

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:GUWAHATI.5

ORIGINAL APPLICATION NO. 439/2000

. . . Madhu Sukanl Chakraborty Applicant.

versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. B.K. Sharma
Mr. S. Sarma Mr. U.K. Gogoi
Mr. D.K. Sharma

For the Respondents. C.G. S. - A Del.

NOTES OF THE REGISTRAR

DATE

O R D E R

22.12.2000 Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

This application is in form but not in Condorion Petition is filed vide M.P. No. C.F. for Rs. 30/- deposited vide IPO/BD No. 503931. Dated 20.11.2000

for D.Y. Registrar. 22/12/2000
B

Heard Mr. S. Sarma, learned counsel for the applicant.

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

Pendency of this application shall not be a bar for the respondents to consider the case of the applicant.

List on 25.1.2001 for written statement and further orders.

Note:- Envelopes filed.

h
Vice-Chairman

For 2) Mention case.

mk

2/2/2001

List on 14/2/2001.

ASD

NB

Notice prepared and sent to D/Chmn. Shillong
for giving the Respondent No 1 to 3
by Registered & by hand Mailed/No.
77 W 79 Md 8/01/01

14.2.2001 Four weeks time allowed to the respondents to file written statement. List for orders on 16.3.01.

- ① Service report are still awaited.
- ② No written statement has been filed.

h
Vice-Chairman

nkm

16.3.2001. Adjourned to 25.4.2001.

M/s
A.D. 72
Tb-3

M/s
13/2/01

25.4.2001

25.4.2001

W/S has been submitted by the Respondent.

nkm

18.5.01

Written statement has been filed. The applicant may file rejoinder, if any, within two weeks from today. List for orders on 11.5.01.

Vice-Chairman

30.4.2001

An additional W/S pg 1.6.01 has been submitted by the Respondents.

BB

3.7.01

The case is ready as regards pleading. The applicant, however, sought more time to file rejoinder and accordingly, seven days time is allowed to the applicant to file rejoinder.

List the case for hearing on 3-7-01.

Vice-Chairman

bb

4.3

Mr. S. Sarma learned counsel appearing on behalf of the applicant submitted that the date of birth of the applicant as per Migration Certificate and copy of Transfer Certificate was 15.6.1943. He argued that the applicant has been ~~possibly~~ ^{possibly} retired on 5.1.2001 though the applicant is due to retire on 30.6.2003. Mr. A. Deb Roy, Sr. C.G.S.C. submitted that the applicant had applied for Postal Life Insurance mentioning the Date of Birth as 5.1.1941. The graduation list also shows the Date of Birth of the applicant as 5.1.1941. The applicant had also applied for GPF Advance mentioning the Date of Birth as 5.1.1941 and the date of superannuation as 4.1.1999. Mr. A. Deb Roy also submitted a photocopy of

contd/-

Q)

Notes of the Registry	Date	Order of the Tribunal
<p>The case is ready for hearing as regard W.O.s and rejoinder.</p> <p><u>26/7/01</u></p>	<p>3.7.01</p> <p>lm</p> <p><u>Deo</u></p>	<p>1st page of Service Book. It is stated showing the Date of Birth as 5.1.1941. He submitted that the Date of Birth of the applicant on 5.1.1941 is not 15.6. 1943. Mr. A. Deb Roy, Sr.C.G.S.C. is directed to produce the Service at the next date of hearing.</p> <p>List for hearing on 27th July 2001.</p> <p><u>I.C.I.C. Shar</u> Member</p> <p><u>Deo</u> <u>Deo & Deo</u></p>

4/N

Notes of the Registry	Date	Order of the Tribunal

57/w

Notes of the Registry	Date	Order of the Tribunal
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27.7.01

At the request of Mr. S. Sarma, learned counsel for the applicant the case is adjourned to 17.8.2001.

List on 17.8.2001 for hearing.

27
16.8.01

TC Ushan

Member

trd

17.8.01

Mr. S. Sarma learned counsel for the applicant states that written statement has filed by the respondents which has been sent to the applicant. List on 27.8.01 for hearing.

TC Ushan

Member

27.8.01

Stand out. List again on 29/8/01 for hearing.

mb

29/8/2001

Vice-Chairman

Writ of on 30/8/2001.

B.K. Sharman
A.K. Jay

29/8

30.8.

Heard Mr. B.K. Sharman, learned Counsel for the applicant
Mr. A. Albany, for C.G.S.C. for the respondent. Hearing concluded, Judgment reserved.

B.K. Sharman
A.K. Jay

30/8

Notes of the Registry

Date

Order of the Tribunal

31.8.2001

Judgment pronounced in open court. The application is dismissed. No order as to costs.

The Service Book and other documents produced by the respondents may be returned to Mr A. Deb Roy, learned SR. C.G.S.C.

nkm

Vice-Chairman

By Order

19/8/01

19.8.2001.
 Copy of the Judgment has been sent to the Office for issue of the same to the applicant as well as to the learned C.G.S.C. for the respondents.

S.R.C.G.S.C.

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. NO. 439. of 2000

DATE OF DECISION

31.8.2001

Shri M.S. Chakraborty

APPLICANT(S)

Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Goswami and Mr D.K. Sharma

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

The Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

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 ?
5. Judgment delivered by Hon'ble Vice-Chairman

Yes,
L

L

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.439 of 2000

Date of decision: This the 31st day of August 2001

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

Shri Madhu Sudhan Chakraborty,
Resident of Village - Jyotinagar (Simaluguri),
P.O.- Simaluguri, Barpeta, Assam.Applicant

By Advocates Mr B.K. Sharma, Mr S. Sarma,
Mr U.K. Goswami and Mr D.K. Sharma.

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, Department of Posts, New Delhi.
2. The Chief Postmaster General, Assam Circle, Guwahati.
3. The Superintendent of Post Offices, Nalbari.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....
O R D E R

CHOWDHURY. J. (V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has arisen and is directed against the order dated 17.10.2000 communicated by the Superintendent of Post Offices, Nalbari Barpeta Division declining to change the date of birth of the applicant in the following circumstances:

2. The applicant joined as a Packer under the respondents in the year 1963. Later, he was promoted as a Postal Clerk. On 20.4.1995, the applicant submitted an application to the Superintendent of Post Offices, Nalbari Barpeta Division for correction of his date of birth from 5.1.1941 to 15.6.1943. In the application it was, inter alia, stated that his date of birth was wrongly recorded as 5.1.1941 in respect of 15.6.1943.

He asserted that he was appointed in the department through the Employment Exchange at Guwahati on the strength of his age proof certificate issued by the West Bengal Government under Registration No. 8/132/203884 dated 15.6.1948. The said application was in due course forwarded to the appropriate authority for consideration. The applicant also thereafter made similar request to the Superintendent of Post Offices, Nalbari Barpeta Division by his representation dated 15.12.1997. The applicant also mentioned the communication dated 5.7.2000 sent by the Superintendent of Post Offices, Nalbari Barpeta Division to the Postmaster, Barpeta HPO, wherein an order was made for reconstruction of Service Books in respect of the officials mentioned in the letter which included the name of the applicant. The said communication also mentioned that the personal file in respect of three persons including the applicant were to be examined at the Superintendent level and the officials concerned were advised to submit copies of the confirmatory documents, such as birth certificate, first appointment letter, joining report and other relevant service records. The applicant thereafter also submitted some representations and by the impugned communication dated 17.10.2000 he was informed that his request for change of his date of birth was not recommended by the Chief Postmaster General, Guwahati since the applicant did not make his request for such correction within five years of his entry into Government service and he also did not fulfil the conditions as per rules. The legitimacy of the said action is assailed in this application by the applicant.

3. The applicant has based his claim on the basis of a Migration Registration Certificate, which reads as follows:

"Certificate No.8/132/283884 registration office 520 Centre No. B registration book No.107 page No.43326 registration persons serial No.5.

Name: Chakroborty Madhusudhun

Head of families: Chakroborty Vivetra Kishore

Present address : Dist.-Calcutta, P.S. Alipur, Sub-Division-
Vill.- Gopal Nagar, P.O.- Alipur.

Age : 5 years, Religion : Hindu, Community : Brahmin

From which District- Penkhali, Sub-division : Mena, P.S.
Sailnaish, Vill.- Purbapathangarh, P.O. Purbashilua.

Witness :

1. Sri Vivetra Kishore Chakraborty 2. T. Mukharjee

Signature

Signature of Registrar

Date : 14.6.48"

On the strength of the aforesaid certificate the applicant claimed that his actual date of birth was 15.6.1943 and the respondent authority erroneously recorded his date of birth as 5.1.1941. It was further contended that the respondent authority in a mechanical way rejected the representation for correction of his date of birth on the ground of delay without considering the merits of his case.

4. The respondents contested the case and in their written statement it was stated that the date of birth in the Service Book was recorded as 5.1.1941 at the instance of the applicant. The applicant was aware about the same. In fact, the Divisional Gradation List and also the Circle Gradation List were prepared and circulated annually or biannually and therefore, the applicant was also aware that his date of birth was recorded as 5.1.1941 prior to 1995. The applicant entered into Government service in the year 1963. He did not make any application for alteration of his date of birth though he was aware that his date of birth was recorded as 5.1.1941. The representation of the applicant praying for alteration of his date of birth from 5.1.1941 to 15.6.1943 was examined, but his request could not be acceded to as the same was time barred and he also did not fulfil the conditions laid down in Note-6 below FR-56.

5. Mr B.K. Sharma, learned Sr. counsel for the applicant, assisted by Mr S. Sarma, learned Advocate, submitted that the respondents acted in a most illegal fashion by rejecting the representation of the applicant on the ground of limitation without going into the merits of the case. Referring to the Migration Registration Certificate, Mr B.K. Sharma submitted that the said certificate was a valid document maintained by public authority in course of official duties. The said document has its own authenticity and meaning. Save and except the aforesaid document

there.....

there was no other material before the respondents for recording the age of the applicant as 5.1.1941. The learned counsel submitted that it was the respondents who were responsible for the mistake and when the applicant pointed it out a duty was cast on the public authority to correct the same and to remove the injustice meted out to the applicant.

6. Mr A. Deb Roy, learned Sr. C.G.S.C., at the time of hearing produced the relevant documents and Service Book of the applicant and submitted that the age of the applicant was recorded as 5.1.1941 at the instance of the applicant wherein he put his thumb impression. Mr Deb Roy also produced the connected documents to justify the ground that the age of the applicant was rightly recorded and therefore, his superannuation was made as per the service record. The learned counsel submitted that there is no material to establish that the date of birth of the applicant was recorded as 5.1.1941 due to any negligence or that there was any sort of clerical error in the applicant's Service Book.

7. The applicant first submitted his representation for correction of his date of birth on 20.5.1995. The respondents turned down his representation. One of the grounds for rejecting his representation was that the said representation of the applicant was not made within five years from the date of his entry into Government service. Obviously, the communication dated 17.10.2000 referred to Note-6 incorporated below F.R. 56 effecting from 15.12.1979. The said note reads as follows:

"NOTE 6.- The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if-

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

As per the aforesaid note request was to be made within five years of the date of entry into Government service and when it is clearly established that a genuine bona fide mistake had occurred.

8. Recording of age of a Government servant is of utmost importance. Such records has its own solemnity. In the Service Book that was produced before me, the age of the applicant was recorded as '5.1.1941' in figure and as "(Fifth day of January Nineteen hundred fortyone)" in words. Against the entry 'Educational qualifications' it was shown as 'Read upto class VIII'. Left hand thumb and finger impressions of the applicant were also recorded. The applicant also put his signature below the thumb and finger impressions. The Superintendent of Postal Store Depot had also put his signature. Subsequently, the applicant submitted the statement of his family showing the date of birth of his wife and daughter, which is also pasted in the Service Book. In the application of withdrawal form of GPF in Form A III, submitted by the applicant on 5.9.1997, the date of joining service was mentioned as 25.2.1963 and his date of superannuation was mentioned as 4.1.1999. In the Gradation List also against the column 'Date of birth', the applicant's date of birth was shown as 5.1.1941. In the Proposal for Insurance filled in by the applicant as per the statutory form of Indian Posts And Telegraphs Department, the date of birth of the applicant was shown as 5.1.1941 and the said document was signed by the applicant on 15.1.1976. In the Schedule of the Postal Endowment Assurance Policy No.300393-P the applicant's date of birth was shown as 5.1.1941.

9. On the basis of all the materials on record it is difficult to hold that a genuine bona fide mistake did occur in recording the date

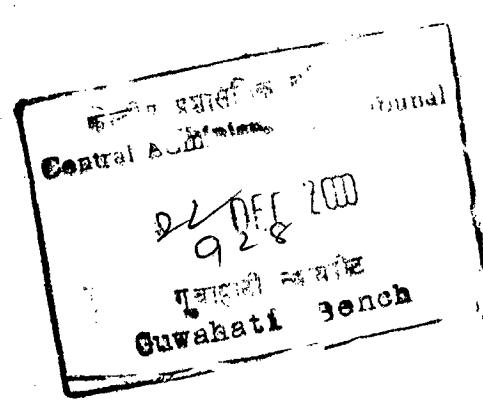
of birth of the applicant. At least materials on record did not indicate. A correction of date of birth has various ramifications. The affects of correction of date of birth is not only relatable to the employee concerned but it also concerns the service career of other employees who are/were not before the Court. With a view to avoid penalisation to other employees, steps were taken by incorporating Note-6 in F.R. 56, which has its own meaning and object.

10. On consideration of all aspects of the matter I do not find that there was any failure of justice in this case nor do I find any illegality in the actions of the respondents in not entertaining the representations of the applicant at the fag end of his career.

11. In the circumstances the application is dismissed. There shall however, be no order as to costs.

(D. N. CHOWDHURY)
VICE-CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case

DA No. 939/2009

BETWEEN

Shri Madhusudhan Chakraborty.

... Applicants

- versus -

Union of India & Ors.

... Respondents

I N D E X

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Filed by : S. Sarema,

Advocate

15
Final 62
Discrepancy
21-12-2002

THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

D.A. No. 939 of 2000

BETWEEN

Shri Madhu Sudhan Chakraborty,
son of Late Jagdish Chandra
Chakraborty, resident of Village -
Jyotinagar (Simaluguri), P.O. -
Simaluguri, P.S. Barpeta, Dist. -
Barpeta, Assam.

... Applicant

AND

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Communication, Deptt. of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Assam Circle, Guwahati-781001.
3. The Superintendent of Post Offices, Nalbari, 781335.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

This present application is directed against the impugned office order No. B-319 dated 17.10.2000 by which the Applicant was illegally forced to retire with effect from 31.1.2001 on the basis of wrong calculation of date of birth of the Applicant and also with the prayer to allow the Applicant to continue in the post of postal Assistant at Barpeta Head Post-Office under the Superintendent of Post Offices-Nalbari, Barpeta Division till the actual date of superannuation i.e.

HB

15.6.2003. This application is also directed against the Rule quoted by the respondents in the aforesaid impugned order by which restriction has been made for making request for correction of date of birth within 5 years.

2. JURISDICTION OF THE TRIBUNAL :

That the Applicant further declares that the subject matter of the case is within the jurisdiction of this Hon'ble Administrative Tribunal.

3. LIMITATION :

That the Applicant declares that the application has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges, as guaranteed under the Constitution of India.

4.2 That the Applicant was initially appointed as packer in the year 1963 vide order Memo No. SD/STAFF-10 dated 25.2.63 and posted at Postal Stores Depot, Guwahati. Thereafter on 15.11.67 the Applicant appointed as postal clerk on clearing the Departmental Examination. The Applicant had enrolled his name in the employment exchange in the year 1963 and in support of his date of birth he had submitted his immigration

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certificate to the employment exchange wherein the declaration existed that the Applicant was 5 years old at that time, as per his father's statement, and as per that certificate his date of birth is 15.6.1943. The Applicant was appointed in the department of Posts through the employment exchange, Guwahati, and he had produced the said age proof certificate to the respondents at the time of his appointment. Hence the Applicant entered service on the basis of the aforesaid certificate which was issued by the Government of West Bengal vide Regd. No. 8/132/283884 dated 15.6.1948 at the time of partition of India when he was 5 years old.

A copy of the appointment letter dated 25.2.63 is annexed herewith and marked as Annexure-1.

4.3 That the Applicant begs to state that the Respondents have wrongly inserted the date of birth as 5.1.1941 instead of 15.6.43 on the basis of the school leaving certificate issued by the Head master, Banipur State welfare school. It is further stated that such insertion was made by the school authority of their own without any prior information to the Applicant. At the time of admission in the primary school, the teacher of the Banipur State Welfare School, recorded the date of birth on their own motion and recorded it as 5.1.1941. Despite the certificate submitted to the concern authorities of the Respondents at the time of appointment which was the only document produced by the Applicant, maintained by the Government of West Bengal.

AB

At the time of partition on the basis of statement made by the father of the Applicant a certificate was issued vide registration No. 8/132/283884 dated 15.6.48.

A copy of the certificate dated 15.6.48 is annexed herewith and marked as Annexure-2.

4.4 That the Applicant at the time of registering his name in the employment exchange submitted the certificate (Annexure-2) and on the basis of which his date of birth was recorded. At the same time the Respondents while appointing the Applicant, however, took note of the schools leaving certificate issued by the school authority. The Applicant further states that the school leaving certificate is not an authentic document, since at the time of recording the date of birth the school authority did not ask for any documentary evidence regarding his age. Of their own the school authority recorded the date of birth the Applicant which is not correct. At that point of time the Applicant as well as his father made complaint to the school authority correcting his age in the light of Annexure-2 certificate but no action was taken by the school authority.

4.5 That the Applicant begs to state that the wrong recording of his date of birth by the Respondents in his service book was not within his knowledge. Since the date of entry in the service there has been no occasion to verify his recorded date of birth in the service book. In the year 1995 the Applicant could come to know about the said wrong entry and immediately he

visited the office of the Respondent No. 2 inquiring about the remedy available to him. On such enquiry the Respondent No. 2 advised him to file a representation and accordingly the Applicant on 20.4.1995 made a representation for correction of his date of birth, but same is yet to yield any affirmative result. Having not receiving any result the Applicant made numbers of representations namely representations dated 15.2.97, 21.6.2000, 3.7.2000 praying for correction of his date of birth.

Copies of the representations dated 20.4.95, 15.2.97, 21.6.2000 and 3.7.2000 are annexed herewith and marked as Annexures-3, 4, 5 and 6.

4.6 That the Applicant begs to state that the Respondent No. 3 issued an office order vide No. -B/A-21/CH-III dated 5.7.2000 informing that the service book of the Applicant has been lost. In the said order itself a direction has been issued for submission of certain documents including birth certificate, first appointment letter, joining report and other relevant documents for construction of his missing service book. It is pertinent to mention here that in the said order dated 5.7.2000 there has been no mention regarding the date of missing of his service book. It may be the fact leading to the wrong recording of his date of birth in his service book.

A copy of the order dated 5.7.2000 is annexed herewith and marked as Annexure-7.

4.7 That pursuant to the Annexure-7 order dated 5.7.2000 the Applicant submitted all the relevant document including document relating to his date of birth. In this connection the Applicant confirming his date of birth also filed an affidavit sworn before the Judicial Magistrate, Barpeta along with the other relevant documents for re-construction of his service book.

A copy of the affidavit sworn before the Judicial Magistrate, Barpeta is annexed herewith and marked as Annexure-8.

4.8 That the Applicant begs to state that after submitting the relevant documents for reconstruction of service book, he made another representations dated 7.9.2000 and 23.9.2000 praying for correction of date of birth as 15.6.43 which is wrongly maintained by the authority concern as 5.1.41 and should be allowed to continue in his service upto 15.6.2000.

The copies of the representations dated 7.9.2000 and 23.9.2000 are annexed herewith and marked as Annexure-9 and 10.

4.9 That the applicant begs to state that he came to know that the superintendent of posts, Nalbari-Barpeta Division had submitted a note to the Chief Post-Master General, Guwahati, after verification of records of the Applicant, but most surprisingly the Chief Post Master

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general, Guwahati did not agree with the proposal/suggestions of the Superintendent of Post, Nalbari-Barpeta Division and arbitrarily without verifying the records of the Applicant, decided to make the applicant retire from his service, assuming the date of birth as on 5.1.41 which was wrongly recorded by the respondents on basis of school leaving certificate. This arbitrary decision issued vide impugned order under office order No. B-319 dated 17.10.2000 wherein it is stated that the Applicant did not make requests in this regards within 5 years of his entry into the service and also did not fulfill the conditions as per rules. This impugned order is issued arbitrarily in total violation of existing/relevant rules and the decision of retirement with effect from 31.1.2000 is contrary to the correct date of birth which was furnished by the Applicant at the time of his initial entry into the service. Be it mention here that the Applicant can not be made to suffer if there is any wrong recording of date of birth on the part of the Respondents. Therefore the impugned order under office order No. B-319 dated 17.10.2000 is liable to be set aside and quashed.

A copy of the order dated 17.10.2000 is annexed herewith and marked as Annexure-II.

4.10. That the applicant begs to state that the respondents have taken the view wrongly in respect of the Rule while passing the impugned order dated

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17.10.00 (Annexure-ii). It is further stated that while passing the said order dated 17.10.00 the respondents have taken in to consideration the Rule to be as 5 years from the dated of entry in to the service debarring the applicant from making application for correction of date of birth. The applicant states that even there is any such Rule debarring him to make application for correction of date of birth within 5 years from the date of entry , through this application he challenge the very legality of the said Rule, with a prayer for modification of the same. In fact in the present case the applicant could come to know about the said wrong in the year 1995 and immediately he made representations to that effect and hence the said Rule will not be applicable in the present case and hence the impugned order is liable to be set aside and quashed.

4.11 That the Applicant begs to state that at the time of appointment the Applicant submitted the certificate issued by the West Bengal Government which is a very important and authentic documents for determining the correct date of birth of the Applicant. The Applicant was recruited through the employment exchange and the name of the Applicant was registered in the employment exchange on the basis of that certificate. Even thereafter the decision taken by the superintendent of Posts, Nalbari-Barpeta Division without application of mind and without verification of the service records of the Applicant is highly arbitrary, illegal and unfair

to retire him with effect from 31.1.2000. Therefore the same is liable to be set aside and quashed and the respondents be directed to allow the Applicant to continue till 15.6.2003 as per his actual date of birth.

4.12 That the Hon'ble Tribunal be pleased to call for service records of the Applicant for proper adjudication of the question involved in the instant application and also for the protection of the right and interests of the present Applicant.

4.13. That this application is deserves to be allowed with costs.

4.14 That it is a fit case where the Hon'ble Tribunal be pleased to interfere to protect the right and interests of the Applicant and this application is made for ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the action of the respondents in not considering the change of date of birth as per rules has given rise to miscarriage of justice.

5.2 For that the actual date of birth recorded as per certificate issued by the west Bengal Government at the time of migration is 15.6.1943. Therefore the Applicant is due to retire on 15.6.2003.

5.3 For that Applicant submitted his age proof certificate at the time of his entry into the postal

service to the authority of the department.

5.4 For that the date of birth was correctly recorded as 15.6.1943 by the employment exchange, Guwahati in the year 1963 at the time of enrollment of his name into the exchange registrar.

5.5 For that the Applicant was appointed into the postal department through the employment exchange not on the basis of school leaving certificate.

5.6 For that the Respondents plea of not making any request within 5 years, is not applicable in this case as the Applicant came to know about the wrong recording of date of birth in the year and he made a representation immediately.

5.7 For that the Applicant can not be made to suffer due to wrong recording of date of birth committed by the Respondents.

5.8 For that no opportunity or principle of natural justice was followed while arbitrary decision was taken without application of mind and with out verification of service records of the Applicant.

5.9 For that the decision taken by the Respondents is bad in law.

6. DETAILS OF REMEDIES EXHAUSTED

That the Applicant declares that he has exhausted all the remedies available to him and there is no

AS

alternatives remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made, before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pendency before any of them.

8. RELIEFS SOUGHT FOR :

Under the facts and circumstances stated above, the Applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perused of records, be grant the following reliefs to the Applicant :-

8.1 To direct the Respondents to correct/change the date of birth of the Applicant as 15.6.43 and allowed to continue him in his service and the order Memo No. B-319 dated 17.10.2000 (Annexure-11) be set aside and quashed modifying the Rule mentioning 5 years from the date of entry as 5 years from the date of knowledge of such mistake.

8.2 To direct the Respondents to extend the all service benefits till 15.6.2003 as per correct date of birth of 15.6.43.



8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR :

During the pendency of this application the Applicant prays for the following interim relief :

9.1 To direct the Respondents to be allow the Applicant to continue to work in the post of postal Asstt. at Barpeta Head Post Office till final disposal of the O.A. or to actual date of superannuation on 15.6.2003.

10. *****

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 29 503939
- ii) Date : 20-11-2000.
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

1953 - postal
Ann. VII - Service book missing verification.
post of office
Order
regd. with Emp. Exch - 1943 -
changed to 1941

OA 440/

PL 1 - S. P. 4/
Graduation Cert. S. P. 4/
P. P. Withdrawal slip - 4.1.95
Service book -

VERIFICATION

I, Shri Madhu Sudhan Chakraborty, son of Late Jagdish Ch. Chakraborty aged about 47 years, at present working as postal Asstt. at Barpeta head Post Office, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4'1, 4'4, 4'11-4'14 and 5 to 12 are true to my knowledge ; those made in paragraphs 4'2, 4'3 and 6'5 to 4'10 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 20 th day of December 2000.

Madhu Sudhan Chakraborty

INDIAN POSTS AND TELEGRAPH DEPARTMENT
OFFICE OF THE SUPDT. POSTAL STORES DEPOT : GAUHATI

MEMO NO. SD/STAFF- 10

Dated Gauhati the 25th Feb '63.

Subject to their furnishing all necessary documents (in order) within a fortnight the following candidates who are also nominees of the Local Employment Exchange are hereby appointed purely on temporary basis as packers of the Postal Stores Depot, Gauhati with effect from 25.2.63 forenoon in the scale of pay of Rs. 70-85/- plus admissible allowances.

This temporary appointment may be terminated at any time without assigning any reason or serving any notice thereof.

The candidates will have to furnish security of Rs.300/- (Rupees three hundred) only each immediately.

Names of the candidates:

1. Shri Madhukar Chakravarty
2. Shri Harman Das
3. Shri Bapu Ram Das.

Sd/-: H. G. Handa
Supdt. Postal Stores Depot,
Gauhati.

Copy to :-

1) Accounts Branch, P.S.D./Gauhati.

2) Shri Madhukar Chakravarty

3) Shri Harman Das

3) Shri Bapu Ram Das.

5-7) P/Ps of the candidates.

Supdt. Postal Stores Depot,
Gauhati.

Approved

.....

.....

A. H. Handa

3
20/10/2002

Superintendent
Barpeta Civil Hospital

Annexure-2

OPEN TRANSLATION FROM BENGALI

GOVERNMENT OF WEST BENGAL

5 MIGRATION REGISTRATION CERTIFICATE

Certificate No. 8/132/283884 registration office
520 Centre No. 8 registration book No. 187 page No.
43326 registration persons serial No. 5.

Name : Chakraborty Madhusudhun

Head of families : Chakraborty Vivetra Kishore

Present address : Dist.-Calcutta, P.S. Alipur, Sub-
Division- x Vill.- Gopal Nagar, P.O.-Alipur

Age : 5 years, Religion : Hindu, Community : Brahmin

From which District- Penkhali, Sub-division : Mena,
P.S. Sailnaish, Vill.-Purbapathangarh, P.O.
Purbashilua

Witness :

1. Sri Vivetra Kishore Chakraborty 2. T. Mukharjee

Signature

Signature of Registrar
Date : 14.6.48

Attested
M. K. Jecwan
Advocate

- 18 -

Annexure-3.

To,

The Supdt. of Posts, Nalbari-Barpeta Division.
dated Barpeta the 20.4.95

(Through proper channel)

Sub:- Prayer for change of date of birth

Sir,

I have come to know me that you have wrongly maintained my date of birth 5.1.1941 instead of 15.6.1943, Sir, I was appointed in this department through employment exchange at Guwahati on the strength of my age proof certificate, which was issued by the West Bengal Government, under Reg. No. 8/132/283884 dated 15.6.1948, on that day I was 5 years old. This age was maintained by the respective issuing officers at the time of partition of India. Sir, I got the service on the strength of the above mentioned certificate.

So you are requested kindly to correctly my date of birth and service record.

Copy forwarded today

Postmaster, Barpeta H.O.
20.4.95

Yours faithfully
M.S. Chakraborty
Barpeta H.P.O.
Dtd. 20.4.95

*Attested
M. S. Chakraborty
Postmaster*

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Annexure-4

DEPARTMENT OF POSTS, INDIA

From: Sub-Postmaster
Sorbhog

To

The Supdt. of Posts, Nalbari-BPE-DVN
at Nalbari-781335

No.A1/Staff/Corr/M.S.Chakraborty.197-98/dtd.Sorbhog the
15.2.97

Sub : Representation for change of date of birth.

An application submitted by Sri M.S. Chakraborty
Spmt Sorbhog P.O. He is prayer for changing of date of
birth. The same of the application is forwarded h/w for
your kind disposal.

Sd/-Illegible
Sub-Postmaster
Sorbhog-781317

Copy to Sri M.S. Chakraborty
Spmt/Sorbhog for information.

Sd/-Illegible
Sub-Postmaster
Sorbhog-781317

Attacted
W.K. Goswami
Advocate

- 18 -

Annexure-4 cont.

To,

The Supdt. of Posts, Nalbari-Barpeta Division.

Dated Barpeta the 15.12.97

(Through proper channel)

Sub.: Prayer for change of date of birth

Sir,

With reference to my letter dated 28.4.95, which was submitted to P.M. Barpeta H.O. for changing of my date of birth as per age proof certificate under Reg. No. B/132/282884 dated 15.6.1943 at the time of partition of India, on that day I was 5 (five) years old. Sir, my date of birth is 15.6.1943. The same as above mentioned proof certificate was issued by the West Bengal Govt. by the respective officers. So you are request kindly to change my date of birth by early date and obliged.

one copy of the letter received and forwarded to SPOS NBR-BPE.DVN at NBR for necessary action on 15.12.97

Yours faithfully
M.S. Chakraborty
Spm/Sorbhog P.O.
Dtd. 15.12.97

Sd/-Illegible
Sub-Postmaster
Sorbhog

Attested
Utkal Grawal
Advocate

- 2 -

Annexure-5.

To,

The Supdt. of Posts, Nalbari-Barpeta Division.
Dated Barpeta the 21.6.2000

Sub.: Prayer for change of date of birth

Sir,

Most respectfully I beg to state that, my date of birth is 15.6.1943, But the department has wrongly maintained the date of birth is 5.1.1941, so you are requested kindly to change the D/o birth as per Government certificate. The true copy of age proof certificate is enclosed h/w, which was issued by the West Bengal Government at the time of bygarcation in the year of 1948. Sir on that day I was 5 yrs. oldest. The certificate registration No. 283884 dtd. 15.6.1948 which was accepted by the Incharge of Employment Exchange office at Guwahati (Assam).

Sir, now myself cordially request you kindly to change my date of birth against 5.1.1941. This is my request. Thanking you.

Enclose one true copy of
certificate under
No. 8/132/283884 dt. 15.6.48

Yours faithfully
M.S. Chakraborty
P.A. (LSG) Barpeta H.O.
Dtd. 15.12.97

*Aftered
M. J. Goswami
Advocate*

To,

The Supdt. of Post, Nalbari, Barpeta Division.

Dated Barpeta the 03-07-2000.

Through the Proper channel.

Subject:- Prayer for change of Date of birth.

Sir,

With reference to my letter No. Dated 21-06-2000, I beg to state that my actual date of birth is 15-06-1943. But the department has wrongly maintained my date of birth of 05-01-1941. So, you are requested kindly to change my date of birth as per as Govt. certificate under number 283884 dated 15-06-1943.

Sir, on that time I was a five years old child which was mentioned in the certificate. The True copy of Certificate enclosed here with this application. Again inform you that the Age proof certificate accept by the employment exchange at Guwahati Assam. Through this certificate I was entered in this department. Now you are cordially requested kindly to change my date of birth by early date.

Thanking you.

Enclosed True copy of

Age proof Certificate,

under No. 8/132/283884.

Yours faithfully,

M. S. Chakrabarty
3/7/2000

M. S. Chakrabarty

P. A. (L.S.C.) Barpeta P.O.
Dtd. 03-07-2000.

Attested
Uk Gonjan
Advocate.

Attested
by

20/10/2000
Superintendent
Barpeta Civil Hospital

DEPARTMENT OF POSTS: INDIA
 Office of the Superintendent of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335

Replied
on 21/7/2009

To

The Postmaster
 Barpeta MPO

No. B/A-21/Ch-III

Date :: 05-07-2009

Sub: Reconstruction of Service Books.

Necessary action was ordered to be taken for reconstruction of service Books in respect of the following officials which were reported to have been lost.

1. Sri Rambol Baro, Postmaster
2. Sri Madhusudan Chakrabarty, PA
3. Sri Chandradhar Gayan, PA
4. Md. Mir Hussain, Gr-D
5. Sri Bishnu Ram Das, Postman
6. Sri Open Patowary, Gr-D

Personal file in respect of Sri Rambol Baro, Sri Madhusudan Chakrabarty and Sri Chandradhar Gayan may be examined here to take the information as may be required as confirmatory documents. Personal files of Sri Bishnu Ram Das and Sri Open Patowary are available at your controlling authority.

Sf
 Supdt. of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335

Copy to:

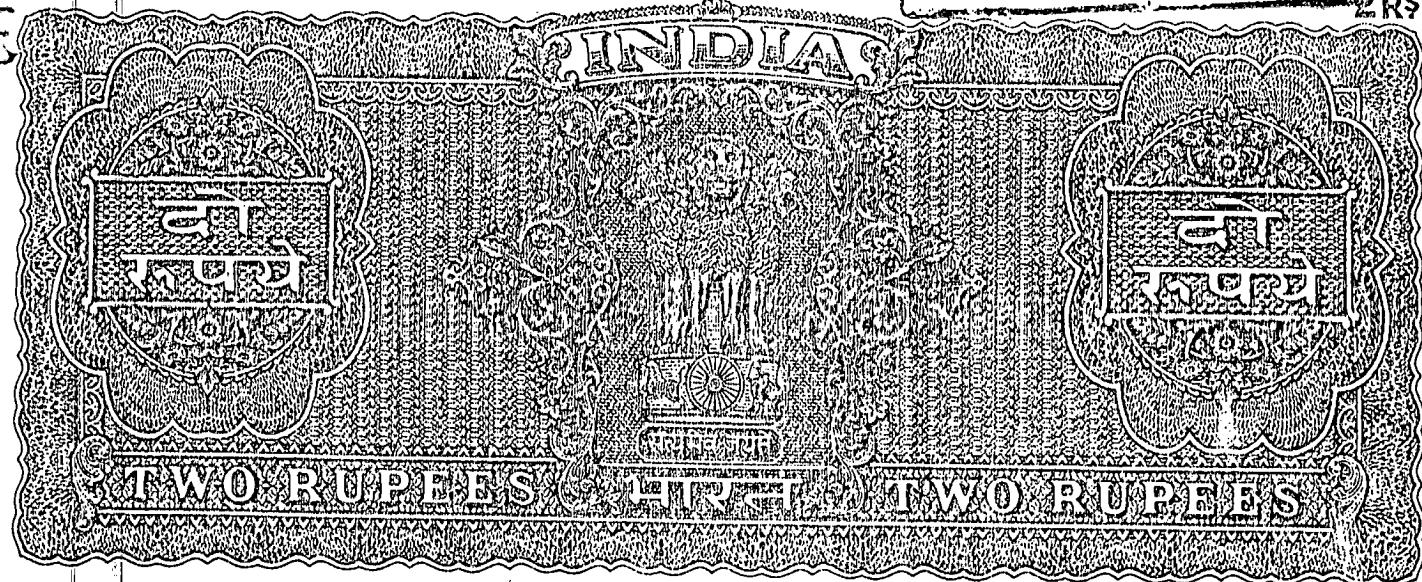
1. The SPM, Barpeta Road SO. The personal file of Md. Mir Hussain, Gr-D may be kindly be forwarded to the Postmaster, Barpeta HO for necessary action.
- 2-6. The officials concerned for information. They are asked to submit copies of confirmatory documents like Birth certificate, first appointment letter, joining report and other required service records as may be required or have relevancy to service records.

Shankar
 Supdt. of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335

Replied
on 21/7/2009

Attested.
 M. M. Chakrabarty
 Advocate

5/7/2009
 Superintendent
 Barpeta Civil Hospital



IN THE COURT OF MAGISTRATE :: BARPETA

AFFIDAVIT

I, Sri Madhusudan Chakrabarty, S/O - Late Jagadish Chandra Chakrabarty, aged about 57 years, a resident of Jyotinagar, Simlaguri, P.O - Simlaguri, Mouza - Howly within P.S & Dist. Barpeta do hereby solemnly declare and affirm on oath :-

1. That at present I am serving as postal assistant at Barpeta head post office under the Superintendent of Post Office - Nalbari, Barpeta Division, Nalbari. This is true to the best of my knowledge and belief.
2. That as per records my date of birth is 15.6.1943. That my date of birth is 15.6.1943 as per the relevant record of my father's statement as recorded in the certificate under No. 8/132/283884 dtd 15.6.1948 granted by the Govt. of West Bengal, Calcutta.

This is true to the best of my knowledge and belief.

3. That the date of birth as furnished by the Head Master, Banipur State Welfare School in the school leaving certificate was originated from my at random statement without knowledge at childhood and at the time of taking admission in the primary school where the teacher noted it on their estimation. The revelation of the actual date of birth, has had the correct status as in the Age Proof Certificate based on the statement of my father at the time of migration.

This is true to the best of my knowledge and belief.

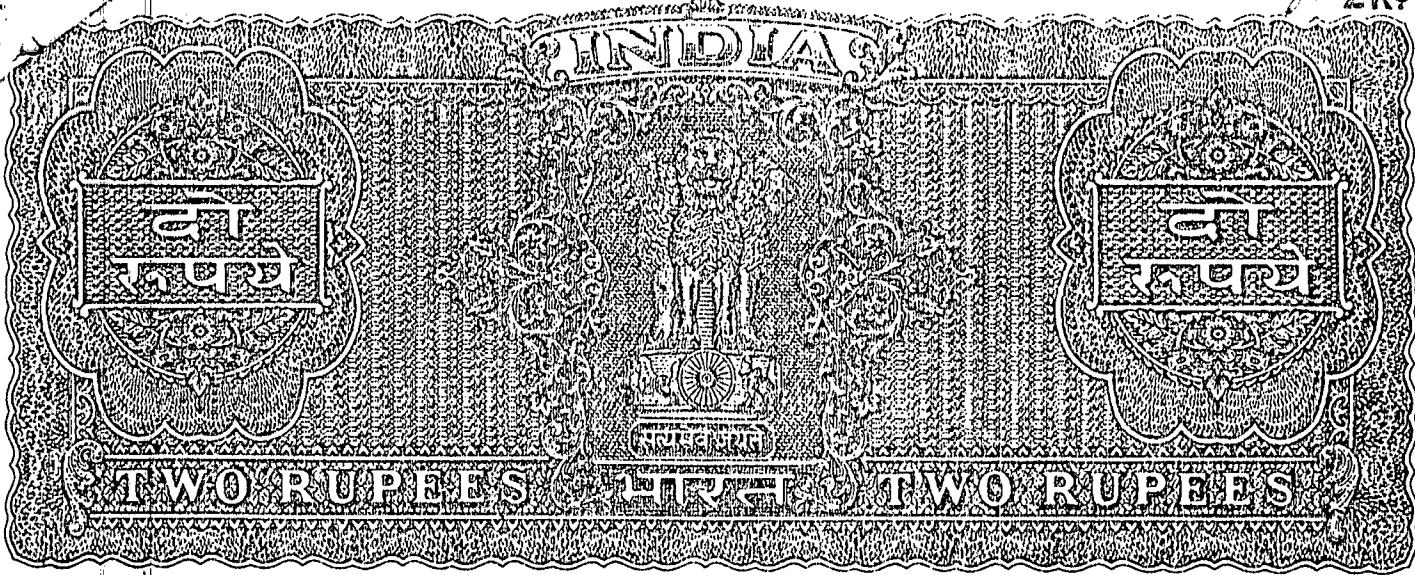
Identified by me

Laward
Advocate, Barpeta

30/8/2000 Arrested.
Utkosha

After checked
20/10/2000 Contd.

20/10/2000
Superintendent
Barpeta Civil Hospital



(2)

4. That despite submission of certificate to the employment exchange and copy submitted to the department for my appointment at the PSD Guwahati. Appears to have not been given cognisance and my date of birth is to have been maintained wrongly.

This is best of my knowledge and belief.

5. That the true copy of Age Proof Certificate was submitted at the time of entered in this Department which was submitted by the West Bengal Govt.

That the age proof certificate was submitted to employment exchange, Guwahati who registered my name on the basis of that Certificate.

This is true to the best of my knowledge and belief.

Identified by me

Advocate, Barpeta

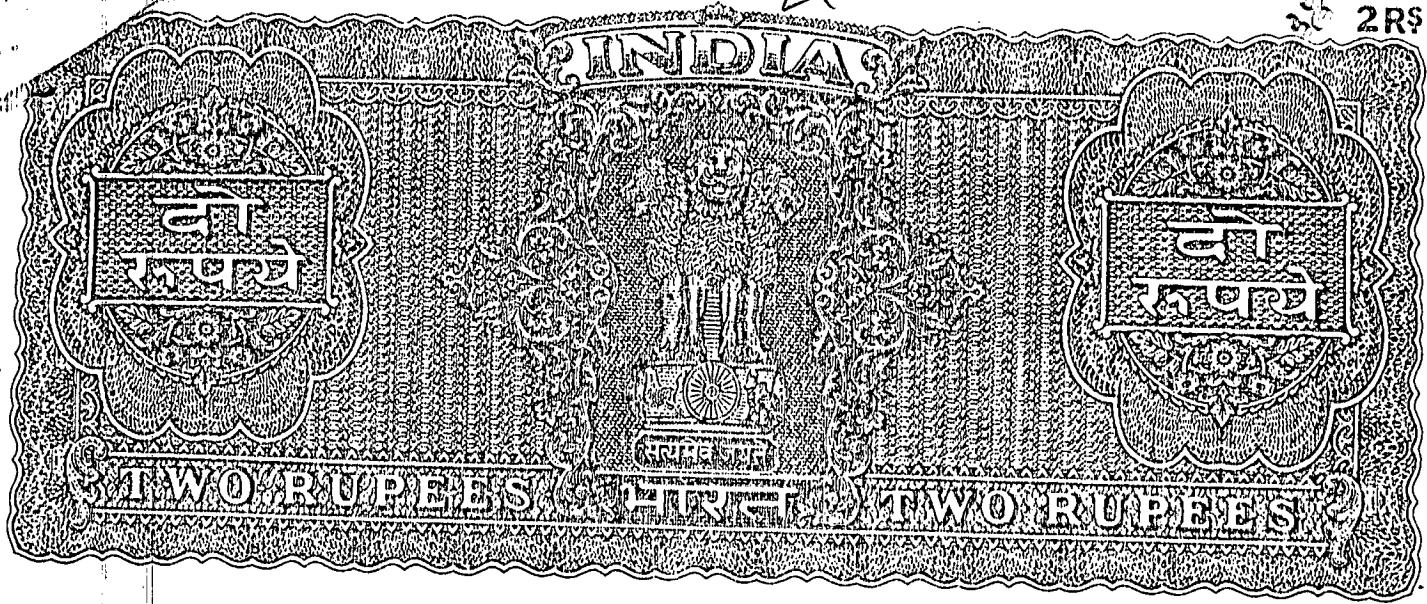
30/8/2000

Contd.

Attested
by
Advocate.

Attested
by
30/10/2000

Secretary
State Civil Hospital
Dibrugarh



(3)

6. That this affidavit shall be used as a piece of evidence to show the date of my birth and will be submitted before postal authority for reconstruction of my Service Book.

7. That the statement made in para (1) to (6) are true to the best of my knowledge and belief.

This affidavit is written according to my own deposition and hence I put my hand unto it on this 30th day of August, 2000.

Solemnly declared and affirmed before me.

Identified by me

A. Cawasji

Advocate, Barpeta

30/8/2000

Magistrate, Barpeta

* * * * *

13/10/2000
13/10/2000
13/10/2000
13/10/2000

A. Herbed

20/10/2000

Superintendent
Barpeta Civil Hospital

7/9/2000

To,

- 25 -

9
9

The Supdt. of posts,
Nalbari Barpeta Division.

Dated Barpeta the 7/9/2000.
(Through Proper channel).

Sub:- Prayer for change of Date of Birth and Reconstruction
of my service Book.

Sir,

With reference to your letter No-C 3-07/SP/2000 dtd NBR
the 30/8/2000. I beg to state that, I have submitted my age proof
certificate on 21/6/2000, 3/7/2000, 21/8/2000 and 30/8/2000 for
preparation of my service Book.

Sir, my date of birth is 15/6/1943, which is issued by the
west Bengal Government under Reg. No. 8/132/283884 dtd. 15/6/1948,
on that day I was 5 years old.

Sir, Now I am 57 years old as per my age proof certificate
and also one affidavit issued by the Magistrate at Barpeta court
on 30/8/2000. This is for preparation of my service Book.

Therefore, Sir, my service should continue upto 15/6/2003
that is why the Question of supernnuation pension should not
arise at present. Sir you are requested kindly to prepare my
service Book as per my age proof certificate.

Sir, I was entered (appointment) in this Department through
Employement Exchange at Guwahati on the strength of this age
proof certificate which is mentioned above. The age proof certi-
ficate was accepted by the Supdt. P. S. D. Ghy. at the time of my
group 'D' appointment in the year 1963.

Sir, I am sorry to say that, my service Book not yet been
prepared(Reconstruction) by the Department, till this day. So you
are cordially requested to declare proper judgement. This is my
humble request to you and I hope you will consider the same early.

ENCLOSED :

1. One copy of age proof certificate
under Registration No. 8/132/283884
which was issued by the west Bengal
Government on 15/6/1948.
2. One copy of Affidavit which is issued
by the Magistrate at Barpeta court on
30/8/2000.
3. Four(4) copies of my Application
dtd. 21/6/2000, 3/7/2000, 21/7/2000
and 30/8/2000.

Yours faithfully,
M. S. Chakraborty
(M. S. CHAKRABORTY)
P. A. Barpeta M. P. O.
Dtd 7/9/2000

Attestd

3

20/10/2000
Subordinate
Court Civil Registry

Attestd.
Advocate
Advocate

To,

The Supdt of posts, Nalbari - Barpeta DVN.
Dated Barpeta the 23/9/2000.

(Through proper channel)

Sub : Prayer for change of date of Birth and re-
construction of my service Book.

Sir,

With reference to your letter No. C 2-07/
SP/2000 dtd. N.B.R. the 30/8/2000. I beg to state
that, I have submitted my age proof certificate on
21/6/2000, 3/7/2000, 21/8/2000, 30/8/2000 and 7/9/2000
for preparation of my service Book. Sir, I have been
corresponding with you regarding the matter of my
date of birth since 1995, but now yet you have not
take any action till this day.

Sir, Now I am 57 years old as per my age proof
certificate and also one affidavit issue by the
Magistrate at Barpeta court on 30/8/2000. This is for
preparation of my service Book.

Therefore, Sir, my service should continue
upto 15/6/2000. That is why the question of superannua-
tion pension should not arise at present.

Sir, You are requested kindly to prepare my
service Book as per my age proof certificate.

Sir, I was entered (appointment) in this
Department through employment exchange at Guwahati
on the strength of this age proof certificate, which
is mentioned above. The age proof certificate was
accepted by the supdt. of PWD, Guwahati at the time

Altered
by

Contd... 21

20/10/2000

Superintendent
Establishment
Barpeta Civil Hospital

Altered
by
Advocate

27

1/3/1

of my group 'D' appointment in the year 1963.

Sir, you are therefore cordially requested to Declare proper judgement. This is my humble request to you and I hope you will consider the same early.

Enclosed:

Yours faithfully,

M. S. Chakravarty
23/9/2000
(M. S. Chakravarty)

P. A. Barpeta.

dtd. 23/9/2000.

1. One copy age certificate under Reg. No. 8/132/28384 which was issued by the West Bengal govt on 15/6/1948.
2. One copy of affidavit which is issued by the Magistrate at Barpeta court on 30/8/2000.
3. Five(5) copies of my application dtd. 21/6/2000, 3/7/2000, 21/7/2000, 30/8/2000 and 7/9/2000.

Attested
M. S. Chakravarty
23/9/2000

.....

Attested
by
20/10/2000
M. S. Chakravarty
West Bengal Civil Service

20/10/00

28

DEPARTMENT OF POSTS: INDIA
 Office of the Superintendent of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335

To

Sri Madhusudan Chakrabarty
 PA, Barpeta HQ.

No. B-319

Date :: 17-10-2000

Sub: Change of date of birth.

Ref: CO's/GH No. Staff/37-12/92 dtd. 19-10-2000.

In pursuance of CO's/GH letter No. noted above, it is to intimate that your request for changing date of birth has not been recommended by the Chief PMG, Guwahati as you did not make request in this regard within 5 years ~~and over~~ ~~service~~ of your entry in to the Govt. service and also did not fulfil the conditions as per rules.

This is for favour of your information.

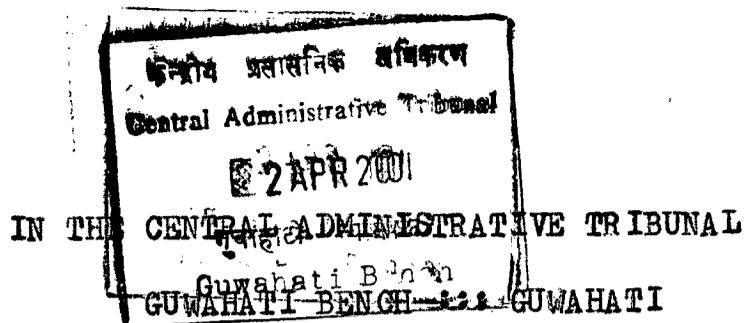
Supdt. of Post Offices
 Nalbari Barpeta Division
 Nalbari-781335

Attested.
 Mulujan
 Advocate.

Superintendent
 Barpeta Civil Hospital

Dinesh

Govt
 S. M. M. H.



O.A. NO. 439 OF 2000

Shri Madhusudan Chakraborty

-Vs-

Union of India & Others.

In the matter of :

Written Statement submitted by the
respondents.

The respondents beg to submit a brief history of
the case which may be treated as a part of Written
statement.

(BRIEF HISTORY)

The applicant was appointed as packer, at the
Postal Stores Depot, Gauhati w.e.f. 25.2.63 vide memo no.
SD/Staff/1-10 dated 25.02.63 by the Superintendent Postal
Stores Depot, Guwahati, who was also nominated from the
Local Employment Exchange, Guwahati.

Thereafter having passed the clerical grade ex-
amination and being trained & qualified as such, he was sub-
sequently appointed as postal clerk w.e.f. 15.11.67 in the
Kamrup Postal Division, Guwahati and thereafter has got his
promotion as TBOP (LSG) and BCR (HSG-II). Generally it implies
and appears to be that at the time of Registration, the
Employment Exchange, makes an seal impression on the back
side of the relevant documents and also the note of regis-

registration. In that pursuit it is found on examination of documents, such as age proof immigration certificate from the Govt. of West Bengal, Under Memo No. 8/132/283884 dated 15.06.48 showing the age to be 5 years as on the date and also the school transfer certificate granted by the Head Master, Banipur State Welfare Home School, as on 30.04.58, which have subsequently been submitted by the Government Servant, Sri Madhusudan Chakrabarty as soon as he has been told of his date of recruitment and asking him to submit the pension papers. ✓

Conspicuously it appears that on the back side of one document, and face bottom side of other document as mentioned above, there is the office seal impression showing registration number and date as "CPR/69/02 dated 30/5 within round seal of Employment Exchange, Sub Office, Gauhati."

But on examination of the documents of the personal file, it is found that there is no documents except one copy of the similarly typed certificate, having been granted by the Head Master, Banipur State Welfare Home School, without any attestation or signature of the issuing authority and the date of birth has been noted as 9.01.41. Thus it automatically remained to be doubtful, which has been reported to the Chief PMG, Assam Circle, Guwahati after perusing the representation received on different dates, and lying undisposed, to have further suggestion or orders from the said authority. ✓

It has been apparent from the appointment letter No. SD/Staff dated 25.02.63, by the Superintendent, Postal Stores Depot, Guwahati, as it was mentioned that subject to their furnishing all necessary documents within a fortnight the following candidates,

63
41

who are also nominees of the Local Employment Exchange, Guwahati temporarily appointed as Packer of Postal Stores Depot, Guwahati. It, should, therefore, be asserted that those above noted documents might have been submitted, and their non availability in the personal file and also in the CR file, is somewhat astonishing. The existence of the other one which has no identification is also wonderful. While he has been promoted to the clerical cadre from class IV cadre, it might not have been emphasised for the maintenance or upkeep of the attestation form originally accepted and other documents as well in the personal on CR file of the official.

Sri Madhusudan Chakrabarty, in his representation dated 20.04.95 which was submitted through and forwarded by Postmaster Barpeta ~~W~~ HO on 20.04.95 has mentioned that, he has come to know that the Supdt. of Post Offices, Nalbari, Barpeta Division wrongly maintained his date of birth as 05.01.41 instead of 15.6.43. It was also mentioned that he was appointed in the Department through Employment Exchange, at Guwahati on the strength of age proof certificate which was issued by the Govt. of West Bengal under Regd no. 8/132/283884 dated 15.06.1948 and on that day he was five years old. This age was also maintained by the respective issuing officers at the time of partition of India so, he got the service on the strength of above mentioned certificate. However, it has been furthermore that the Transfer Certificate dated 30.04.1958 granted by the Headmaster Banipur State Welfare Home School certified his date of birth as 15-06-1943. The relevancy of which has already been stated above. Therefore, Shri Chakrabarty made series of representation dated 15.12.97,

21.06.2000, 13.07.2000, 07.09.2000, 28.09.2000 and also submission of a copy of an Affidavit dated 30.08.2000. It has been seen that perusing all representations and the impact of the Affidavit a detailed report was submitted to the Chief Postmaster General, Guwahati, vide this office letter no. B-319 dated 19.9.2000. The Chief Postmaster General, Guwahati in his letter No. Staff/ 37-12/92 dated 10.10.2000 has rejected the claim of the official for change of his date of birth and accordingly under this office letter no. B-319 dated 17.10.2000 it was informed to Sri Madhusudan Chakrabarty, PA Barpeta HO that the request for changing date of birth has not been recommended by the Chief PMG, Guwahati as the request was not made in this regard within five years of entry into the Govt. service and also did not fulfill the condition as per rules. Thereupon Sri Madhusudan Chakrabarty has filed an O.A. 439/2000 in the Central Administrative Tribunal, Guwahati Bench, Guwahati and it is pending for submission of the written statement by the respondents.

It is pertinent to mention that the original Service Book of Shri Madhu Sudan Chakrabarty along with the Service Book of some Staff of Barpeta H.O have lost and reconstruction of the said Service Book, has been on by verifying other papers from the personal file and verification of service particulars from the "Acquittance Roll" of the offices where his pay was drawn and disbursed during the service period.

While the change of the date of birth of Shri Madhusudan Chakrabarty, was not recommended by the Head of the Department his original date of birth as on 05-01-41 has been maintained and followed and accordingly he has been usually

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given to be retired on superannuation w.e.f. 31.01.2001 Shri M.S. Chakrabarty has accepted the retirement provisionally subject to the outcome of O.A. 439/2000 with the submission of "protest letter". He is not signing and submitting the pension papers, which have been sent for collection by the SDI(P)/Barpeta.

Thus the case is accordingly subjudiced in the Hon'ble Central Administrative & Tribunal, Guwahati Bench with the direction that pendency of this application shall not be a bar for the respondent to consider the case of the applicant.

The respondents beg to submit para wise written statement as follows :

1. That with regard to para 1 the respondents beg to state that the date of birth of Shri Madhusudan Chakrabarty as maintained in the Gradation list to be as 05.01.1941 and as such his date of retirement on superannuation was correctly informed and made effective w.e.f. 31.01.2001. The applicant has been alleging for wrongful maintenance of his date of birth for which he made representations for correction of his date of birth. The request of the applicant was submitted to the Chief Post master General, Assam Circle, Guwahati who rejected the prayer under his letter No. Staff/37-12/92 dated 10.10.2000. The decision was therefore intimated under this office memo no. B-319 dated 17.10.2000. That, the request for changing date of birth has not been recommended by the Chief PMG, Guwahati as he did not make his request within five years of entry into service and also did not fulfil conditions as per rules. The order was simply a formal and there was no illegality or imposition of

any force to retire him w.e.f. 31.01.2001. However, Shri Madhusudan Chakrabarty with his letter of protest dated (The letter and dates is made Annexure-I) has accepted provisionally, subject to the outcome result of the OA No. 439/2000 and other legal approaches as may be necessary. Though he has provisionally accepted the retirement as on 31.01.2001 he has not signed and made submission of the pension papers etc. even though he was requested several times to do so and the SDI(P), Barpeta was also directed to obtain the pension papers.

2. ^{4.1} That with regard to paras 3, 3 and 4 the respondents beg to offer no comments.

3. That with regard to para 4.2 the respondents beg to state that on being nominated from the Employment Exchange, Guwahati, the applicant was appointed under memo no SD/STAFF-10 dated 25.02.1963 and posted as packer at Postal Stores Depot., Guwahati. Thereafter on passing the Clerical Grade Examination and trained as such, the applicant was further appointed as Postal Clerk w.e.f. 15.11.1967. Sri Madhusudan Chakrabarty has submitted two copies of certificates one is termed as age proof certificate granted by the Govt. of West Bengal vide Regd. No. 8/132/283884 dated 15.06.1948 and one transfer certificate granted by the Headmaster, Manipur State Welfare Homes School dated 30.04.58 upon which, there is the office stamp impression as Employment Exchange, Sub Office, Guwahati Regd. No. CPR/64/02 dated 30.05. This indicates to show that his name was duly registered at the local Employment Exchange, nominated there from and appointed accordingly in the year 1963. In both these certificates

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mention of the date of birth to be as 15.06.1943. On the other hand there is one typed copy of transfer certificate having been granted by the Headmaster, Banipur State Welfare Home School, which has neither been identified or any attesting authority or there is no signature of the issuing authority. In this certificate, the date of birth is mentioned to be 05.01.1941.

Copy of transfer certificate is annexed hereto and marked as Annexure - R₁ .

4. That with regard to para 4.3 the respondents beg to state that the applicant alleges that his date of birth has been wrongly inserted as 05.01.1941 on the basis of the school leaving certificate, which is stated to be recorded on their own motion and recorded the date of birth as 05.01.1941. But, this submission of the only documents through the Employment Exchange being the age proof certificate issued by the government of West Bengal vide Regd. No. 8-132/283884 dated 15.06.1948 and the transfer certificate granted by the Headmaster, Banipur State Welfare Home School dated 30.04.1958 have had the mention of the date of birth to be as 15.06.1943.

5. That with regard to para 4.4 the respondents beg to state that the applicant has claimed that he registered his name by submitting the certificate granted by the Govt. of West Bengal and the Banipur State Welfare Home School authority, which have had significant of holding the round seal impression of the Employment Exchange indicating the registration no and the date of registration etc. Thus it is not out of consideration that he might have submitted the said documents to the employment

exchange and the appointing authority for which there was caution in the appointment letter that necessary documents be submitted within a fortnight. The instance of the other copy of the transfer certificate appears to be granted by the said school authority appears to be distorting. But the date of birth as mentioned in the said certificate to be as 05.01.1941 is maintained and made effective in this case. The non availability of the other two certificates as submitted presently by the applicant and its cause and reason cannot be ascertained now.

6. That with regard to para 4.5 the respondents beg to state that the applicant ~~is~~ alleges that the wrong recording of his date of birth in the service book was not within his knowledge. Because, he has no occasion to verify his recorded date of birth in the service book ever since his entry in service. Only in the year 1995 the applicant could come to know about the said wrong entry and immediately he visited the office of the Supdt. of Post offices, Nalbari Barpeta Division, Nalbari and enquired about the remedy available to him. The applicant was advised to file a representation and accordingly he made an representation dated 20.04.1995 for correction of his date of birth. In fact, a Divisional Gradation list and also a circle Gradation list of all the non gazetted staff of the circle are been prepared and circulated annually or biannually and therefore it cannot be a fact to be accepted that he has no occasion to see his date of birth as alleges to be wrongly maintained and represented there upon under the conditions of rules.

7. That with regard to para 4.6 the respondents beg to state that the applicant alleges that, the respondent no. 3 being the Supdt. of Post Offices, Nalbari Barpeta Division Nalbari vide his no. B/A-21/Ch-III dated 9 05-07-2000 informing the authorities, that the service Book of the applicant along with some other officials, have been lost with further direction to do reparation of those service Book w.r.t. the documents of the personal file and "Acquittance Roll" . The officials have also been asked to submit the copies of confirmatory documents like birth certificate, first appointment letter, joining report and other required service records as may be available and relevant. The date of missing of the service Book as was not ascertained was not mentioned in the said letter dated 05.07.2000. It is not the only fact, to be respected ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ 05.07.2000 leading to the wrong recording of the date of birth of the applicant in his service book.

8. That with regard to para 4.7 the respondents beg to state that the applicant has perhaps participated to the pursuit of submitting copies of relevant documents as mentioned and also a copy of the Affidavit sworn before the Judicial Magistrate, Barpeta. That, this Affidavit is placed as a piece of evidence to show the date of birth and re-construction of the service book.

9- That with regard to para 4.8 the respondents beg to state that the applicant has in fact represented on 07.09.2000 and 23.09.2000 for correction of date of birth as 15.06.1943 after furnishing all the relevant documents as stated above. The case

was, therefore, carefully examined and the Chief PMG, Guwahati was apprised with its merit and impact under the detailed report. The Chief PMG, Guwahati on the other hand examined the case and did not recommend for changing of the date of birth being not reported within five years of entry into the Govt. service and not fulfilling the condition as per rule. Hence, the applicant could not be allowed to continue beyond 31.01.2001 being his date of birth as on 05.01.1941.

10. That with regard to para 4.9 the respondents beg to state that the applicant might be knowing the source and condition of report submitted to the Chief PMG, Guwahati as stated above. The decision conveyed by the said Chief PMG under his no Staff/37-12/92 dated 10.10.2000 was only communicated under order no. B-319 dated 17.10.2000 inter alia stating the applicant did not make request in this regard within five years of his entry and also did not fulfilled the conditions as per rule. This order was therefore, not issued arbitrarily and in total violation of the existing relevant rules and the decision of retirement w.e.f. 31.01.2001 was contrary to the correct date of birth which was maintained to be as 05.01.1941 in the official records.

11. That with regard to para 4.10 the respondents beg to state that the applicant alleges that the respondent has taken the view in respect of the rules while passing the impeded order dated 17.10.2000, whereas the order was issued under the Principles of statutory and fundamental rules that the correction of date of birth be represented within five years from the date of entry into service. That in this ~~xxxx~~ present case, the applicant alleged

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that, he could come to know about the said wrong entry on the date of birth only in the year 1995 and immediately he made representation, dated 20.04.1995 to that effect and hence the said rule will not be applicable. This is a provision of the fundamental rule incorporated as Note 6 below FR-56, where it provides inter alia w.e.f. 15.12.1979 that, a request for alteration in date of birth can be made by a Govt. servant only within five years of Govt. service. It was further that while incorporating the condition of 5 years time limit for making a request for alteration of date of birth in the service record, no distinction was made in respect of Govt. servant already in service vis-a-vis the further recruits. However, in a recent judgement given by the Supreme Court on 09-02-1993 in civil appeal No. 502 of 1993 (Union of India -Vs- Harran Singh), the Supreme Court has inter alia observed that, in regard to the Govt. servants who has joined in the service prior to 1979, the correction of date of birth should be made within a period of 5 years from 1979. The observation being as much as that, in the case of these Govt. servant who is already in Govt. service before 1979 for a period of more than 5 years and who intended to have their date of birth corrected after 1979 may seek the correction of date of birth within a reasonable time after 1979, but in any event not later than 5 years after the coming into force of the amendment in 1979. This view would be in consequence with the intention of the rule making authority. But, the claim of the applicant appears to be that his date of birth as on 15.06.1943 is ~~as~~ as per relevant documents which has not been maintained and instead an incorrect date of birth is alleged to be maintained as on 05.01.1941. As such, it is apparent that, the applicant has not

made any claim for correction of his date of birth it fresh at length. The condition has further been more aggravative at the loss of the service book being basic and vital importance.

12. That with regard to para 4.11 the respondents beg to state that it is stated that the details of the certificates has already been furnished. It is also a fact that there is significatory mark of round seal of Employment Exchange, Guwahati, on the body of the certificates, with the show of the particulars of the registration at local Employment Exchange, Guwahati since the impact of the entire documents, and phenomenon of the case has been reported to the higher authority, being competent to decide and orders, has not recommended the change of the date of birth being not permissible under the provision of rules. Hence, there was no arbitrary, illegal, and unfair element to retire the applicant w.e.f. 31.01.2001.

13. That with regard to paras 4.12, 4.13 and 4.14 the respondents beg ~~to~~ to offer no comments.

14. That with regard to para 5.1 the respondents beg to state that the records maintained including the gradation list of the Staff including the official, has had the glaring instance that his date of birth is as 05.01.41 and as such his date of retirement, has been correctly followed to be as 31.01.2000. There appears to be no miscarriage of justice at the present phenomenon, while the correction to the date of the applicant, has not been recommended by the competent authority being not admissible under the provision of rules.

15. That with regard to para 5.2, the respondents beg to state that the claim appears apparently to be some what genuine now, but the applicant did not make it to notice of the authority in right time. Thus it has become time barred.

16. That with regard to para 5.3, the respondents beg to state that the copy of the certificate maintained in the personal file of the application, has had the entry of the date of birth to be as 05.01.1941. The documents submitted recently, have had the impact of time bar at length, under the observation of the Supreme Court of India, but for the other impact that the ~~new~~ new prayer, in this case is for maintenance of the correct date instead of the wrong one and not a fresh change of date of course.

17. That with regard to para 5.4, the respondents beg to state that it may be so, as per instance of the documents, but the original documents of the Employment can not be verified now. However, the impact of the information, particulars of seal and writings at the Employment Exchange, may be indicative to become an evidence.

18. That with regard to para 5.5 the respondents beg to state that is admitted as per records and mention in the ~~application~~ letter of the applicant.

19. That with regard to para 5.6 the respondents beg to state that the impact of the provision has been such that the incorporation of Note 6 below FR-36, effecting from 15.12.79 . However, in a rent judgement, given by the Supreme Court on 09.02.93 in Civil Appeal 502/93, the Supreme Court has inter alia

observed that in regard to the Government servants who had joined service prior to 1979, the correction of date of birth should be made within a period of 5 years from 1979. However, the instance and impact of this judgement, has only been circulated on 19.05.93/ 28.06.93 to the Head of the circle and Administrative officers.

The applicant in this case, has made his prayer for the correction of the date of birth not within 5 years from 1979, but within 5 years from the circulation of the judgement dated 09.02.93 being made on 20.04.95, as soon as he come to know that his date of birth has been maintained wrongly.

20. That with regard to paras 5.7, 5.8, 5.9, 6, 7, 8.1, 8.2, 8.3 and 8.4 the respondents beg to offer no comments.

21. That with regard to para 9.1 the respondents beg to state that the applicant, has accepted his retirement on superannuation preovisionally, subject to the outcome of O.A. No. 439/2000 and he has been relieved on 31.01.2001.

22. That with regard to paras 10, 11 and 12 the respondents beg to offer no comments.

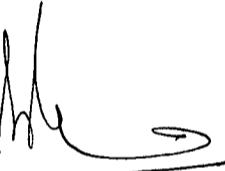
Verification.....

VERIFICATION

I, Shri Niranjan Das,

being authorised do hereby solemnly declare that the statement made in this written statement are true to my knowledge, believe and information and I have not suppressed any material fact.

And I sign this verification on this th day
of March 2001 at Guwahati.



Declarant.
Superintendent of Post Offices,
Nalbari, Burpeta Division
Nalbari-731335

Copy

Banipur State Welfare Home School
BANIPUR, HABRA, 24 parganas.

Transfer Certificate

Certified that Sriyan Madan Sudhan Chakrabarty
son of Late Jagadish Chandra Chakrabarty of
Village Purbapathangarh P.O. Chagaria
K.S. Chagaria District, Noakhali
State, Pakistan (East Bengal).

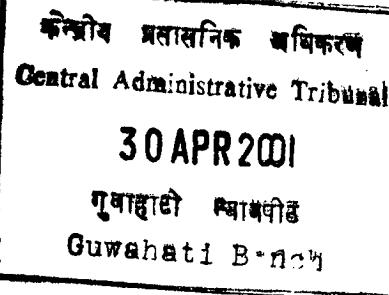
His birth date 5.1.41.....

Present Age 17 yrs. 3 months. 25 days.....

He was reading on class VII and passed the
annual examination on VIII. (Class. VIII)

His character is Good.

Sd/- H. Ghosh
Head Master
Banipur State Welfare Home School.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

O.A. NO. 439 OF 2000

Shri Madusudhan Chakraborty

- Vs -

Union of India and others.

- And -

In the matter of :

Additional written statement submitted in O.A. No. 439/2000.

The respondents beg to submit the additional written statement as follows :

1. That with regard to para 1, the respondents beg to state that the Supdt. of Post Offices (Respondent No.3) issued Memo No. B-319 dated 17.10.2000 directing the applicant to retire on 31.1.2001 (A/N) on his attaining the age of super-annuation i.e. 60 years as per rules and condition of service. The request of the applicant for change of his date of birth and to allow him to continue in service till 15.6.2003 is barred by the established rules laid down in Note-6 below Fundamental Rule-56, hence can not be acceded to. His date of birth was correctly calculated on the basis of the age proof school certificate available on record and the graduation lists of the employees maintained by the respondent No.3 in absence of the service book reported to have been lost from the custody of the Postmaster, Barpeta. Further the Respondents beg to submit that

the applicant mentioned in all official records/applications for claims such as GPF withdrawal, proposal for PLI policies etc., the date of his birth as 5.1.1941. In the application for GPF withdrawal dated 5.9.97 the official declared in his own hand writing the date of his superannuation as 4.1.99 counting 58 years of age from the date of his birth on 5.1.1941. Similarly, the Drawing and Disbursing Officer i.e. the Postmaster, Barpeta HO who maintain the service book of the applicant recorded and certified the date of birth of the applicant to be 5.1.1941, while signing the bio-data of the applicant in the relevant papers of the PLI proposals of the applicant. These entries were verified and certified by the Postmaster. Barpeta based on the date of birth recorded in the 1st page of the service book. This clearly established that the applicant was knowing very well about the date of birth recorded in the service book all along the time since his entry in the department. Therefore, his subsequent claim for alteration in date of birth is an after thought intention to derive undue advantage out of loss of service book.

A copy of the school certificate issued by the Headmaster, Banipur State Welfare Home School and also a copy of Gradation list are enclosed as Annexure-I and II respectively and also a copy of application for withdrawal from GPF duly filed and signed by the applicant showing the date of superannuation as 4.1.1999 and marked as Annexure -II A. The respondents crave leave of producing the document viz PLI proposal as and when required by this

this Hon'ble Tribunal.

2. That with regard to paras 2, 3 and 4.1, the respondents beg to offer no comments.
3. That with regard to para 4.2, the respondents beg to state that the applicant was initially appointed as Packer (group D cadre) in the Postal Store Depot, Guwahati on 25.2.1963 conditionally subject to furnishing necessary documents. Accordingly the applicant submitted among others the age proof school certificate the date of birth of the applicant is 5.1.1941. This was obviously noted in the service book of the applicant as well as in the gradation list (Annexure -II) as reflecting. Hence the claim of the applicant the date of his birth as 15.6.1943 on the basis of so called migration certificate is not maintainable.

A copy of the appointment letter dated 25.2.63 is enclosed as Annexure -III.

4. That with regard to para 4.3, the respondents beg to state that the date of birth of the applicant was rightly recorded in the service record by the respondents viz the service book (reported lost) and the gradation list on the basis of the school certificate (Annexure - I-II). The school certificate was accepted as bonafide document submitted by the applicant on his appointment under the respondents and filed as record accordingly. Submission of another certificate subsequently to claim different date of birth does not confer any right to

the applicant for changing his date of birth to his convenience. Further, the applicant had been knowing his actual date of birth as 5.1.1941 recorded in the service records as he himself declared and noted in the application for GPF withdrawal (Annexure -IIA), proposals for PLI policies etc. as stated in para 4.1 above. His final claim of PLI policies has been settled accordingly without any objection. Therefore, the belated claim for alteration of date of birth is prompted by malafide intention to derive undue benefit of extension of superannuation date taking advantage of loss of service book. The claim of the applicant is liable to be rejected.

5. That with regard to para 4.4, the respondents beg to state that the so called migration certificate having declaration of own's age was never furnished by the applicant except the age proof school certificate (Annexure-I). His claiming the document to be not telling the authentic age subsequently is guided by ill motive and intention to derive under advantage on loss of his service book which is under reconstruction.

6. That with regard to para 4.5, the respondents beg to state that the applicant have had the knowledge of his date of birth recorded in his service book as he was required to sign the entries regarding his bio-data including the date of birth in the first page of the service book after appointment. Moreover, the date of birth is also recorded in the Gradation List (Annexure-II) based on the record in the service book and the gradation list is circulated periodically by the respondent No.3 for information of the employees. The applicant must have seen the gradation list but no any complaint for rectification of his

date of birth was made by him at any stage earlier. As submitted earlier in para 4.1 and 4.3 above the respondents beg to state that the applicant himself declared his date of birth as 5.1.1941 as noted in his service book and, in all other official records like claim for GPF withdrawal (Annexure-II-A) and proposal for PLI policies etc etc. As such, it is submitted that the applicant though fully knowing his date of birth as 5.1.1941 is trying to get undue gain with an evil intention out of the loss of his service book. As regards the representation made by him in this regard, the case was examined by the respondents but could not be considered as time barred and not fulfilling conditions specified in Note-6 below FR-56. The applicant was replied of the decision on his request on 17.10.2000.

(An extract of the Note-6 below FR-56 and also a copy of the letter dated 17.10.2000 replied to the applicant are enclosed as Annexure - IV and V respectively).

7. That with regard to para 4.6, the respondents beg to stat the service book of 6(six) employees including the applicant under control of the respondent No.3 were reported lost from the custody of the Postmaster, Barpeta Head Post Office who is the custodian of the records. As reconstruction of the missing service books was necessary the official concerned including the applicant were asked to submit relevant records available with them vide letter dated 5.7.2000 to the respondent no.3. That letter did not imply any action for changing the date of birth of the applicant and others.

A copy of the letter dated 5.7.2000 is enclosed
as Annexure - VI.

8. That with regard to para 4.7, the respondents beg to state that the documents furnished by the applicant in response to (Annexure -VI) did not warrant any alteration of the date of birth already on record. The applicant on his own submitted an affidavit issued by the Court of Hon'ble Magistrate, Barpeta declaring his date of birth as 15.6.1943 most dubiously to get his date of birth altered to his advantage knowing that his service book has been lost.

9. That with regard to para 4.8, the respondents beg to state that the representations of the applicant praying for alteration in his date of birth from 5.1.1941 to 15.6.1943 were examined but the request could not be acceded to as the same was time barred and did not fulfil the conditions laid down in Note-6 below PR-56 (Annexure-IV) which was incorporated as such vide Department Personnel and Administrative Reform, Govt. of India Notification No. 19017/7/79-Estt(A) dated 30.11.1979. The notification provides inter-alia that a request for alteration in date of birth can be made by a Govt. servant only within 5 years of his entry into the Govt. Service. In a Judgement given by the Apex Court on 9.2.93 in Civil Appeal No. 502 of 1993 (Union of India - Vs - Harnam Singh), the Supreme Court has reinforced the Govt. policy regarding rejection of belated claim for alteration in date of birth also observed that in regard to Govt. Servants who entered into Govt. Service prior to 1979, the request for correction of date of birth also observed that

in regard to Govt. Servants who entered into Govt. Service prior to 1979, the request for correction of date/birth should be made within a period of 5 years from the date of coming into force of the said notification i.e. on 15.12.1979. The applicant entered the Govt. service in the year 1963. He did not make the representation for alteration in his date of birth within 5 years of coming the provisions of the Note-6 below FR-56 on 15.12.79. Therefore, his claim is time barred and has no merit for consideration.

A copy of Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Govt. of India F. No. 19017/2/92-Estt(A) dated 19.5.93 is enclosed as Annexure -VII and A copy of the judgement dated 9.2.93 given by the Supreme Court in Civil Appeal No. 502 of 1993 (Union of India - Vs - Harnam Singh) is also enclosed as Annexure - VIII.

10. That with regard to para 4.9, the respondents beg to state that the representation made by the applicant was referred to the respondent no.2 for decision. After careful examination of the facts and documents , the request of the applicant for alteration in the date of birth was rejected as found having no merit in the case in terms of provisions in Note-6 of FR-56 (Annexure-IV). The contention of the applicant having his date of birth recorded arbitrarily is not correct. The applicant was informed of the reasons for rejecting his request in a speaking letter dated 17.10.2000 (Annexure -V). There was no any bonafide mistake in recording the date of birth.

The date of birth was recorded on the basis of the age proof school certificate (Annexure-I) submitted by the applicant at his initial appointment.

11. That with regard to para 4.10, the respondents beg to state that the applicant challenging legality of the existing rules in the matter for his personal interest is bad in law and deserves outright rejection. The contention of the applicant that these rules are not applicable to his case as he had come to know the date of birth recorded in his case only in 1995 are not maintainable. He had been knowing the date of birth recorded in his service book and other records as 5.1.1941 all those years, as the applicant himself declared and noted the date of birth as 5.1.1941 in all his official records/claims such as proposals for PLI policies No. (I) 300390-P, (II) 300393-P and 200185-P which were accepted on 24.5.1977, 1/2. 12.2.1977 and 1.9.1972 respectively i.e. much earlier than 1995 after due verification with the 1st page of the service book but made the request in the recent past to get undue benefits taking advantage of loss of the service book. (Respondents crave leave of producing the PLI proposals/policies as and when required by the Hon'ble Tribunal).

12. That with regard to para 4.11, the respondents beg to state that re-iterate the comments what have already been stated in the foregoing paragraphs i.e. 4.1, 4.3, 4.5, 4.9 and 4.10 as the applicant is repeating the same contentions.

13. That with regard to para 4.12, the respondents beg to state that the respondents will produce relevant records

available connected with the case as and when asked for by the Hon'ble Tribunal.

14. That with regard to paras 4.13 and 4.14, the respondents beg to state that the application is time barred by rules, hence deserves no merit for consideration.
15. That with regard to paras 5.1 to 5.9, the respondents beg to state that the respondents are bound to follow the policy and rules framed by the Union of India. The date of birth of a government servant once recorded in the relevant service records can not be altered whimsically at the behest of the Govt. servants unless conditions are fulfilled. The request of the applicant is not covered by the existing rules and orders of the Government. Hence the relief sought for & deserves no consideration and liable to be rejected.
16. That with regard to para 6 and 7 , the respondents beg to offer no comments.
17. That with regard to para 8.1 to 8.4, the respondents beg to state that relief sought for by the applicant has got no merit as discussed in the foregoing paragraphs and deserves no consideration being barred under provisions of Note-6 below IR-56 (Annexure-IV) and as such liable to be rejected.
18. That with regard to para 9, the respondents beg to state that the application has no merit as discussed in foregoing paragraphs and hence the Hon'ble Tribunal may dismiss the same.
19. That with regard to paras 10, 11 and 12, the respondents beg to offer no comments.

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VERIFICATION

I, Shri Niranjan Das,

being authorised do hereby solemnly declare
that the statement made in this written statement are true
to my knowledge, belief and information and I have not
suppressed any material fact

And I sign this verification on this 27th day
of April, 2001.



Declarant.

Superintendent of Post Offices,
Nalbari, Barpeta Division
Nalbari 781336

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Filed by
Lokhitam Jharna
3-7-2001

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

CA No. 439 of 2000

Shri Madhu Sudhan Chakraborty

... Applicant.

- Versus -

Union of India & Ors.

... Respondents

Rejoinder to written statement filed by the Respondents.

1. That the Applicant have received the copy of the written statement and have gone through the same. Save and except the statement which are specifically admitted herein below, rests may be treated as total denial. The statement which are not borne on record are also denial and the Respondents are put to the strictest proof thereof.
2. That with regard to the statements made in the background history in the written statement the Applicant while denying the contentions made therein, begs to state that the Respondents have admitted the fact and so far as factual positions are concerned there is no dispute that the immigration certificate dated 15.6.48 and the school certificate dated 30.4.58 has been submitted by the Applicant before the employment exchange which sponsored the name of the Applicant at the time of his initial

appointment. However, the Respondents took into consideration some irrelevant document basing on which the date of birth of the Applicant have been noted as 5.1.41 which is not correct. When the authenticated documents were available the Respondents ought to have taken into consideration those documents at the time of record in the date of birth of the Applicant. In fact the service book of the Applicant was misplaced by the Respondents and to reconstruct the same, the Respondents took into consideration some irrelevant documents and same has caused the aforesaid error. The matter has been represented by the Applicant several times but nothing came out in positive. In reply to the request made by the Applicant, the Respondent rejected his claim by saying the same to be time barred. In fact the Rule quoted by the Respondents is not applicable in the present case. The present case is the case of rectification of error apparent on the face of the record. Admittedly the relevant documents which were taken into consideration at the time of his initial appointment are very much available in the office of the Respondents and taking into consideration the said authenticated documents the Respondents ought to have recorded the correct date of birth at the time of reconstruction of his service book.

The Hon'ble Apex Court as well as this Hon'ble Tribunal in its various judicial pronouncement as held that for rectification of error apparent on the face of the record the Rule quoted by the Respondents are not applicable. Admittedly the present dispute is not regarding correction of date of birth but a dispute of not maintaining/recording

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the correct date of birth due to mistake. The Respondents have admitted their mistake and on the other hand in the impugned order they are emphasizing on the point of limitation prescribed under FRSR which is not correct. The Hon'ble Tribunal has occasion to deal with similar matter (OA No. 414/2001) wherein the dispute arose regarding correction of error. Taking into consideration all the submission/admission made by the Respondents, it is a fit case for granting relief to the present Applicant.

3. That with regard to the statement made in other paragraphs the Applicant while denying the contentions made therein begs to reiterate and reaffirm the statements made above as well as in the OA.

In the view of the above Application deserves to be allowed with cost granting the reliefs to the present Applicant.

Verification.....

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VERIFICATION

I, Shri Madhu Sudhan Chakraborty, son of Late Jagadish Ch. Chakraborty, aged about 48 years, at present working as postal Assistant at Barpeta Head Post Office, Assam, do here by solemnly affirm and state that the statements made in this application from paragraph _____ are true to my knowledge and those made in paragraphs _____ are matters of records informations derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on ____th day of July, 2001.

Madhu Sudhan Chakraborty