

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 152/00
R.A/C.P No.
E.P/M.A No.

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SECTION OFFICER (Judl.)

kahts
18.12.17

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 152/2000 OF 199

Applicant(s) Sri Lakshyadhar Barua

Respondent(s) Union of India and Ors.

Advocate for Applicant(s) Mr. M. Chanda
Mrs. N. D. Goowari

Advocate for Respondent(s) Mr. G. N. Chakraborty -
C. G. S.

Notes of the Registry	Date	Order of the Tribunal
<p>28.4.2000</p> <p>Application filed on 28.4.2000 and within time. F. F. of Rs. 50/- deposited vide IPO (B) No. 1094/00 Dated 28.4.2000</p> <p>27/4</p> <p>27/4/2000</p> <p>mk</p> <p>30.5.00</p> <p>Notice prepared and sent to D. Section for issuing of the same to the respondents through Regd. post with A.D.</p>	<p>28.4.2000</p> <p>30.5.00</p>	<p>Present : Hon'ble G.L. Sanglyine, Administrative Member</p> <p>Heard Mr. M. Chanda, learned counsel for the applicant.</p> <p>Application is admitted. Issue notice on the respondents by registered post.</p> <p>List for written statement on 30.5.00.</p> <p>Member</p> <p>Min & no Bank today.</p> <p>Agreed 2-8-6-00.</p>

Notes of the Registry

Date

Order of the Tribunal

Notice issued to the
respondants vide D.Os.
1354 to 1358 Dtd 9.5.2000

8.6.00

Present : The Hon'ble Shri D.C.Verma,
Member(Judicial).

Mr M.Chanda, learned counsel for the
applicant is present. On the prayer of
Mr A.Deb Roy, learned Sr.C.G.S.C two
weeks further time is granted for filing
of written statement.

List on 23.6.00 for order.

Member(J)

11-7-2000

No. written statements
have been filed.

pg

23.6.00

There is no Bench today.
Adj'd on 12.7.00. 1870
h

12.7.00

Applicant's counsel present. Written
statement has not yet been filed. Mr
B.S.Basumatary, learned Addl.C.G.S.C
seeks time to file written statement.

List on 11.8.2000 for written
statement and further orders.

S. Basu
Member(A)

pg

11.8.00

There is no Bench adj'd
on 7.9.00. 1870
h

20-9-2000

No. wfs have been filed.

7.9.00

No Bench. To be listed on on
21.9.00. 1870
h

21.9.00

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

List the case for hearing on
2.11.00. In the meantime, the parties
may exchange affidavit.

Vice-Chairman

mk

Notes of the Registry

Date

Order of the Tribunal

2.11.00

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

List it on 7.11.00 for hearing.


Vice-Chairman

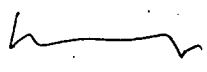
mk

7.11.00

Mr. M. Chanda, learned counsel for the applicant and Mr. B.S. Basumatary, learned Additional C.G.S.C. for the respondents.

Heard learned counsel for the parties at length. On the prayer of Mr. B.S. Basumatary, counsel for the respondents the case is adjourned till 10.11.2000 to enable him to get Service Book.

List on 10.11.2000 for further hearing.


Vice-Chairman

rd

13.11.00

Heard learned counsel for the parties. Judgment delivered in open Court. Kept in separate sheets. Application is allowed. No order as to costs.


Vice-Chairman

lm

6-11-2000
Written Statement
has been filed by the
respondents No. 1, 2, 3, 4, 5.
Boo

7-11-2000
Reminder has been
filed by the
applicant Advocate.
Boo

13/11/2000

Copy of the Judgment
have been sent to the
S/Sec for issuing the same
to the applicant as well as
to the Addl. C.G.S.C.
SS

Notes of the Registry	Date	Order of the Tribunal
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4

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A.//P.A. No. .152. of 2000 of

DATE OF DECISION .10.11.2000

Shri Lakashya Dhar Bania.

PETITIONER(S)

Mr.M.Chanda , Mrs.N.D.Goswami,

Mr.G.N.Chakraborty.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Others.

RESPONDENT(S)

Mr.B.S.Basumatary, Addl.C.G.S.C.


ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE

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

Judgment delivered by Hon'ble VICE-CHAIRMAN



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.152 of 2000

Dated of Order: This Day of 10th November 2000.

Shri Lakashya Dhar Bania.
Sr. Section Supervisor, Commercial Section.
Office of the General Manager, Telecom,
Kamrup Telecom District.
Guwahati-7. ... Applicant-

By Advocate Mr.M.Chanda. Mrs.N.D.Goswami
Mr.G.N.Chakraborty.

-Vs-

1. The Union of India, Represented through the
Secretary, Department of Telecom
Ministry of Communication,
New Delhi.
2. The Chief General Manager, Assam, Telecom Circle
Ulubari, Guwahati.
3. The General Manager
Telecommunication Kamrup
Telecom District, Ulubari,
Guwahati.
4. The Divisional Engineer(Admn)
Office of the GMT,
Kamrup Telecom District,
Ulubari, Guwahati. Respondents.

By Advocate Mr.B.S.Basumatary, Addl.C.G.S.C.

O R D E R.

D.N.Choudhury, J. (Vice-Chairman):

This subject matter relates to correction of Date of Birth. The applicant is working as Sr. Section Supervisor under the department of Telecommunication. The applicant entered into the services in the month of November 1963 and when he was only Matriculate. The Date of Birth of the applicant was recorded at the time of entry into service was 1959. Accordingly, the age of the applicant was recorded and the applicant last signed in the Service Book was on 3.5.1971. The applicant submitted a representation before the authority in the year 1997 stating that his Date of Birth in his Service

contd/-

Book ought to have been recorded as 1.7.41 instead of 13.11.40. The applicant also enclosed the duplicate copy of the Matriculation Certificate passed in 1959 issued by the Guwahati University. In this Certificate it was shown that the applicant passed the Matriculation Examination in 1959 under Roll - Mangaldoi, No.158 and age was recorded in 17(seventeen) years 8(eight)months on the first day of March 1959. The said certificate was shown by the applicant on 29.8.1959. The applicant on the basis of that Certificate sought for correction of the Date of Birth from 1.7.41 instead of 13.11.40. The respondents on receipt of the application by communication on 11.2.98 advised the S.D.O concerned to requisition. The following documents from the applicant for verification is under:

- 1). Admit Card of H.S.L.C. Examination.
- 2) Original H.S.L.C. Certificate.
- 3) If 1 & 2 are not available, Roll No. of H.S.L.C. Examination.

The said communication was also indicated that

"as per the rule the official should have settle (SCC) 5(five) years of his appointment if at all there was a mistake."

The applicant in terms of the communication submitted an attested duplicate copy of the certificate to the authority by its communication dated 14.3.2000 is time barred application. Hence the present application.

Mr.M.Chanda learned counsel for the applicant submitted that the error in question is a patent and manifest one as it appears from the Matriculation Certificate. The respondents ought to have corrected the same, instead of resorting to technicality on the off chance of the plea of limitation to defeat a genuine claim as submitted Mr.Chanda. Mr.Basumatary, learned Addl.Central Government Counsel on the other hand submitted that the applicant himself entered the particulars in the Service Book in his own handwriting and where he has shown his date of Birth its 13th Nov.1940.

The applicant again counter signed the said certificate on 3.5.71. Even in the official documents, as pointed out by Mr. Basumatary, the learned Addl. Central Govt. Standing Counsel in Form No. 3, the applicant cited the same Date of Birth, while furnishing the details of his family on 17.10.89. In that Form, also the applicant mentioned his Date of Birth in 13.11.49 in his own handwriting. Lastly, Mr. Basumatary pointed out to the Notification issued by the DP & AR, bearing No. 19017/7/79 Ests dated 30.11.79 wherein the time limit was prescribed for considering of such request for correction of date. There is no dispute that in the year 1963, the applicant was appointed as a Time scale Clerk and wherein it was stated that the applicant passed the Matriculation Examination in the year 1959.

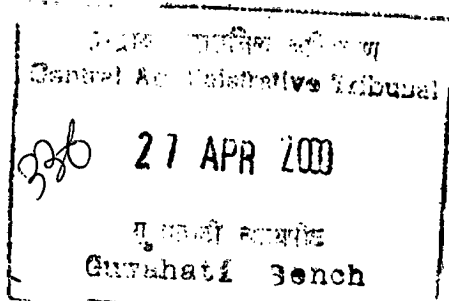
The applicant, ^{at that time} there, cited his date of birth, as such ^{the} ~~the~~ ^{of said} ~~of said~~ ^{date was entered in the Service Record.} his entry into the service. The Respondents have also set out the limits for correction. The time limit is prescribed for the administrative convenience and such prescriptions no doubt is to be sedulously adhered to. Rules and Guidelines are meant to render Justice. In interpreting the rules & the regulations care must be taken so that there is no failure of Justice. Justice is higher than the cold letters of law. The Respondents have, emphasised more on the technicalities and rejected the claim of the applicant on mere point of limitation. It did not reject the entries of the Date of Birth cited in the duplicate Certificate issued by the University. Even if there was any bonafide doubts on the duplicate certificate, the Respondents could have taken the University into confidence and got the matter clarified. The impugned order dated 14.3.2000 in the circumstances cannot be sustained and the same is accordingly,

contd.

set aside. The respondents are now directed to reconsider the representation of the petitioner on merit. The Respondents more particularly the Respondent No.5 accordingly ^{are} directed to consider the matter afresh and dispose the same expeditiously within three weeks from to-day by a reasoned order. The Application is allowed accordingly, there shall however, be no order as to costs.


(D.N.CHOUDHURY)
VICE-CHAIRMAN

L.M.



In the Central Administrative Tribunal

Guwahati Bench ::: Guwahati.

O.A. No. 152 /2000

Shri Lakshyadhar Bania

..... Applicant.

-Vs-

Union of India and others.

..... Respondents.

I N D E X

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Filed by

N.D. Goswami

Advocate.

Lakshya Jhan Bania

Filed by same applicant
through N.D. Goswami
Advocate
27.4.2000

In the Central Administrative Tribunal

Guwahati Bench ::: Guwahati.

O.A. No. 152/2000

BETWEEN

Shri Lakshya Dhar Bania

Son of Late Rajat Ch. Bania

Sr. Section Supervisor

Commercial Section

Office of the General Manager Telecom

Kamrup Telecom District

Guwahati-7.

..... Applicant.

- Versus -

1. The Union of India
Represented through the
Secretary, Department of Telecom
Ministry of Communication
New Delhi.
2. The Chief General Manager
Assam, Telecom Circle
Ulubari Guwahati.
3. The General Manager
Telecommunication Kamrup
Telecom District, Ulubari,
Guwahati.

..... 2/-

Lakshya Dhar Bania

4. The Divisional Engineer (Admn)

Office of the GMT,

Kamrup Telecom District

Ulubari, Guwahati.

5. The Sub-Divisional Engineer (Admn)

Office of the GMT,

Kamrup Telecom District

Ulubari, Guwahati.

..... Respondents.

Particulars of orders against which this application
is made.

1. This application is made against the impugned letter dated 14.3.2000 issued by the respondent No.5 rejecting the prayer of recording correct date of birth of the applicant, and also praying for a direction in favour of the applicant to record his correct date of birth as 1.7.41 instead of 13.11.40 and also praying for a direction upon the respondent to treat the applicants date of birth in his service book as 1.7.41 instead of 13.11.40.

2. Limitation.

That the applicant declares that this application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985.

3. Jurisdiction :

That the applicants declare that the subject matter of this application is within the jurisdiction of this Hon&ble Tribunal.

Lakshya Dhar Barua

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 privileges as guaranteed under the Constitution of India. The applicant is presently serving as Senior Section Supervisor in Commercial Section in the office of the General Manager Telecom Kamrup Telecom District, Ulubari, Guwahati-7.

4.2. That the applicant initially appointed as Time-Scale Clerk in the month of November 1963. At the relevant time the applicant was a matriculate. Be it stated that he had passed his matriculation examination in the year 1959. The date of birth of the applicant was recorded in the matriculation passed certificate issued by the Gauhati University as 17 years 8 months on first March 1959 at the time of filling up of his necessary service prescribed format through which the applicant applied for the post of Time Scale Clerk. At the relevant time he had correctly mentioned in the prescribed format putting the correct date of birth recorded in the said matriculation certificate as on 1.7.41 and also submitted the attested copies of necessary documents including matriculation certificate and the same was duly verified with the original certificate by the Department of Telecom.

A copy of the matriculation passed certificate is annexed as Annexure - I .

4.3. That your applicant thereafter continuously served in the Telecom Department and now is serving as Senior Section Supervisor in Commercial Section in the office of the General

Lakshya Dhar Bania

General Manager Telecom Kamrup Telecom District Ulubari.

4.4. That on 22.11.97 applicant submitted an representation before the authority claiming that his date of birth was wrongly written in the service book as 13.11.40 instead of 1.7-41. He also stated in the representation that he has lost his original certificate so, he collected duplicate of the same from his High School where from he had passed H.S.L.C. examination in 1959.

It is stated that the applicant came to know about the wrong recording of the date of birth only in the month of November 1997 when ^{one} of his batch mate employee apprised the applicant that he is going to be retired in the month of November 2000 as per date of birth recorded in his service book, thereafter the applicant made an enquiry and came to know about the wrong recording of the date of birth therefore it is a case for correct recording ^{of} date of birth as per matriculation certificate. In this connection it is relevant to mention here that the service book was never shown to the applicant during his entire service carrier, as such wrong recording was never pointed out to the applicant and same was also not came to the notice of the applicant as such he could not take any steps for correction of date of birth.

It is not a case of alteration of date of birth but it is a case for correction of date of birth which occurred due to bonafide clerical mistake while the date of birth was recorded in the service book of the applicant.

Lakshya Dhar Barua

It is stated that it was the duty of the respondents to allow the applicant to inspect the service book of the applicant in every year in order to enable him to verify whether all entry and declaration are correct or not but in the instant case the respondents did not take any such step for verification of the service book by the applicant, therefore respondents are duty bound to record correct date of birth in the service book.

It is a settled position of law that when there is a bonafide clerical mistake the respondents are duty bound to rectify the same. It is categorically stated that as per matriculation certificate the applicant have attained 7 years 8 months on the first day of March 1959 as such the correct date of birth ^{on 1st} of March 1959 as such the correct date of the applicant is stand as 1.7.41, therefore the applicant is entitled to retire on superannuation with effect from 30.6.2001 due to wrong recording of date of birth as 13.11.1940 the applicant is going to be tetired on superannuation on 12.11.2000 that is on 30th November which is premature, therefore Hon'ble Tribunal be pleased to direct the respondents for correction of date of birth as 1.7.1941 instead of 13.11.1940 in the service book of the applicant and further be pleased to direct the respondents to allow the applicant to continue in service till completion of 60 years of service treating the correct date of birth as 1.7.1941.

A copy of the representation dated 22.11.97 is annexed herewith as Annexure - 2.

Lakshya Dhar Bania

17
4.5. That thereafter ^{the} that authority issued a letter in respect of the applicant vide its letter bearing ~~in~~ no. GMT/Staff/B-625/26 dated 11.2.98 that the authority says that as per rule the officials should have settled such type of cases within 5 (five) years of the appointment of the applicant. The authority also requested the applicant to submit the following documents immediately.

1. Admit card of H.S.L.C. Examination.
2. Original H.S.L.C. Certificate.
3. If 1 or 2 are not available
Roll No. of H.S.L.C. Examination.

A copy of the letter dated 11.2.98 is annexed herewith as Annexure - 3 .

4.6. That on 24.2.2000, the applicant submitted another representation before the authorities for correct recording of his date of birth as 1.7.1941 in his service book. He also prayed inter alia in his representation that the applicant urged to produce duplicate matriculation certificate before the authorities, accordingly he had produced the same and also stated in his representation that he is in the verge of retirement. So, he prays before the authorities to correct his date of birth as 1.7.1941 instead of 13.11.40, but to no result.

A copy of the representation dated 24.2.2000 is annexed herewith as Annexure -4.

4.7. That most surprisingly the respondent no.5 issued the impugned letter bearing No. OB-625/31 dated 14.3.2000 where

Lakshya Dhar Bania

wherein it is stated that it is a time bound case. Only for this reason the authorities rejected the prayer of the applicant for correct recording ^{of} and date of birth.

A copy of the impugned letter dated 14.3.2000 is annexed herewith as Annexure -5.

4.8. That this application is filed bonafide and ~~the~~ for the ends of justice.

5. Grounds for relief with legal provision.

5.1. For that as per matriculation passed certificate the applicants correct date of birth is 1.7.1941, therefore he is legally entitled to correct his service book as 1.7.41 instead of 13.11.40.

5.2. For that the applicant submitted the original ~~app~~ matriculation certificate to the concerned authorities at the relevant time of selection ~~for~~ at the initial entry into Telecom Service for verification and the same certificate is also verified and recorded into ^{his} are service book of the applicant.

5.3. For that the applicant submitted representation before the General Manager Telecom, Kamrup Guwahati-7 for correction his date of birth but the same was refused by respondent No.5, declaring that it is a time bound case.

Lakshya Jhar Bania

5.4 For that the applicant had served / the Telecom Department since 1963, therefore he acquires a valuable and legal right for ~~worrection~~ his date of birth as per his matriculation passed certificate.

5.5. For that the applicant cannot be allowed to suffer due to wrong entry by the respondents into his
book
service and records.

6. Details of the remedies exhausted

The applicant state that he has exhausted the remedies available to him and there is no alternative but to approach this Hon'ble Tribunal through this application seeking redress of his grievances.

7. Matters not previously filed or pending with any other court/tribunal.

The applicant further declare that he has ~~rig~~ not previously filed any application writ petition or suit regarding the matter in respect of which this application has been made before any Court of law or any other authority or any ~~Branch~~ Bench of the Tribunal and/or any such application writ petition or suit is pending before any of them.

8. Reliefs Sought for :

Under the facts and circumstances of the case the applicant pray that your Lordships would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records ~~and after perusal~~ of the case and on perusal of

Lakshya Dhar Bania

of the records and after hearing the parties on the cause that may be shown, be pleased to grant the following reliefs.:

- 8.1. That the Hon'ble Tribunal be pleased to set aside the impugned letter issued under letter No.0B-625/31 dated 14.3.2000(Annexure-5)
- 8.2. That the respondents be directed to rectify all relevant records and service book of the applicant as 1-7-41 instead of 13.11.40 on the basis of matriculation certificate issued by the Guwahati University in respect of the applicant as correct date of Birth and to treat 1.7.41 as correct date of Birth of the applicant for all service purposes.
- 8.3. To pass any other order or orders as deemed fit and proper under the facts and circumstances stated above in this application.
- 8.4. Costs of the case.
9. Interim relief prayed for.

This application is made praying for a direction upon the respondents to record the correct date of birth in the service book of the applicant as 1.7.41 instead of 13.11.40 and also against the impugned letter dated 14.3.2000 be set aside and quashed and also for a declaration that the correct date of birth of the applicant is 1.7.41 and also for direction to treat 1-7-41 as correct date of birth for the purpose of retirement on superannuation.

10. This application has been filed through advocate.

11. Particulars of the IPO

i) I.P.O. NO. : 06 424416
ii) Date of Issue : 10.4.2011
iii) Issued from : G.P.O. Guwahati.
iv) Payable at : G.P.O. Guwahati.

12. List of Enclosures :

As stated in the Index.

Verification.....

Lakshya Dhar Bania

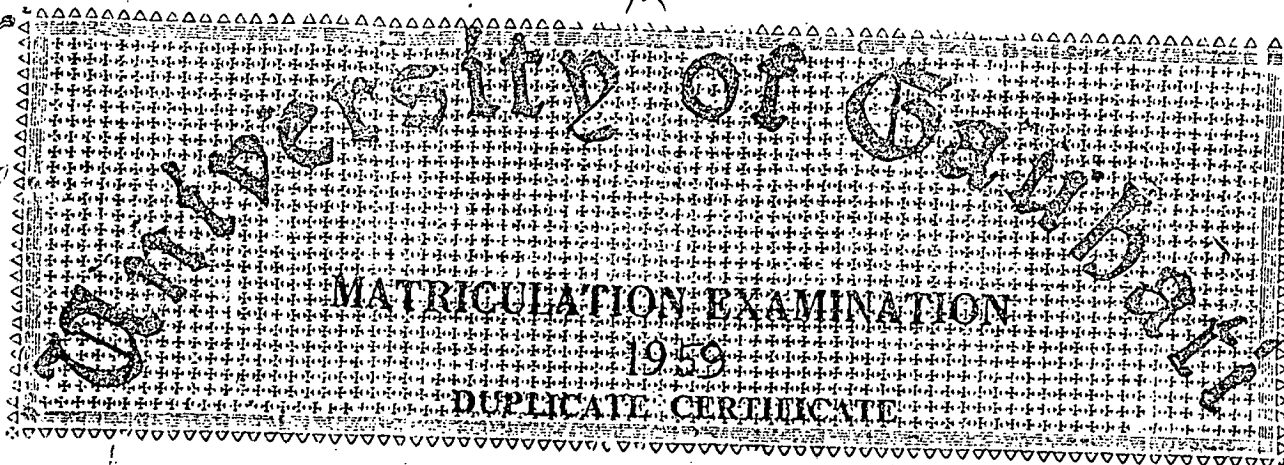
V E R I F I C A T I O N

I, Shri Lakshyadhar Bania son of Late R.C. Bania,
Senior Section Supervisor aged about 56 years, office of
the General Manager Telecom, Kamrup Telecom District do
hereby solemnly affirm and declare that the statements
made in paragraph 1 to 4 and 6 to 12 are true to my know-
ledge and those made in paragraph 5 are true to my legal
advice and I have not suppressed any material fact.

And I sign this verification on this 27th day
of April 2000.

Signature.

Lakshya Dhar Bania



050

I certify that Lakshya Dhar Bania
Roll/Mang No. 158 aged 17 (Seventeen) years & (Eight)
months x days on the First of March, 1959,
 duly passed the Matriculation Examination,
1959 of this University and was placed in
 the Third Division.

GUWAHATI-14, (ASSAM)

The 29 July.... 1959.

Countersigned

Registrar

Date.....

Jayma
23.2.2000

Sd/- P. Dutta

Regist.

Attested
U. D.
 28/3/59
 Commercial Officer-I
 O/o the C.M.T. / K.T.S.
 Guwahati.

-13-

Annexum-2

24

From: L.D. Bania, S.S.S.
O/O S.A.O. P.W. I/GH-I

22.xii.97

To

The G.M.T./GH-7

(Through the proper channel)

Sub: Wrong copy of date of birth in the S/Book
as 13.XI.40 instead of 1.7.1941.

Sir,

With due respect I beg to inform you that my date
of birth has been entered wrongly as 13.XI.40 instead of

1.7.41. It has come to light last month only. No attes-

tation has yet been made ^{So} in far ~~xxxx~~ verify my service period
please. Further I have lost my original certificate of HSLC
passed certifice. As long back I have collected one dupli-
cate certificate of the same from my high school wherefrom
I passed HSLC Exam. in 1959.

I, therefore fervently ~~xxxx~~ request you kindly to do
the needful as early as possible. For their acts of kindness.

I shall ever remain grateful to that.

With kind regards.

Yours faithfully,

1959
17
1942

DEPARTMENT OF TELECOMMUNICATIONS,
OFFICE OF THE GENERAL MANAGER: KAMRUP TELECOM DISTRICT
ULUBARI GUWAHATI -7.

1963

No. GMT/Staff/B-625/26.

dated at Guwahati the
11-02-98.To,
The S.D.O.P (W-1),
Guwahati.Sub:- Date of Birth of Shri L.D. Bania,
Sr.s.sRef:- Your letter no E-1/97-98/16. |
Dt. 22-12-97.

In response to your above cited letter,
You are requested to obtain the following documents from
Shri L.D. Bania, Sr.s.s for verifications at this end.

As per rule officials should have settle
such Cases with 5 (Five) years of his appointment, if at all
there was mistake of date of birth in the Matric Certificate

- 1) Admit Card of H.S.L.C Examination. ✓
- 2) Original H.S.L.C Certificate. ✓
- 3) If 1 & 2 are not Available, Roll No of H.S.L.C Exam.

Please treat this as most Urgent.

Devisional Engineer (Admn),
Office of the General Manager Telecom
Kamrup Telecom district: ulubari: GH-7.

Attested
Secy
Advocate

15-

Annexure-4

28

Dated 24.2.00

From : L.D. Bania, S.S.S.

O/O G.M.T(K) GH
(Coml. Section)

To

The D.E.P. P&A O/O GMT(K) GH

Sub: Correction of date of birth in my service book as 1.7.1941.

Sir,

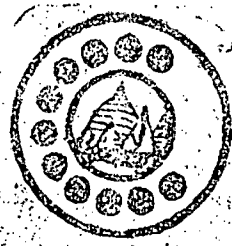
With due respect I beg to inform you that I have ²already applied to correct my date of birth as above some time in 1998 when it has come to light from one of my Senior Colleague and well wisher of this office. I have been asked to produce duplicate copy of Matriculation certificate. Accordingly I have applied to have the duplicate copy of Matriculation certificate May '98.

The G.U. is so strict that after meeting up more than, 4-5 evening I have been issued the duplicate copy of Matriculation certificate to day the 24.2.00 An attested copy is enclosed for ready reference herewith.

Further, I fervently request you kindly to correct it early as I am at the verge of retirement. If my submission is ~~is~~ baseless I am ready to take an offence.

With kind regards .

Yours faithfully,



कौर-7/Corr-7

भारतीय दूरसंचार/DEPARTMENT OF TELECOMMUNICATIONS
कार्यालय/Office of the
TO

संयोजक, संचार विभाग (प्रशासन)
Sub-Division of Administration
कर्मचारी भवन, दूर संचार
एनएच, मुंबई, गुजरात-400 002

No. G.B.-625/31

Sree L.D. Baniya, SSO
C/O C.S. Commercial Section
P/O GMT/GH
Dated 14.3.2000

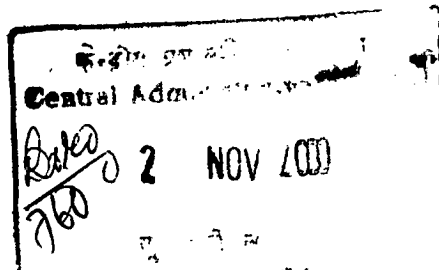
Sub: Correction of date of birth in S/Book.
Ref: Your letter No. dt 24.2.2000

In response to your above cited representation, I have been directed to intimate you, that your case has been examined carefully and found that the same cannot be accepted as it is a time barred case.

Accounts

संयोजक, संचार विभाग (प्रशासन)
Sub-Division of Administration
कर्मचारी भवन, दूर संचार
एनएच, मुंबई, गुजरात-400 002

Pls. Adv.
Advocate



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

17
Filed by
Shri G.C. Sarma,
RESDT.
H. Singh
B. K. Singh
Telali C.S.D.C., A.T.
21/12/2000

O.A.NO.152 OF 2000.

SHRI LAKSHYA DHAR BANIA

-VERSUS-

UNION OF INDIA & ORS.

WRITTEN STATEMENT FOR AND ON BEHALF OF RESPONDENT NOS.
1,2,3,4 AND 5.

I, SHRI G.C.SARMA, Assistant Director, Telecom(Legal) in the Office of the Chief General Manager, Telecommunications, Assam Circle, Guwahati having authorised do hereby solemnly affirm and state as follows :

1. That I am the Assistant Director, Telecom(Legal) at present serving at the disposal of the Chief General Manager, Telecommunications, Assam Circle, Guwahati.
2. That the Chief General Manager, Telecommunications, Assam Circle has been impleaded party Respondent No.2 in the instant Original Application alongwith 4 others. I have received a copy of the aforesaid O.A.served on Respondent No.2, gone through the same, understood the contents thereof and as such I am competent to verify and file this written statement for and on behalf of all the Respondents.
3. That this deponent does not admit any of the facts, statements, allegations and averments made in the O.A. save and except these have been specifically admitted herein-under in this written statement. Further the statements which have not been borne on records are categorically denied.
4. That before dealing with the merits of the instant O.A. this deponent begs to raise objection in respect of maintainability of the O.A. on the ground of limitation and respectfully states that the instant

O.A.

O.A. is heavily timebarred inasmuch as the applicant though initially appointed in the Department as far back as in 1963 and he had for the first time represented on 22.11.1997 for correction of his date of birth. It is pertinent to mention here that as per extant rule as contained in the circular DP & AR No.19017/7/79/ESTS dated 30.11.79 no alteration in the entry of date of birth after expiry of 5 years of service from the date of appointment is permissible.

A photostat true copy of the aforesaid circular dated 30.11.79 is annexed herewith and marked as ANNEXURE -R¹ hereof.

Be it further stated that the Hon'ble Supreme Court in the case of S.S.Rathore -Vs-State of M.P.(1989)4 SCC 582 while discussing Sections 20 and 21 of the Administrative Tribunals Act held that six months' period from the date of preferring of an appeal or making of a representation shall be taken to be the date when cause of action shall be taken to have first arisen and observed :

"We, therefore, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representation not provided by law are not governed by this principle."

It is pertinent to mention here that the Hon'ble Tribunal on an earlier occasion adjudicated an O.A.No.26/1995(Shri Kanti Kumar Sen Gupta -Vs-Union of India and others)pertaining to correction of date of birth and was pleased to dismiss the O.A.relying on the S.S.Rathore case(Supra) as well as Union of India -Vs- C.Ramaswamy and others,1997 SCC(IAS)1158.

A photostat true copy of the aforesaid order dated 26.6.2000 passed in O.A.No.26/1995 is annexed herewith and marked as ANNEXURE-R² hereof.

In the circumstances as stated above, the instant O.A. is liable to be dismissed with adequate costs.

5. That

5. That as regards the contents of paragraph 1 of the O.A. this deponent respectfully states that the applicant had submitted his representation for correction of his date of birth recorded in the Service Book on 22.11.97 whereas he was appointed in the Department in the month of November, 1963, in a gap of 34 years as such the aforesaid representation of the applicant was dismissed in conformity with the circular DP & AR No. 19017/7/79/ESTS dated 30.11.79 as heavily barred.

6. That as regards the contents of paragraph 2 of the O.A. this deponent respectfully states that the instant O.A. is heavily timebarred for the reasons as explained in the foregoing paragraph No. 4 of this written statement. As such the same is not tenable in the eye of law and liable to be dismissed with costs.

7. That as regards the contents of paragraph 3 of the O.A. this deponent does not make any comments.

8. That as regards the contents of paragraph 4.1 of the O.A. this deponent does not make any comments since these are matter of records.

9. That as regards the contents of paragraph 4.2 of the O.A. this deponent respectfully states that immediately after joining the post /Department a Service Book in the name of the applicant was opened and in the said Service Book his date of birth was written as 13th Nov. 1940 by his own hand-writing on the basis of his own documents /records. Thereafter his service book was once again verified by him on 3.5.71 and he did not find any discrepancy in the entries of the service book. Thus he signed on it without raising any question.

A photostat true copy of 1st page of the aforesaid Service Book is ~~MARKED~~ annexed herewith and marked as ANNEXURE-3 hereof.

That apart in the FORM 3 (see Rule 54(12)) as regards the details of family submitted by the applicant his date of birth was clearly written as 13.XI.40.

Photostat true copies of duly filled up FORM 3 submitted by the applicant in the year 1973

and

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-4-

and in the year 1989 are annexed herewith and marked as ANNEXURE-2⁴ and R⁵ respectively hereof.

Under this backdrop the applicant cannot shift his responsibility. From the records it appears that the applicant was sleeping over right his right, if the claim of the applicant is to be accepted at all. As such the applicant is not entitled to approach the Hon'ble Tribunal to get condoned of his own negligence as well as lapses and on that count alone the instant O.A. is liable to be dismissed with adequate costs.

10. That as regards the contents of paragraph 4.3 of the O.A. this deponent makes no comments since those are matter of records.

11. That as regards the contents of paragraph 4.4 of the O.A. this deponent respectfully states that as has been stated in the preceding paragraph of this written statement that the applicant, Shri Lakshya Dhar Bania himself entered his date of birth in his Service Book by his own on the basis of the documents available with him including the Matriculation Certificate and the said Service Book was verified by him in the year 1971 and nothing was said by him at that point of time in respect of any entry in the Service Book. Subsequent to that he submitted FORM 3 duly filled up by himself wherein also his date of birth was written as 13.XI.40 (annexed as R⁴ & R⁵ hereof).

In the circumstances the applicant cannot claim the benefit for clerical mistake as envisaged and held by the Hon'ble Supreme Court in the cited case (S.S. Rathore's case supra).

Be it further stated that the applicant after sleeping over his right abruptly he awoke and submitted a representation on 22.11.97, that too at the behest of some of his colleagues, for correction of date of his birth in the Departmental records. Earlier to that though he verified his Service Book on 3.5.71 and at the time of submission of FORM 3 in the year 1973 and 1989 he did not find any incorrectness

in his.....

in his records as regard to his date of birth and curiously the applicant himself endorsed time and again his date of birth as 13.XI.40 in various manner. It is interesting that the applicant without having age proof record at his hand at that point of time was saying that his date of birth was wrongly recorded. This circumstance smacks foul play at some level at some corner. As a matter of fact the date of birth was initially entered by the applicant ^{himself} in his Service Book which was again duly verified by him on 3.5.71 on the basis of age proof document submitted by him and subsequent to that he approved himself his date of birth originally recorded in the Service Book and other Departmental records in various ways.

In the circumstances the allegations that the applicant's date of birth was wrongly recorded and he was never shown his Service Book at any point of time ~~is~~ ^{be} are totally false and also well designed. On that count itself the O.A. ^{is} liable to ^{be} dismissed with handsome costs.

12. That as regards the contents of paragraph 4.5 of the O.A. this dependent respectfully states that on receipt of the representation dated 22.11.97 the competent authority considered the case and came to conclusion in conformity with the extant rule and thus the applicant was intimated that his case was not fit for consideration since he had approached beyond the prescribed period of limitation. Curiously enough his relevant records were not found alongwith his Service Book, as such he was asked to submit -Admit Card of H.S.L.C Examination, Original H.S.L.C. Certificate and if 1 & 2 are not available, Roll No of H.S.L.C. Exam. in order that complication in future might have avoided in processing the papers at the time of retirement. However, it does not mean that his matter ^{was} going to be scrutinised on merits.

13. That as regards the contents of paragraph 4.6 of the O.A. this dependent respectfully states that though the applicant's matter in respect of correction of date of birth was not entertained for the reasons as ~~as~~ has been explained above, however, the applicant had submitted another representation harping the same string and this time the applicant

has

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has submitted a Duplicate Matriculation Certificate which ^{is} seemed to be issued by the University authority on 23.2.2000 and on the basis of that he wants rectification on the date of birth claiming that his original date of entry was bonafide mistake. However, for the reasons stated above the Respondents became handicap to consider the claim of applicant and the same was turned down.

14. That as regards the contents of paragraph 4.7 this deponent does not make any comments.

15. That as regards the contents of paragraph 4.8 ~~that~~ of the O.A. this deponent respectfully states that the applicant has filed this application against the settled law inasmuch as he was negligent to his right and was sleeping over the same during the entire ~~career~~ career of service and the O.A. has been filed without explaining the reasons behind such sleeping tight. As such the instant O.A. deserves no consideration on merits and liable to be dismissed.

16. That as regards the contents of paragraphs 5.1 to 5.5 this deponent respectfully submits that in the facts and circumstances as cited above the instant O.A. does ^{not} bear legal valid ground, as such not maintainable in the eye of law and liable to be dismissed.

17. That as regards the contents of paragraphs 6 and 7 of the O.A. this deponent does not make any comments.

18. That as regards the contents of paragraphs 8 and 9 of the O.A. this deponent respectfully submits that as the instant O.A. is not maintainable in the eye of law for the reasons explained above in this written statement, hence the applicant is not entitled any relief or ~~at~~ reliefs including the interim relief as prayed for.

Verification.....

: VERIFICATION :

I, SHRI G.C.SARMA, Assistant Director, Telecommunications (Legal), in the Office of the Chief General Manager, Telecommunications, Assam Circle, Guwahati having authorised do hereby solemnly affirm and verify that the statements made in this verification and those have been made in paragraphs 1, 3, 7 and 14 of the written statement are true to the best of my knowledge and belief and those have been made in paragraphs 2, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 15 are true to the best of my information which have been derived from the records and the rests are my humble submission before the Hon'ble Tribunal.

I sign this verification this the 2 nd day of November, 2000.

Ganesh Chandra Sarma.
DEPONENT.

CHAPTER 48

DATE OF BIRTH AND ITS
SUBSEQUENT ALTERATION

Declaration of date of birth.—Every person newly appointed to a service or a post under Government shall, at the time of the appointment, declare the date of birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date shall be determined in the following manner:—

- (a) If he is unable to state his exact date of birth but can state the year or year and month of birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth.
- (b) If he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.
- (c) When a person who first entered Military employ is subsequently employed in a Civil Department, the date of his birth for the purpose of the Civil employment shall be the date stated by him at the time of attestation, or if at the time of attestation he stated only his age, the date of birth shall be deducted with reference to that age according to (b) above.

[Rules 79 & 80, General Financial Rules.]

Entry of date of birth in service records.—The actual date or the assumed date determined in the manner stated above shall be recorded in the history of service, Service Book, or any other record that may be kept in respect of the Government servant's service under Government and, once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of a Department of the Central Government or an Administrator. The Comptroller and Auditor General exercises the powers of Department of Central Government in regard to persons serving in the Indian Audit and Accounts Department. Heads of Departments are authorised to exercise this power in the case of non-gazetted Government servants under their control.

Alteration of date of birth.—The following criteria may usefully be applied in considering requests for alteration of dates of birth already recorded in Service Books etc., which may be received by the Ministries etc.

Normally, requests for alteration of date of birth made within a year or two of the date of superannuation are not countenanced. Where, however, such requests are not regarded as time-barred, they should be supported by satisfactory documentary evidence (such as the matriculation or equivalent certificate or a duly attested extract of the birth register or baptismal certificate in original) together with a satisfactory explanation of the circumstances in which the wrong date came to be entered and statement of any previous attempts made to have the record amended. It should also be examined whether the Government servant concerned would have been within the age limits prescribed for Government service at the time he entered service with reference to the different date later claimed by him as the correct date. If he would not have been so eligible, it should be examined whether the date actually accepted then was given by him *bona fide* and did not give him some advantage in securing admission into service at that time, and the change proposed later on is for *bona fide* reasons and not merely to gain some fresh advantage.

So far as the officers belonging to the Central Secretariat Service are concerned, the Ministry of Home Affairs should be regarded as the Administrative Ministry for this purpose, and all requests for alteration in the date of birth from such officers should be referred to this Ministry.

[M.H.A., O.M. No. 55/3/54-Ests., dated the 5th June, 1954.]

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 an 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 had 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.

[Note 5 below F.R. 56 as amended by D.P. & A.R., Notification No. 19017/7/79-Ests., dated the 30th November, 1979.]

(10)

ANNEXURE-R² 25

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 26 of 1995.

Date of Order : This the 26th Day of June, 2000.

The Hon'ble Mr D.C.Verma, Judicial Member.

Shri Kanti Kumar Sen Gupta
at present working as Sub-Divisional Engineer,
Udharbond, Silchar under Telecom District Engineer,
Silchar. . . . Applicant.

By Advocate Shri B.K.Sharma, S.Sarma.

- Versus :-

1. The Union of India
represented by the Secretary to the Govt. of India,
Ministry of Telecommunications,
New Delhi.
2. The Director General,
Telecommunications, New Delhi.
3. The Chief General Manager(Telecom),
Assam Circle, Ulubari, Guwahati-7. . . . Respondents.

By Advocate Shri B.C.Pathak, Addl.C.G.S.C.

O R D E R

D.C.VERMA, JUDICIAL MEMBER,

By this O.A. the applicant has prayed for correction of date of his birth from 1.3.1937 to 28.2.1941. As this case has a little chequered history, brief facts is required to be given.

The present O.A. was initially dismissed vide order dated 15.3.1996. The applicant filed Review Application which was registered as 13/98. The Review Application was allowed vide order dated 5.4.2000. Consequently the O.A. has again come up for hearing before this Bench.

2. Admittedly, the date of birth of the applicant in the service record is 1.3.1937. This date of birth was recorded on the basis of the Matriculation Certificate.

contd...2

38 It so happened that the Gauhati University took a decision for entertaining application for correction of age entered in the Matriculation Certificate and accordingly a notice dated 14.8.1969 was issued by the Registrar, Gauhati University. On receipt of said information the applicant applied for correction of date of birth in his Matriculation Certificate and filed the required documents. The Gauhati University corrected the age of the applicant in the Matriculation Certificate as 14 years 1 day as on 1.3.1955 instead of 18 years 1 day as on 1.3.1955. After the correction was made by the Registrar, Gauhati University in February 1971, the applicant applied to the departmental authority for correcting the date of birth in the Service Book. The said application was sent on 26.6.1972. The department vide its letter dated 4.6.1975 (copy Annexure-3 to the C.A) called upon the applicant to intimate the circumstance which is stood on the way of the applicant in making representation on an earlier date for correction of date of birth in the service record. On 13.6.1975 (Annexure-4) the applicant replied to the same. Thereafter there was no correspondence for several years. As per the applicant he sent representation in 1983, 1985 and 1988 with no reply. Subsequently, on 11.1.1995 the applicant sent a representation (Annexure-4). By Annexure-9 letter the respondents rejected the applicant's claim as time barred. Consequently the present O.A. has been filed to challenge this order.

3. The submission of learned counsel for the applicant is that Annexure-9 was not decided by the respondents on merit and consequently the respondents be directed to decide applicant's case on merit. The second ground is that the cause of action arose to the applicant when the impugned

contd..3

order dated 30.1.1995 (Annexure-9 to the O.A) was communicated to the applicant.

4. Learned counsel for the respondents has, on the other hand, submitted that the present O.A. is highly barred by limitation. Secondly, the correction of date of birth made by the Gauhati University in the Matriculation Certificate is not binding on the respondents. Thirdly, that the applicant entered in service in the year 1960 and the date of birth recorded in the Service Book is 1.3.1937 which cannot be changed by a subsequent change of date of birth in the Matriculation Certificate, 11 years after entry in the service.

5. Heard learned counsel for the parties at some length. It is admitted in para 4.3 of the O.A. that at the time of entry in the service, the date of birth of the applicant was recorded as 1.3.1937 in the Service Book on the basis of age recorded in the Matriculation Certificate. Once a date of birth has been recorded in the service Book and accepted by the employee that cannot be changed due to subsequent change of date of birth in his School Certificate. In the case of Union of India vs. C.Rama Swamy and others, 1997 S.C.C (L&S) 1158, the Hon'ble Supreme Court had held that on the basis of a judicial decree correction of date of birth in Secondary School Leaving Certificate did not entitle the employee to corresponding correction in official records because such correction was not permitted by the rules. In the case before this Bench as has been stated above, admittedly, the recorded date of birth of the applicant in the service book is 1.3.1937. After a decade the Registrar, Gauhati University changed the date of birth in the Matriculation Certificate of the applicant. Said

contd..4

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change of date of birth made by the Registrar, Gauhati University is not binding on the department, unless there is a clerical mistake in the date of birth recorded in the Service Book and accepted by the employee. Consequently in my view the applicant's case has no merit.

6. From Annexure-3 dated 4.6.1975 it appears that the applicant had made his first representation for correction of date of birth on 26.6.1972. But after sending reply dated 13.6.1975 the applicant kept quite till 1983. Thus for about eight years

the respondents had not taken any action/Cause of action arose to the applicant in the year 1972. The applicant then, did not agitate the matter further and kept quite for about 8 years. The applicant thereafter sent representations in 1983, 1985 and then 1988. Again the applicant kept quite for about 7 years and sent a representation on 11.1.1995. In the representation dated 11.1.1995 the applicant did not make any mention about his earlier representations made prior to 1983. This representation dated 11.1.1995 was rejected by the respondents by the impugned order dated 30.1.1995, as time barred. The submission of the learned counsel for the applicant that the respondents be directed to decide the representation on merit cannot be accepted at this belated stage. The applicant lost his right as he did not agitate the matter in the year 1975 and kept quite for several years. Sending of representations one after another would not give rise a new cause of action to the applicant. The Central Administrative Tribunal came into existence after the Administrative Tribunals Act 1985 was notified on 1.11.1985. As per Section 21(2) of the Administrative Tribunals Act this Tribunal has no jurisdiction to entertain an application in respect of a cause of action

contd.. 5

which arose to an employee 3 years prior to the ^{date 1/10/73} Administrative Tribunals Act came into force. As the cause of action had arisen to the applicant in the year 1972, i.e. 3 years prior to Administrative Tribunals Act came into force, for such a cause of action this Tribunal cannot entertain the application. Hon'ble 7 Judges Bench of the Apex Court in the case of S.S.Rathore vs State of M.P. (1989) 4 SCC 582 realised the apathy of the Government department and observed :

"Redressal of grievances in the hands of the departmental authorities take an unduly long time. This is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation."

The above observation of the Apex Court is equally applicable to the present case. The legislature was ^{probably} also aware and consequently it was provided in Section 21 of the Administrative Tribunals Act that if an appeal or representation is not decided within a period of 6 months, the aggrieved party may approach within 1 year after expiry of the said period of 6 months. The aggrieved person cannot be left without ^{so} the remedy for decades to come and consequently, even if the representation is not decided the aggrieved person has a remedy to approach the Tribunal within the period prescribed under Section 21. This however, does not mean that an aggrieved person can extend the period of limitation by making representations after representations that would make the limitation provision provided in Section

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- 6 -

21 as redundant. It is with this view that Hon'ble Apex Court in the case of S.S.Rathore (supra) while discussing Section 20 and 21 of the Administrative Tribunals Act held that six months' period from the date of preferring of an appeal or making of a representation shall be taken to be the date when cause of action shall be taken to have first arisen and observed :

We, therefore, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representation not provided by law are not governed by this principle."

7. In view of the observations made above in my view there is no merit in the submissions of the learned counsel for the applicant and the same cannot be accepted.

Accordingly the O.A. is dismissed. Costs on parties.

Sd/MEMBER(j)



TRUE COPY
प्रतिनिधि

Deputy Registrar (O)
Central Administrative Tribunal
Guwahati Bench

M/16/6/1000

16/6/2000

G.P. P. C. M. P. S. 662

Name: *Lachhya Chandra Barua*

Residence: *P.O. Hazaribaghpara III - M. Para - Mangaldai Dist. - Darrang (Assam)*



Date: *13th Nov 1948*

Educ: *High School*

Height: *5 ft 6 in*

Weight: *120 lbs* (Barua community)

Personal mark for identification: *One cut mark on right forearm*

Father's name (and also husband's name in the case of a female Govt servant) and Residence: *Sgt. Rajni Ch. Barua P.O. Hazaribaghpara III - M. Para Dist. - Darrang (Assam)*

Left hand thumb and finger impressions of (non-gazetted) officer: *[Impressions]*

Right Finger

Ring Finger

Left Finger

Fore Finger

Signature of Government servant: *[Signature]*

Signature and designation of the Head of Office, or other authorized Officer: *[Signature]*

Sub Divisional Officer, Telegraph: *[Signature]*

Manager, Telecom: *[Signature]*

Divisional Officer, Darrang (P.S.)

Sub Divisional Officer, Darrang

Sub Divisional Officer, Darrang

FORM 3
(See rule 54 (12))
DETAILS OF FAMILY

Name of the Government Servant :-

Laxmika Shari Baidg.

Designation :-

S.L.O.

Date of birth :-

13-11-40.

Date of appointment :-

10.7.63

Details of the members of my family as on.....

17-4-73

Sl. No	Name of the members of Family	Date of Birth	Relationship with the officer.	Initial of the Head of office	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1.	Mrs K.L. Baidg.		Wife		
2.	Miss K. Baidg.	5 Year	Daughter		
3.	Miss M. Baidg.	6 Year	Daughter		
4.	Miss K.L. Baidg.	23 Year	Sister		
5.	Jatin Baidg.	25 4	Son		
6.					

I hereby undertake to keep the above particulars up-to-date by notifying to the Audit Office / Head of Office any addition or alteration.

Place 12/4/73

Dated the..... 12/4/73

Signature of Government Servant.

(C. D. Baidg.)

*Family for this purpose means.

- (a) Wife, in the case of a male Government Servant.
- (b) husband, in the case of a female Government Servant;
- (c) Sons below eighteen years of age and unmarried daughters below twenty-one years of age including son or daughter adopted legally before retirement.

Attested,

Veryd...
वर्तमान निदेश (र. 54)
Assistant Director (O.L.)
आयुक्त निदेशक (ओ.एल.)

Note :- Wife and husband shall include respectively judicially separated wife and husband.

amrup telecom D
Juti-781007.

FORM 3
(See rule 54 (12))
DETAILS OF FAMILY.

ANNEXURE-R^s

30. 18

Name of the Government Servant :-

L. D. Bandy

Designation. :-

SSC

Date of birth. :-

13.11.40

Date of appointment, :-

10.8.63 ✓

Details of the members of my family as on

12.2.79

Sl. No.	Name of the members of Family	Date of Birth	Relationship with the officer,	Initial of the Head of office	Remarks
(1)	(2)	(3)	(5)	(5)	(6)
1.	<i>Mrs. M. L. Bandy</i>	<i>Mother</i>			
2.	<i>H. L. Bandy</i>	<i>Wife</i>			
3.	<i>Jatin Bandy</i>	<i>Son</i>	<i>7.4.69</i>		
4.	<i>Archana Bandy</i>	<i>Daughter</i>	<i>13.9.76</i>		
5.	<i>Manisha Bandy</i>	<i>Daughter</i>	<i>10.4.78</i>		
6.	<i>R. L. Bandy</i>	<i>Sister</i>	<i>22.11.48</i>	<i>20.4.77</i>	

⑦ *L. D. Bandy* *Signature*

I, hereby undertake to keep the above particulars up-to-date by notifying to the Audit Officer / Head of Office any addition or alteration.

Place.....

Calcutta

Dated the.....

12/2/79

Signature of Government Servant

[Signature]

*Family for this purpose means.

- (a) Wife, in the case of a male Government Servant.
- (b) husband, in the case of a female Government Servant ;
- (c) Sons below eighteen years of age and unmarried daughters below twenty-one years of age, including such son or daughter adopted legally before retirement.

Note :—Wife and husband shall include respectively judicially separated wife and husband.

45

Filed by the applicant.
M. L. Banerjee
Advocate

7 NOV 2000

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI
Guwahati Bench

O.A. No. 152 of 2000

Sri L.D.Baniya

-versus-

Union of India & Ors.

-AND-

IN THE MATTER OF :

Rejoinder submitted by the Applicant.

The applicant Most humbly and Respectfully state as follows :-

1. That your applicant categorically denies the statements made in paragraph 4,5,6 and 9 of the written statement and further begs to state that the applicant has approached this Hon'ble Tribunal against the impugned order dated 14.3.2000 issued by the Respondent No.5 rejecting the prayer of the applicant recording the correct date of birth in the Service Book of the applicant as such application is well within the time limit as prescribed under Section 21 of the Administrative Tribunals Act 1985, as such objection raised by the Respondents on the ground of limitation is not sustainable in the eye of law. It is further stated that the instant case of the applicant is not a case of alteration of date of birth but a case for correction of bonafide clerical mistake while recording the same in the Service Book of the applicant, as such the law of limitation is not applicable in the instant case of the applicant. The Respondent is at liberty to make any

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any enquiry to ascertain the correctness of the claim of the applicant. It is further submitted that the applicant also submitted his certificate before the authority in terms of the authorities letter dated 21.2.1998, however, the claim of the applicant is rejected only on the ground that the case is time barred but no doubt is expressed regarding correctness of the date of birth as claimed by the applicant on the basis of his Matriculation Certificate. Therefore impugned order is liable to be set aside and quashed on that score alone.

2. That your applicant denies the correctness the statements made in paragraph 11, 12, 13, 15, 16 and 18 of the written statement and further begs to state that it is a simple case of bonafide clerical mistake as such the contention of the respondents is not tenable in the eye of law, the rule quoted by the Respondents in Annexure-L of the written statement rather supports the case of the applicant wherein it is categorically stated that the clerical error can be rectified even without any previous order of the department as such the Hon'ble Tribunal be pleased to direct the Respondents to make necessary correction in the Service Book by recording 1.7.1941 as correct date of birth of the applicant. It is further stated that the case relied by the respondents is not applicable in the instant case there is a bonafide mistake in recording the date of birth of the applicant in his Service Book, whereas decision in O.A. 26/95 relating to alteration of date of birth of Sri Kanti Kumar Sengupta, whereas the case of the applicant is squarely covered by the judgement and order dated 19.8.98 passed in O.A. 16/96 (S.N.G. Momin Vs.

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Union of India & Ors.) passed by the Division Bench of the Hon'ble Tribunal. The facts and circumstances of O.A.16/96 is similar to the case of the present applicant as such the Hon'ble Tribunal be pleased to allow the application directing the Respondents to correct entry of date of birth of the applicant in his Service Book by redording 1.7.1941 as correct date of birth and allow the applicant to continue in service till completion of sixty years of age according to his correct/actual date of birth i.e. 1.7.1941.

Copy of the judgement and order dated 19.8.98 is annexed as Annexure- 6.

In the facts and circumstances stated above, the application is deserves to be allowed with costs.

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

I, Sri Lakshyadhar Bania, son of late BLC.Bania, working as Senior Section Supervisor, aged about 56 years, in the office of the General Manager, Telecom, Kamrup Telecom District, Guwahati, do hereby solemnly affirm and declare that the statements made in paragraphs 1 to 3 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this 7th day of November, 2000.

Lakshyadhar Bania

Signature

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ANNEXURE-6

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 16 of 1996

Date of decision : This the 19th day of August, 1998.

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

HON'BLE SHRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER.

Shri Shiv Nath G. Homin
Son of late Gijang R. Marak,
resident of village-Barbaka
P.O. Mandakatu
P.S. Kamalpur
Dist. Kamrup
Assam

.... Applicant

By Advocate Mr. M. Chanda.

-versus-



1. Union of India
through the General Manager
N.F. Railway,
Maligaon
Guwahati-781011

The General Manager (P)
N.F. Railway,
Maligaon,
Guwahati-781011

3. Chief Personnel Officer,
N.F. Railway,
Maligaon,
Guwahati-781011

4. Deputy Chief Personnel Officer,
N.F. Railway,
Maligaon,
Guwahati-781011

.... Respondents

By Advocate Mr. B.K. Sharma

ORDER

BARUAH J. (V.C.).

In this application the applicant has challenged the entry of his date of birth in his Service Book and prays for a direction to the respondents to treat the applicant's date of birth as 1.8.1938 in place of 1.8.1937.

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... Applicant himself having

Handwritten signature/initials

2. According to the applicant the date of birth in the Service Book was written by some other person and he put his signature and the thumb impression. The service record was renewed in the year 1995 and he put his signature and thumb impression. The facts for the purpose of disposal of the present application are :

3. On 31.5.1962 the applicant was appointed Junior Clerk. Before joining in service he submitted an application for selection to the post of Junior Clerk in the N.F.Railway. In his application he mentioned that his date of birth as 1.8.1938 as per his Matriculation Certificate. After his appointment to the post of Junior Clerk, a few years later the service particulars were entered including date of birth. All these entries were made by some other person, the applicant put only his signature. In that service records in column No.6 the date of birth of the applicant was shown as 1.8.1937 instead of 1.8.1938. When the Service Book was updated in 1995 same particulars were also entered by some other person and the applicant put thumb impression and signature. The applicant in his present application has stated that these entries so far the date of birth is concerned, namely in his service book was wrong. In fact it was written by somebody and he was not very mindful at the time of putting his signature. This mistake was not detected during his long period of service. On 26.6.95 the Dy. C.E. issued a letter that his date of birth had been recorded as 1.8.37 and 1.8.38 in different records and the applicant was ordered to submit his valid documents in original. On the same day the applicant submitted his relevant documents in original including Matriculation Certificate to the competent authority and also stated that he was borne in

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August 1938 and not in 1937. The applicant states that at the time of filing of the application for entry into service in a prescribed form he also enclosed the Matriculation Certificate and Caste Certificate. However, the authority did not accept the date of birth as per the Matriculation Certificate and passed the order dated 31.8.95 that the applicant was to retire from service on 01.8.95. Hence the present application.

3. In the present application the applicant has challenged the impugned order Annexure-8 dated 31.8.95. The respondents have entered appearance and have filed written statement.

4. We have heard Mr. M.Chanda, learned counsel appearing on behalf of the applicant and Mr. B.K.Sharma, learned Railway counsel appearing on behalf of the respondents.

5. Mr. Chanda submits that it is true, the service book shows that the date of birth of the applicant is 1.8.1937. Mr. Chanda further submits that as per his Matriculation Certificate his date of birth is 1.8.1938 and not 1.8.1937. This Matriculation Certificate was enclosed alongwith his application during entry into service and after verification of the same by the Railway Authority the same was returned to the applicant. Mr. Chanda further submits that in the seniority list prepared by the respondents his date of birth was shown as 31.8.1938 instead of 1.8.1938. Mr. B.K.Sharma resists the claim of the applicant on the ground that his Service Book shows his date of birth is 1.8.1937 and the applicant put his signature as a token of acceptance and this was also confirmed by the applicant when renewed in 1995 by putting his signature and thumb impression thereon. Mr. Sharma further submits that while the applicant himself having



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confirmed it by putting signature the question of mistake does not arise at all and the same cannot be rectified at the fag end of his service. In reply, Mr. Chanda submits that the date of birth 1.8.1937 instead of 1.8.1938 was inadvertantly entered and the same was not known to the applicant before 26.6.1995. Action of the respondents clearly indicates that the respondents also were not aware of the actual date of birth otherwise according to Mr. Chanda applicant ought to have been retired from service on 1.8.1995 itself but he was allowed to continue some more time. Mr. Chanda has emphasized in his arguments that in the Service Book date of birth was entered after few years of joining i.e. sometime in 1965. Similar mistake was also committed in the subsequent date when it was updated in the year 1995. According to Mr. Chanda the entries were made by some other person other than the applicant and the applicant only put his signature and thumb impression. Mr. Sharma also admits that from the records it is seen that so far as the entry of date of birth is concerned this was entered by person other than the applicant. The Original Matriculation Certificate has been produced before us. We have perused the same and from the Original Matriculation Certificate as well as an Admit Card it clearly shows that the applicant was born on 1.8.1938 and not on 1.8.1937. Besides his Matriculation Certificate the applicant had submitted an application for entry into service where he had shown his date of birth as 1.8.1938 and not 1.8.1937. Records have also not been produced before us. We have perused the records. We find that the applicant's date of birth is clearly written as 1.8.1938 in the application. There is a clear

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mention that Matriculation Certificate was also enclosed alongwith application and again produced the same on demand of the authority.

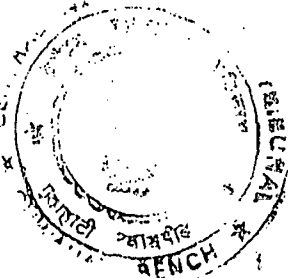
6. It is an established law that change of date of birth cannot be claimed at a belated stage but when there is genuine papers available, the court should not hesitate to change the date of birth on the basis of genuine documents. In respect of date of birth normally the Matriculation Certificate should be accepted. In this connection Mr. Chanda has drawn our attention to a decision of the Apex Court in the case of Commissioner of Police, Bombay and Another Vs. Bhagawan V. Lahane, reported in 1:97 (1) SCC 249 where the Apex Court held thus :

"The respondent admittedly filed his Secondary School Leaving Certificate at the time of entry into service on the basis of which his date of birth was reflected in the service register as 12.11.1948. The respondent ought to have produced the reliable material to show that the date of birth mentioned in the School Leaving Certificate was incorrect. No such material was produced by him. The extract from the birth register produced by him along with his representation being inconsistent with the School Leaving Certificate produced by him earlier, he ought to have proved to the satisfaction of the competent authority that he was given a name before or soon after his birth and that his name was entered in the birth register at the time of registration of his birth. Ordinarily, a child is not given a name before birth and in the entry in the birth register only sex, viz., male or female would be mentioned. After naming ceremony the name is given.....

Admittedly, the School Leaving Certificate was produced by the respondent and the entry in the service-book was made on the basis of the date of birth mentioned therein. As he failed to show that the said entry was made due to want of care on the part of some other person or that it was an obvious clerical error,"

From this, it is clear that date of birth shown in the School Leaving Certificate should be accepted as an authentic document. In the instant application, the

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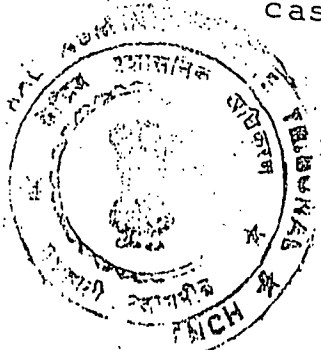


Matriculation certificate produced by the applicant shows date of birth is clearly written as 1.8.1938 and from the facts and circumstances of the case the date of birth shall be as 1.8.1938 which is advertantly entered in the service book of the applicant as 1.8.1937. From his Matriculation certificate and admit card it is clear that he was born on 1.8.1938 and not on 1.8.1937 and we are inclined to accept the submission of Mr. Chanda, and hold that the applicant was born on 1.8.1938 and his date of superannuation 31.7.1996 but the applicant was allowed to work upto 31.8.95. Therefore we direct the respondents to pay his dues accordingly and he shall be allowed to draw consequential service benefits including pensionary benefits. Accordingly we allow the application and set aside Annexure-B order dated 31.8.95.

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

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)



Certified to be true Cop.

प्रमाणित प्रतिलिपि

[Signature]
25/9/98

Section Officer (J)

अनुमान अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati
गुवाहाटी न्यायाधीश, गुवाहाटी-6

[Signature]