 1965 to 1997 without deciding the matter by the Respondents.

The applicant craves leave of this Hon'ble Tribunal to refer to and rely upon the records of O.A. No. 127/1997 at the time of hearing.

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VERIFICATION

I, Shri Abinash Chandra Das, Son of Late Purna Chandra Das, aged about 61 years, resident of Qr. No.300/A by Central Gotanagar, Maligaon, Guwahati-11 do hereby verify that the contents of paragraphs 1 to 16 are true to my knowledge and that I have not suppressed any material fact.

And I sign this verification on this 10th day of October, 2001 at Guwahati.

Abinash Chandra Das,

(Shri Abinash Chandra Das)

Contd....p/

Abinash Chandra Das

(22)

ANNEXURE-XLI

English Translated Copy of Certificate of Village Gaon Burah.

Certified that Sriman Abinash Chandra Das, Son of Late Purna Chandra Das of Village and Mouza: Rampur, District: Kamrup is a boy of my Lat. I know and recognise him well since his birth. He was born on 1st March, 1939. This is true from my knowledge, belief and from my proof of birth register (Hath Chitha). His above date of birth is mentioned here from the year 1938-39 birth Register (Hath Chitha).

I became the Gaon-Buarah of No.20 Lat of Village: Rampur after the death of late Dehjur Gaonburah.

The character and conduct of Sriman Abinash is very good and he is also a boy of amiable nature.

I wish him all success in his life.

Sri Bhakat Chandra Kalita,
Gaonburah

Rampur, 20 NO.Lat.

District: Kamrup, Assam.

2/3/61.

From the birth register produced by the Gaonburah of Lat No.20 (of Rampur) it appears that Shri Abinash Chandra Das son of Late Purna Chandra Das of Village : Rampur was born on 1/3/1939.

Attested
P. Bhakat
Advocate
W. 10. 400

Sd/ A.Das
Sub Deputy Collector.

Contd....p/

Abinash Chandra Das

True - Copy

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শ্রীমান অবিনাশ চৌধুরী নাম, পিতা শ্রুতি পূর্ণচন্দ্র নাম, জাতি ও মৌজা
বায়পুর, ডিল্লি বাজারপাটা, প্রেস স্টেট নং ১৩। প্রতিক পর্যবেক্ষণ পরামর্শ পরামর্শ দণ্ডে
জন্মে উন্নতি পাও। প্রতিবেশী জন্ম ১১ তার এবং ১২ মার্চ ইত্যু। পর্যবেক্ষণ
জন্ম, কিংবা জন্ম, কোথা জন্ম কিংবা অবস্থা জন্ম। ১১ তার তার
জন্ম হাত নিষ্ঠাৰ পৰা প্রতিবেশী ও পরামর্শ জন্ম পৰি কুল দিয়া ইন্দু।

ব্রহ্মপুর দেবগুৰু জাতীয় পুত্র পুর্ণচন্দ্র প্রতি বায়পুর জাতীয়

২০ মাস জন্ম জাতীয় ২৩।

শ্রীমান অবিনাশ চৌধুরী পারিষ অধিনি প্রতি প্রতিপ্রতি পৰিক
ব্রহ্মপুর অবস্থা। প্রতি প্রতিবেশী জন্ম সর্বান্ধিম প্রতিবেশী ও কুতুবপুর জাতীয়
বাবে কামনা কৰিবে।

ইতি-

From the Birth Register produced
by the Gram Sevach of hat No. 20
(of Ramnagar) it appears that Sri Sd/ শ্রী অবিনাশ চৌধুরী - জন্ম কলিয়া - জাতীয়
Alinash Chandra Das (of) later Sd/ S. D. C. বায়পুর, ২০ মাস - মাস - ।
Sengnar Chandra Das of Vill. Ramnagar was born on 1.3.39
born on 1.3.39

জিলা বায়পুর, প্রদেশ।

২১। মে ইং

Sd/ ~~Mr~~ Das.
S.D.C.
Palashbari
12/3/61.

Attested
C.R.
10/3/61
14/3

Attested
f. K. Bhattacharya
Advocate
W. 75 Govt



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ENGLISH TRANSLATED COPY OF THE ABSTRACT
FROM PANJIKA

ANNEXURE-XLII

Abstract of birth date of Shri Abinash Chandra Das from
teh "Panjika" of 1939, noted down by Shri Purna Chandra Das
(father) on page No.345.

Sakabda 1860 San 1345, English 1939, Mury 1358/345

17 Phagun English 1 March, Mury 9 Maharan

Ist March 6-30 Morning.

Father Sd/ Sri Purna Chandra

Sd/ Sriman Abinash
5/3/39 Eng.

Official Seal of
Sub Deputy Collector of Palasbari.

Attested
P. Chandra
Advocate
10.10.2017

Contd....p/

Abinash Chander Das

X3A-
(156)

Instead of birthdate of Sri Th. I. M. S. (Bengaluru D. B., former
the "Panjika" of 1939, noted down by Sri Purusha Channan (father)
on page No. 345.

1939-07-01, 87-1680, 2nd 1939, 2nd 1939, 2nd 1939 | 1939.

1939-07-01, 87-1680, 2nd 1939, 2nd 1939 | 1939.

1939-07-01, 87-1680, 2nd 1939 | 1939.

sd/- Shri. S. N. Chaturvedi

sd/- Shri. S. N. Chaturvedi

2/6 1939 2nd

Attested
(Signature)



Attested,
G. G. Chaturvedi
Advocate
No. 10, Mysore.

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ANNEXURE-XLIII

OFFICE OF THE REGISTRAR, GAUHATI UNIVERSITY

No.Cer/CA/

Date

|All communications to the |
 |University should give the |
 |Number, Date and Subject of |
 | previous correspondence. |

From:

P. Datta, Esqr. M.A., B.L.,
 Registrar, Gauhati University, Guwahati.

To,

Subject: Alteration in the age-entries of persons.

Reference:- Your endorsement/letter/application

No. Date

Sir,

With reference to the above you are informed that you are to submit the following documents and the fee for consideration of the matter.

1. The original horoscope of the person.
2. An affidavit duly sworn before a 1st Class Magistrate.
3. Original or certified extract from the Municipal or Local Board Birth Register or such other public documents.
4. and A fee of Rs.10/-

It may please be noted that application for alteration in the age-entries of persons after they have appeared at or passed the Matriculation Examination is not generally entertained. The application will not be considered in absence of any of the above three documents.

The accompanied form may please be duly filled in and returned to this office with necessary documents and fee.

Enclosure:

*Aftered
 P. Bhutiani
 Advocate
 10.10.2017*

Alinsh Chunder Das

REGISTRAR

Contd....p/

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ANNEXURE-XLIV

To,

The FA & Chief Accounts Officer,
N.F. Railway/Maligaon.Dated, Maligaon
th 8th July, 94.

Sir,

Sub: Submission of Pension Forms and Forms of other
retirement benefits of Sri Abinash Chandra Das,
Sr. SO(A)/Insp.Section.

With due respect, I beg to submit herewith two booklets
containing pension Forms "A" (102) on protest of my prematured
and arbitrary retirement from service w.e.f. 1/3/1993 at the
age of 54 years.

I have not yet received any reply to my original application
dated 11/5/1965, on reccorrectoin of date of birth as
1/3/1939 recording to my Matriculation Certificate.

GM(P)/N.F.RLY/Maligaon has not yet intimated me the decision
of Rly. Board as communicated to you vide
L/NO./E/71/10/Q dated 11/8/92 and you communicated to me vide
L/No.PNO/AD/70/348 dated IV dated 19/8/92.

Reply to my last letter dated 11/6/93 addressed to GM,
CPO and you has not yet been received by me.

Reply to my representation to the Hon'ble Railway Minister and Railway Board, which was sent to
GM(P)/N.F.RLY/Maligaon for comment vide Board's Letter
No.E(REP)11-93/NF(15)91 dated 17/9/93 has not yet been received.

Under the circumstances, after long sixteen months,
awaiting for decision and reply from GM(P) and Railway Board
now pending finalisation of my case by Rly Board. I am going
to submit the papers of retirement benefits being compelled

Attested
P. Bhattacharya
Abinash Chandra Das.

Contd....p/

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by extreme and unbearable financial hardship under the circumstances of starvation with my family.

Kindly acknowledge receipt.

With best regards,

Yours faithfully,

(ABINASH CHANDRA DAS)

Sr. SO/(Accounts).

Qrs. No.300/A, Central Gotanagar

Maligaon, Guwahati-781011.

Dist: Kamrup, Assam.

Encl: 1. Two booklets of pension application forms.

2. Three Jt. P.P. size photographs.

Copy to: GM(P)/N.F.RLY/Maligaon for information & necessary action with reference to his L/NO/E/71/10/Q dated 11/8/92.

(ABINASH CHANDRA DAS)

Abinash Chandra Das

Contd....p/