

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 292/02

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet.....O.A.....Pg. 1.....to 3.....
2. Judgment/Order dtd. 19/5/03.....Pg. 1.....to 1 Alured
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....BA 292/02.....Pg. 1.....to 60.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
- ~~7. W.S.....Pg. 1.....to 6.....~~
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

6/11/17

(SEE RULE -4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI
.....

ORDER SHEET

Original Application No : 292/02
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant (s) Niradh Kr. Das

-Vs-
Respondent (s) M. O. J. Goss


Advocate for the Applicant (s) A.K. Roy, Indram Gogoi

Advocate for the Respondent(s) Case T.C. Khehi

Notes of the Registry	Date	Order of the Tribunal
<u>131/77/1620-24</u> <u>3-8-02</u> <u>Steps along with</u> <u>envelops taken</u> <u>Notices prepared and sent</u> <u>to D. Section for issuing</u> <u>of the same to the respondents</u> <u>Through Regd. post with</u> <u>A/D. vide D. No. 2659 to 2662</u> <u>Dtd. 23.9.02.</u> <u>23/10/02.</u>	<u>9.9.2002</u> <u>mb</u> <u>8.10.02</u>	<p>Heard Mr. A.K. Roy, learned counsel for the applicant. The application is admitted. Call for the records. List on 8.10.2002 for orders.</p> <p><u>Vice-Chairman</u></p> <p>List again on 18.11.2002 to enable the respondents to file written statement as prayed by Mr. S. Sengupta, learned counsel for the Railway.</p> <p><u>Member</u> <u>Vice-Chairman</u></p>

18.11.02

Mr. S. Sengupta, learned counsel for the respondents prayed for four weeks time to file written statement. prayer is allowed. List on 17.12.02 for orders.

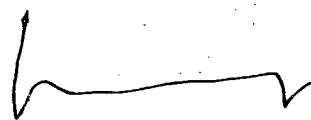

Member


Vice-Chairman

mb

17.12.02

No written statement so far filed by the respondents though time granted. List on 21.1.2003 to enable the respondents to file written statement positively.


Vice-Chairman

mb

21.1.03 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

Further four weeks time is allowed to the respondents for filing written statement. List again on 20.2.2003 for written statement.


Member

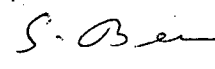

Vice-Chairman

mb

20.2.2003

Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S. Biswas, Administrative Member.

Respondents has not filed written statement. Post the matter for hearing on 22.4.2003. The respondents may file written statement within three weeks from today.


Member


Vice-Chairman

mb

22.4. Court did not set today. The case is adjourned to 21/5/03. mb

20/1/03

NO W/S has been filed

NB
20/1/03

No. W/S has been filed.

20
9.5.03.

Notes of the Registry

Date

Order of the Tribunal

12/5/03.

Division Bench is not available
the case is adjourned to 19/5/03
m

No. 1013 has been
billed

24
14-503.

was billed on 19/5/2003
Accepted in the file.

A.K. Jha
19/5

27/5/2003

Copy of the Judgment
has been sent to the D/Sec.
for issuing the same to
the applicant as well as
to the Railway Standup
Council for the Respondents.

HS

19.5.2003

Heard learned counsel for
the parties. Hearing concluded.
Judgment delivered in open
Court, kept in separate sheets.

The application is allowed
in terms of the order. No order
as to costs.

Member

Vice-Chairman

bb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~XXA~~. No.292 of. 2002 of

DATE OF DECISION 19.5.2003.....

.... Shri Nirod Kumar Das APPLICANT(S).

.... Mr.T.C.Khetri, Mr.A.K.Ray & I.Gogoi. ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

.... Union of India & Others. RESPONDENT(S).

.... Mr.S.Sengupta, Railway Standing Counsel. ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR S.K. HAJRA, ADMINISTRATIVE MEMBER.

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 Ho'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 292 of 2002.

Date of Order : This the 19th Day of May, 2003.

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

THE HON'BLE MR.S.K. HAJRA, ADMINISTRATIVE MEMBER.

Shri Nirod Kumar Das
S/o Late Akhil Kumar Das
Resident of Rly.Quarter No.95-D
Loco Colony, P.O:- Rangapara
District:- Sonitpur, Assam.

. . . Applicant.

By Advocates Mr.T.C.Khetri, Mr.A.K.Ray & I.Gogoi.

- Versus -

1. Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati - 781 011 (Assam).

2. Divisional Railway Manager(P)
N.F.Railway, Alipurduar Junction
District:- Jalpaiguri (W.B.).

3. Divisional Engineer(V)
N.F.Railway, Alipurduar Junction
District:- Jalpaiguri (W.B.).

4. Sr.D.E.N.(C)
N.F.Railway
Alipurduar Junction
District:- Jalpaiguri (W.B.).

. . . Respondents.

By Mr.S.Sengupta, Railway Standing Counsel.


O R D E R

CHOWDHURY J.(V.C.):

We have heard Mr.A.K.Ray, learned counsel for the applicant and also Mr.S.Sengupta, learned Standing counsel for the Railway.

In view of our finding in Original Application No.159 of 2002, the application is liable to be allowed. Even otherwise, we do not find any justification for imposition of punishment on the materials on records. In the circumstances, the order No.E/213/30(E)/AP/Pt.II dated 25.6.2002 issued by the Divisional Engineer/V, Alipurduar Junction is accordingly set aside and quashed.

The application is thus allowed. There shall, however, be no order as to costs.


(S.K.HAJRA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

DISTRICT :: SONITPUR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

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

Original Application No. 292 /2002

Shri Nirodh Kumar Das:

....Applicant.

-Versus-

Union of India & others.

... Respondents.

I N D E X

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page Nos.</u>
1.	Application _____	1 to 14
2.	Verification _____	15
3.	Annexure-A _____	16
4.	Annexure-B _____	17
5.	Annexure-C _____	18
6.	Annexure-D _____	19
7.	Annexure-E _____	20 & 21
8.	Annexure-F _____	22 & 23
9.	Annexure-G, _____	24 to 27
10.	Annexure-H, _____	28
11.	Annexure-I. _____	29 & 30

Filed by :
Indranil Gogoi
Advocate, CAT,
Guwahati Bench.

For Office Use :-

S I G N A T U R E

Date:-

DISTRICT :: SONITPUR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

9
Filed by the applicant
through -
Gardhaail Gogoi
Advocate, 04/09/2002

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

Original Application No. 292/2002

- B E T W E E N -

Shri Nirodh Kumar Das,
Son of Late Akhil Kumar Das,
Resident of Rly. Quater No. 95-D,
Loco Colony, P.O. Rangapara,
District Sonitpur, Assam.

....Applicant.

-Versus-

1. Union of India,
represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati 781 011 (Assam).
2. Divisional Railway Manager(P),
N.F. Railway, Alipurduar Junction,
District Jalpaiguri (W.B.),
3. Divisional Engineer(V),
N.F. Railway, Alipurduar Junction,
District Jalapiguri (W.B.).

contd...p/2

Nirodh Kumar Das

: 2 :

4. Sr.D.E.N.(C),
N.F.Railway,
Alipurduar Junction,
District Jalpaiguri(W.B.),

1. PARTICULARS OF ORDER AGAINST WHICH THIS APPLICATION
IS MADE :-

This application is directed against the illegal order of the Disciplinary Authority under No.E/213/30(E)/AP/Pt.II dated 25/6/2002 issued by the Divisional Engineer(V), Alipurduar Junction, N.F.Railway and thereby withholding the increment for 1(one) year.

2. JURISDICTION :

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

3. LIMITATION :

The applicant also declares that the application is within the limitation period as has been prescribed under section 21 of the Administrative Tribunal Act, 1985.

contd...p/3

Nirodh Kumar Das .

4. FACT OF THE CASE :-

(i) That, the applicant after passing the class VII Examination in the year 1963 took admission in Class VIII in the Sudhani High School, Sudhani under Katihar District (Earlier Purnia) of Bihar. But after a few months of his admission in Class VIII, his father expired and hence he had to left the idea of further study and accordingly left the study and started to search for a job. As he left the study, he obtained a transfer certificate from the school in the year 1965 as a proof of his date of birth.

A copy of the Transfer certificate dated 16/4/1965 is annexed herewith as Annexure-A.

(ii) That, the applicant states that ultimately he was appointed as Khalasi under the then Inspector of works (I.O.W.), N.F. Railway, Rangapara and he joined the said job on 3/8/1968 and since then he continued the said job till his promotion to the post of Filter plant operator (FPO in short) Grade-III in the mont of August, 1985 and then he was further promoted to FPO, Grade II in the year 1986.

contd...p/4

- iii). That the applicant entered into service at the age of about 19 years, After the appointment of the applicant, the Respondent authority opened his personal service book wherein the authority obtained his signature. Be it stated that when the service book was opened, he was asked by the authority about his date of birth and qualification and he stated the same as per the school transfer certificate and the same was made entry correctly.
- iv. That the applicant states that in the year 1999, he got one seniority list as on 1/4/1989 from one of his colleague wherein he found that his date of birth had been entered as 2/12/1943. Be it stated that the said date of birth was also over written. Immediately after knowing the same the applicant submitted one representation dated 18/9/1999 to the Divisional Railway Manager(P) requesting to correct the date of birth as per the school transfer certificate which was submitted at the time of his appointment.

One copy of the seniority list as on 1/4/1989 and one copy of the representation dated 18/9/1999 are annexed herewith as Annexure-B. and Annexure-C respectively.

contd...p/5

: 5 :

- v. That after the aforesaid representation of the applicant the Respondent conducted an enquiry in the Sudhani High School about the genuineness of the school Transfer certificate of the applicant and accordingly it was found that the said certificate was genuine. The Divisional Railway Manager(P) conducted the said enquiry and submitted his report to the General Manager(P) vide his letter dated 14/12/2000. The said letter dated 14/12/2000 also clearly reveals about the genuineness of the school Transfer certificate. The applicant also obtained one copy of the said letter dated 14/12/2000 but failed to collect the enquiry report and hence craves the leave of this Hon'ble court/Tribunal to direct the Respondent to produce the copy of the enquiry Report.

A copy of the letter dated 14/12/2000 is annexed herewith as Annexure-D.

- vi. That inspite of the findings in the said enquiry about the genuineness of the school Transfer certificate, the Respondent No.3 instead of correcting the date of birth in the service record, issued one Memorandum of Charges dated 10/4/2001 asking the applicant to submit his

contd..p/6

14

: 6 :

representation against the Memorandum within 10(Ten) days. In the said Memorandum the Respondent enclosed one statement of imputation of misconduct in which a vague and concocted charge has been levelled on the applicant without any basis and/or document. In the said statement of misconduct the authority brought the allegation that the applicant entered in the service by giving a false certificate regarding his date of birth. It has also been alleged ^{as per the School Transfer Certificate he was} that ^Aattaining the age of 14 years, 8 months and 1 days as on 3/8/1968 and hence the applicant has availed undue benefit for becoming a Government employee by giving false statement.

One copy of the said Memorandum of charges is annexed herewith as

Annexure-E.

- vii. That after getting the said Memorandum of charges, the applicant submitted his defence statements dated 27/4/2001 denying the allegation levelled against him. In the said representation the applicant specifically stated that as per the school Transfer certificate his date of birth was 9/6/1949 and accordingly when he entered in the service he was

contd....p/7

: 7 :

attaining the age of 19 years, 1 months 24 days and as seniority list his date of birth was 2/12/1943 and in that case his age was 24 years, 8 months and 1 day as on 3/8/1968 and hence the the questions of under age at the time of the date of appointment does not arise. He also requested the authority to make a proper enquiry about the year of his birth.

One copy of the defence statement dated 27/4/2001 is annexed as

Annexure-F.

viii. That after the said defence statement the Respondent remained silent about the matter without giving any information to the applicant and hence the applicant gave a number of reminders dated 23/7/2001, 12/9/2001, 19/12/2001 and 29/4/2002. In all the reminders the applicant requested to inform about the decision of the authority so that he may not be in trouble in future.

Copies of the representations dated 23/7/2001, 12/9/2001, 19/12/2001 and 29/4/2002 are annexed herewith as Annexure G. series.

contd...p/8

16

: 8 :

- ix. That as inspite of repeated representation, the Respondents remain silent ; the applicant personally approach the office of the Respondent No.2 to make an enquiry into his service book and after going through the same, he came to know that there are some over writting in the date of birth and qualification coloumn in the service book. It is also pertinent to say that in the seniority list also there are over writing in the coloumn of date of birth.
- x. That being aggrieved by the in action of the Respondents, the applicant approached this Hon'ble Tribunal by filling an original Application No.159/2002 which is still pending before this Tribunal.
- xi. That after receiving the notice of this Hon'ble Tribunal, the Respondent No.3 issued an order dated 25/6/2002 whereby the disciplinary authority imposed a minor punishment "with holding of increment for one year non-cumulative".

One copy of the said order
dated 25/6/2002 is annexed herewith
as Annexure-H.

contd...p/9

X. That the applicant states that the Respondent No. 3 has issued the charge memorandum as well as the impugned order dated 25/6/2002 , in complete violation of the statutory provisions of law. The Memorandum of charges is illegal in as much as the same has been served without any list of documents and/or list of witnesses basing on which the same has been prepared. It is also pertinent to mention that the statement of imputation of misconduct itself speak that the allegation is baseless and without having any documentary support.

xiii). That, the applicant states that the impugned order has been issued by the authority in complete violation of the Statutory Rules as has been provided in the Railway servant(Disciplinary and Appeal) Rules, 1968. The said impugned order has been issued without any disciplinary proceeding. After receiving the impugned order the applicant preferred an appeal dated 26/7/2002 but the Respondent has not given any response till date.

Copy of the appeal dated 26/7/2002
is annexed herewith as Annexure-I.

contd..p/10

10.

XIV. That due to the impugned order the applicant will loss one increment for one year and hence it will affect adversely his pensionary benefit if he is given retirement in December, 2003 on the basis of the wrong date of birth. Due to the impugned order the applicant will not get the increment and hence at the time of retirement his basic pay will remain the present scale, i.e. Rs. 4,900/- per month (under pay scale of Rs. 4,000-6,000 per month). Had the impugned order was not issued the applicant's last pay scale would have fixed at Rs. 5,100/- per month at the time of retirement

The applicant also states that on 16/7/2002 the applicant was promoted to the next grade, i.e., Filter plant operator, (Grade-I), in the pay scale of Rs. 4,500 to Rs. 7,000/- per month but due to the impugned order of punishment dated 25/6/2002, the said promotion has not given effect.

XV. That the applicant states that the authority has issued the impugned order in violation of sub-Rule 2 of Rule 11 of the Railway servants (Discipline and Appeal) Rules 1968 in as much as the same will adversely affect the amount of pension, if he is given retirement in the year 2003 on the basis of the wrong date of birth as is in the service book.

contd..p/11

XVI. That the applicant states that the impugned order has been issued by the authority without application of mind in as much as the allegation of punishment as has been stated in the impugned order are completely different with the charge levelled against him in the charge Memorandum.

XVII. That as per the relevant provision as has been provided in sub-Rule 4 of Rule 11 and Rule 12 of the Railway servants (Discipline and Appeal) Rules, 1968, the disciplinary authority is required to supply the order to the Railway servant alongwith the findings of the authority and a brief reason of the issuance of the punishment order, but in the instant case the same has not been given to the applicant and hence the impugned order is illegal.

XVIII. That, being aggrieved with the impugned order, the applicant again approach this Hon'ble Tribunal filling this Original application on the following grounds amongst others.

5. GROUND FOR RELIEF :-

- i. For that the impugned order has been issued in complete violation of the statutory provisions as laid down in the Railway servants (Discipline and Appeal) Rule 1968.

: 12.

- ii. For that, as the charge Memorandum including the statement of imputation of misconduct itself is irrelevant and has no basis at all in any way whatsoever, the same is not sustainable in the eye of law.
- iii. For that the applicant submitted his school certificate at the time of entry in the service and the same was recorded correctly at that time, but latter on same was altered by over writing, the applicant should not be punished for the same.
- iv. For that the illegality has also been done in the seniority list as well as in the service Book by over writing in the column of date of birth, the same is also not sustainable in the eye of law.
- v. For that the charges as stated in the imputation of misconduct is completely different with the charges leveled in the impugned order and hence the same is not maintainable.
- vi. For that the action of the Respondents in issuing the Memorandum of charges and the impugned order is illegal and arbitrary and hence the same is not maintainable in the eye of law.

contd...p/13.

- vii. For that as the impugned order will adversely affect the amount of pension of the applicant, if he is given retirement in the year 2003 ; the same is not maintainable in the eye of law in as much as the same has been issued in violation of the statutory provisions of law.
- viii. For that the action of the Respondents is against the principle of Natural Justice and administrative fair play.
- ix. For that the action of the Respondents is violate of fundamental rights of the applicant as has been provided under Article 16 and 21 of the Constitution of India.
- X. For that at any rate the impugned order is not sustainable in the eye of law and is liable to be set-aside and quashed.

6. DETAILS OF REMEDIES AVAILABLE :

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

contd..p/14.

: 14. :

7. MATTER NOT PREVIOUSLY FILED AND/OR PENDING BEFORE ANY COURT :-

That the applicant further declares that he has not previously filed any application, writ petition or suit regarding this matter before any court, authority or any other bench of this Hon'ble Tribunal or any such application, writ petition or suit is pending before any authority.

8. RELIEF SOUGHT FOR :

Under the facts and circumstances stated above the applicant prays for the following reliefs:-

- i. To set-aside and quash the impugned order dated 25/6/2002 (Annexure-H).
- ii. Cost of the application.
- iii. Any other relief as Your Lordships may deem fit and proper.

9. INTERIM RELIEF, IF ANY :-

Under the facts and circumstances stated above the applicant donot pray for any interim relief.

10.

15.

11. PARTICULARS OF INDIAN POSTAL ORDER :-

- i. I.P.O. Nos :- 31E771620 , 31E771621 , 31E771622
31E771623, 31E771624 .
- ii. Date of issue :- 03/09/2002
- iii. Payable at :- Guwahati.

V e r i f i c a t i o n

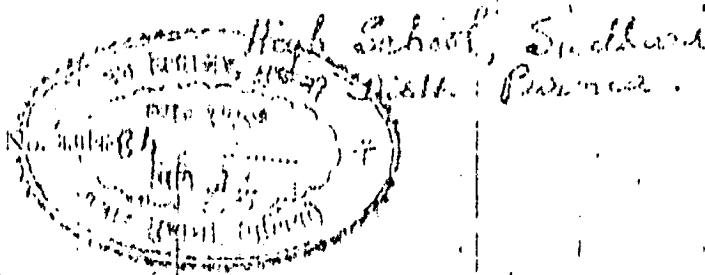
I, Shri Nirodh Kr. Das, aged about 53 years,
Son of late Akhil Ch. Das, resident of Rly.Quater
No. 95-D, Loco Colony, P.O. Rangapara, District Sonitpur
(Assam) and presently working as Sr.Section Officer(Works)/
I.O.W, Rangapara, (North), N.F.Railway, do hereby verify
that the statement made in paragraph Nos. 1 to 12 are
true to my personaly knowledge and the submissions made
therein, I believe to be true and I have not supressed
any material facts of the case.

And I sign this verification on this the 4th day
of September, 2002 at Guwahati.

Date :- 04/09/2002

Place:- Guwahati .

Nirodh Kumar Das
S I G N A T U R E



24

TRANSFER CERTIFICATE स्थानान्तरण प्रमाण-पत्र

1. Pupil's name छात्र का नाम : Nirodh Kumar Das.
2. Father's name पिता का नाम : Sri Akhil Chandra Das.
3. Residence (village, thana and district) vill. Luttipur P.S. Balrampur
निवास-स्थान (ग्राम, थाना और जिला) : P.O. Suddhahi Distt. Purnea.
4. Date of admission प्रवेश-तिथि : 16.1.63 5. Adm. No. प्रवेशांक : 34
6. Date of birth as recorded in the admission register (in words) प्रवेश पुरिष्का में प्रकृत
जन्म-तिथि (शब्दों में) : 9-6-49 Ninth June - forty nine.
7. Date on which he left the school विद्यालय छोड़ने की तिथि : 31.3.63
8. Class in which he was then reading (in words) VIII eighth
उस समय वह किस वर्ग में पढ़ता था (शब्दों में) : VIII eighth
9. (To be filled up when the pupil leaves at the end of the session (सत्र की समाप्ति के बाद छात्र विद्यालय छोड़े तो लिखा जाय) :
Whether he has passed the Examination for promotion to the next higher class क्या छात्र दूसरे वर्ष वर्ग के लिये परीक्षोत्तीर्ण हुआ है?
10. (To be filled up when the pupil leaves during the session सत्र में छात्र विद्यालय छोड़े तो लिखा जाय) :

Attendance during the current session वर्तमान सत्र में उपस्थिति-संख्या

	Date of admission प्रवेश-तिथि	Date of leaving छोड़ने की तिथि	Possible number of attendance सम्भव उपस्थिति सं.	Actual number of attendance वास्तविक उपस्थिति सं.
1. In this school इस विद्यालय में	<u>16.1.63</u>	<u>31.3.63</u>	<u>—</u>	<u>—</u>
2. In.....schoolविद्यालय में				
3. In.....schoolविद्यालय में				

11. Character आचरण : Good.
12. Reason for leaving school विद्यालय छोड़ने का कारण : Guardian's Wish.
All sums due by him to the school have been paid till March 1963.
विद्यालय का सभी पावना छात्र से तक प्राप्त है।

Date of issue वितरण-तिथि 16.4.65

Headmaster प्रधानाध्यापक

प्रधानाध्यापक,

उच्च विद्यालय, सुधानी (पुर्णिया)

Attested by —

Indranil Gogoi
04/09/2002

Advocate

CAT, Guwahati Bench

N. F. Railway.

Provisional seniority list of F.P.O. Gr. III in scale Rs.950-1500/-
under division wise as on 1.4.89.

Department: Engineering. Division: Alipurduar Jn.

Criterion: Length of service to the grade & post. Classification: Divisional.

Sanction strength:

Perm: Post:-

Temp: Post:-

Total:-

Sl. No.	Name	Father's Name	Working Under.	Date of Birth.	Date of Apptt.	Date of promo- tion.	Confid.	When- other SC/ST	Length of service. Y- M- D
1	2	3	4	5	6	7	8	9	10
<u>S/Shri,</u>									
1.	Kamal Saikia	Lt. Kameswar Saikia	IOW/ DMC.	13.3.41	13.8.66	21.12.78	Con- fd.		10-3-10
2.	Samar Kr. Guha	Anil Kr. Guha	" / BNGN	1.11.52	10.11.74	14.9.84	"		4-6-17
3.	Sadhan Ch. Dey	Harendra Ch. Dey	" / BNGN	19.3.49	21.5.78	14.9.84	"		4-6-17
4.	Manoranjan Das		" / FKM	9.1.41	18.12.61	10.11.84	"		4-4-21
5.	Dhajendra Singh		" / FKM	1.7.47	20.3.69	23.8.85	"		3-7-8
6.	Mirodh Kr. Das	Lt. Akhil Ch. Das	" / RPN	2.12.43	3.8.68	27.8.85	"		3-7-4
7.	Jagadish Ch. Sarker	" Dinesh Sarker	" / MJPT	2.5.51	16.11.80	31.8.85	"	SC	3-7-0
8.	Faridhan Miah	" Masu Ali	" / NLP	16.9.41	8.5.68	13.9.85	"		3-6-14
9.	Hareswar Roy	" Shib M. Roy	" / NLP	1.1.39	22.3.71	13.9.85	"		3-6-14
10.	Rajendra Prasad	Haribar Prasad	" / NLP	17.2.50	13.10.72	13.9.85	"		3-6-14
11.	Anjorn Pradhan	Babulal Pradhan	" / NLP	15.1.50	1.7.78	27.11.85	"		3-1-4

*Prepared by
APC/PC/APST*

Attested by —
Indranil Gogoi
04/09/2002
Advocate,
CAT, Guwahati Bench

12. Dhanai

Sambhu

10W/I/
AIDJ.

26.3.38

16.2.65

16.12.87

Conf-
d.

1-3-15

Present 8 23.7.89
for Divl. Rly. Manager (A),
Alipurduar Junction.

No. E/255/1(E)A

Dt. 12/09/89.

Copy forwarded for information and necessary action to :-

- (1) IOWS/DMC, NLT, RAN, RNY, ENGN, FKM, I/AIDJ.
- (2) AENS/RAN, NLT, RNY, NBQ, NCB, R/AIDJ.
- (3) Branch Secy./NPREU/NLT, RAN, RNY, ENGN, NBQ, FKM, NCB, AIDJ.
- (4) Branch Secy./NPRMU/RAN, RNY, ENGN, NBQ, FKM, NCB, AIDJ.
- (5) Staff concerned & spare copy for I/case.

Any appeal as regards seniority position should be submitted to this office within one month from the date of receipt of this list.

(akp/8989)

Present 8 23-9-89
for Divl. Rly. Manager (A),
Alipurduar Junction.

13/9/89

Letter of Demand

Seniority List No. 7
dated 13/09/89.

Please connect above seniority list and service bio-data of
therein in item 10.5.

The date of my birth therein has been mentioned as 02/12/43
and the digit '3' of 43 has been over-written in ink entered over
other figure.

Fact Sir, my actual date of birth is on 09/6/49, but not
02/12/43 in my case, given vide the above list. I was not
aware of the anomaly as I have not received/seen the seniority
list in question. S/list such publishes never reaches to individuals
nor the same are executed in office notice board. The S/list
was received coincidentally from a colleague of mine and known about
it, hence could not correct/represented in time scheduled therein.

When assigned in the job, I executed and submitted a copy
of my school certificate in support of my age, as such rect of
such anomaly in date of birth could not discerned with.

I shall be highly obliged and grateful alike if your
honour do so good by correcting my date of birth as per copy of
my school certificate to avoid future dispute over the issue.

Yours : ~~Indranil~~

Yours faithfully,

Copy to : LHM/V/APDJ for his
information and necessary
action please.

Attested by -

Indranil Gogoi
04/09/2002

Advocate

CAT, Guwahati Bench.

Yours faithfully,

Alindiah K. D. Das
I.P.O. (M. II)

Page No. 19

Office of the
Divl. Rly. Manager(P),
Alipurduar Junction.

Dated. 14./12/2000.

NO : E/213/30(E)AP-Pt.I.

To
GK(P)/MLC.

Sub:- Alteration of date of birth of Shri Nirodh
Das, S. 120/Gr. II under IOW/RPAN.

Ref:- Your letter No. E/71/4(E) dt. 2.8.2000.

.....

As desired vide your letter as referred above, one SLWI
of this office was directed to Sudhani High School from where Shri
Das has obtained the school certificate.

Shri S. Ghosh, SLWI attended Sudhani and after verification
of all records he has submitted a report on this issue. A xerox copy
of the same is enclosed herewith for taking further necessary action
at yours. According to the enquiry report, the School certificate No.
84 dated 16.4.64 issued by the Head Master, Sudhani High School is
found genuine.

In this connection this office letter No. E/213/30(Loose)
dated 3.5.2000 may kindly be referred to.

This is for your kind information please.

DA : ons.

for Divl. Rly. Manager(P)/AFDJ.

(Pd 12)

Attested by -

Indranil Gogoi
04/09/2002

Advocate,

CAT, Guwahati Bench

NORTHEAST FRONTIER RAILWAY

STANDARD FORM NO. 11

G/174 L

Standard Form of Memorandum of charge for imposing minor penalties
(Rules 11 of RS (D&A) Rules, 1968)

No. F/213/30(E)AP-Pl. II Dated 11-4-01

..... (Name of Railway Administration)

(Place of issue) apj dated 11-4-01

MEMORANDUM

Shri Nirodh Kr. Das (Designation) FPO-Cr. II (Office on which working) ION/RPAN is hereby informed that the President/Railway Board/undersigned propose (s) to take action against him under Rule 11 of the Railway servants (Discipline and Appeal) Rules, 1968. A statement of the imputations of misconduct or misbehaviour in which action is proposed to be taken as mentioned above, is enclosed.

2. Shri Nirodh Kr. Das is hereby given an opportunity to make such representation as he may wish to make against the proposal. The representation, if any, should be submitted to the undersigned (through the General Manager DEA/IV/AP Railway, so as to reach the said General Manager) *within ten days of receipt of this Memorandum.

3. If Shri Nirodh Kr. Das fails to submit his representation — the period specified in para 2, it will be presumed that he has no representation to make and orders will be liable to be passed against Shri Nirodh Kr. Das ex-party.

4. The receipt of this Memorandum should be acknowledged by Shri Nirodh Kr. Das, FPO-Cr. II under ION/RPAN.

%(By order and in the name of the President)

10/4/01
(S. K. Ghosh)
Signature.....
Name.....
Name and Designation of the Competent Authority Divisional Engineer

10 Shri Nirodh Kr. Das, FPO-Cr. II ION/RPAN (Name Designation and Office of the Railway Servant)

*To be retained wherever this Memorandum is issued by the Railway Board/the President
% Where the President is the disciplinary authority.

Attested by —

Jordhramil Gogoi
04/09/2002

Advocate, CAT, Guwahati Bench

STATEMENT OF IMPUTATION MISCONDUCT/MISBEHAVIOUR AGAINST
SHRI NIRODH KR. DAS, FPO/GR.I UNDER SE/WORKS/RANGAPARA.

Shri Nirodh Kr. Das, while working as FPO/Gr.II under JE/Works/RPAN submitted an appeal dated : Nil against seniority list No.E/255/1[E]/AP dated 13.09.89 in which he requested to alter his recorded 'Date of Birth' from 09.06.49 to 02.12.43. In disposing the appeal a fact finding enquiry was conducted and during enquiry it was evident that Shri N.K.Das is a literate person and signed the 1st page of Service Book of his own in English. With his application for alteration of his recorded 'Date of Birth', Shri Das produced a School certificate dated 16.04.65 issued by Head Master, Sudhani High School, Sudhani and the School certificate was also got verified. From the School from its counter-foil and as per this school certificate his 'Date of Birth' is something other. The prayer of Shri N.K.Das was forwarded to Hqrs. for examination by the competent authority who observed that Shri Das was in possession of School certificate at the time of his appointment i.e. 03.08.68 but he entered in the Railway service by giving a false certificate regarding date of birth. As per record of school certificate he was attaining the age of 14 years. 08 months and 01 day as on 03.08.68 when he was not eligible for Railway service and decided that the 'Date of Birth' in the 1st page of Service Book may not be altered and it should be kept in binding.

* For false declaration about the 'Date of Birth' Shri Nirodh Kr. Das availed undue benefit for becoming a of Govt. employee at his minor age and after a gap of 33 years he preferred the appeal to have the advantage of serving more which is misconduct and misbehaviour on his part and attracted violation of Rule, 3 (1) (i), (ii) & (iii) of Railway Service Conduct Rule, 1966.

10/9/01
Divisional Engineer/V
N.F.Rly./Alipurduar Jn.

Attested by -

Jindranil Gogoi
04/09/2002

Advocate,

CAT, Guwahati Bench.

To
The Divisional Engineer/V
S.S. City-/Alipurduar In.

Through : Proper Channel.

Sub :- Deference against Memorandum No. L/213/30(E)
AP-Pt-II dt. 11/4/01.

Sir,

In reference to Memorandum No. mentioned above I beg to state you that I submitted an appeal against seniority list No. P/255/1(F)/AP dated. 13/09/89 in which I requested for correction of date of birth from 02/12/43 to 09/06/49 not to alter the recorded date of birth from 09/06/49 to 02/12/43 as mentioned.

Secondly regarding School Certificate issued by Headmaster Micheni High School on 16/04/65 of which copy submitted further in same which can not be something other though mentioned.

Thereafter it has mentioned that myself entered in the Railway service by giving a false certificate regarding date of birth and as per record I was attaining the age of 14 years 08 months and 01 day as on 03/08/68 where from said record arranged is not known which is complete false.

Actually my date of birth was 09/06/49 while entered in Railway service and was attaining the age of 19 years 01 month 24 days. And as per date birth in the seniority list of 13/09/89 mentioned as 02/12/43 was attaining the age of 24 years 08 months 01 day. On which I submitted appeal. (As the digits '3' of 43 also over written in ink, over some other digit).

I astonished to learn that after completion of about 33 years service you are in opinion that "as on 03/08/68 when he was not eligible for Railway service". If I actually entered in service at the minor age as mentioned then the date of birth will be (03/08/68 - 01/08/14) 02-12-53 not 02-12-43 as mentioned in said seniority list which is not correct as accepted by you also.

So question of giving false declaration about the date of birth does not arise as I am sure that my date of birth from the date of entering in service till date is 09/06/49, repeat 09/06/49.

Contd....2.

At the conclusion I would request your honour for
inquiry and decide out of the year 48, 43 and 53
in actual and arrange for correction of the said entry
and your order release me from the allegation for which I would
remain ever grateful to you and oblige.

Dated : 27/04/2001.

Yours faithfully,

Niraj Kumar Das *F.P.C. Cr II*
(NIRAJ KUMAR DAS)

LED Cr. II

Under SI/Worked/R.P.A.

Attested by —

Jendranil Gogoi
04/09/2002

Advocate ,

CAT , Guwahati Bench .

My for distinction to the defence against
Memorandum No. 212/30(M) AP 21-11 15/1/01.

I beg most respectfully to state you that I have submitted
the same against said memorandum on 27/4/01 through 21/5/01.
The information received within the period.

The date of retirement is connected with the actual
date of birth, so I continued to remain your honour to give
the same and declare actual date of birth to keep the service
correct for future guidance and to avoid any trouble in
the future, in absence of me.

On the above I would request your honour to kindly
through the defence and give actual decision by which I
may continue in service for actual period.

Date : 23/07/01.

Yours faithfully,

Atty. Gen. D. D. D.

(L. D. D. D. D. D. D.)

Under 1/1/01.

Attested by —

Jordhamil Gogoi
04/09/2002

Advocate,
CAT, Guwahati Bench.

Additional Secretary (P),
Ministry of Labour and Employment.

3*

Through : Proper Channel.

Tab - Correction of date of birth in service record.

Sir,

With due respect I beg most respectfully to state you that I submitted several applications previously for correction of date of birth in the service record. In support of the actual date, school certificate's copy also produced which was issued by Headmaster, Sudhani High School on 16/04/65 in which clearly mentioned the date of birth as 09/06/49. But in record particularly in the seniority list No. E/255A I(E)/AP dt. 13/09/89 the date of birth showed 43 instead of 49 being overwritten in ink on the last digit as "3" over some other digit.

On my appeals LMI/APDJ also was directed to verify the school certificate on which without giving decision I have been served with memorandum No. E/213/30(E)AP.Pt- II dt. 11/4/01. Defence against said memorandum submitted on 27/4/01. But no information or decision received within the period.

On the above I would request your honour to finalise the case as early as possible as I am passing the days in much anxiety. If no information received within one month I am to inform the fact to Higher authority to get proper judgement as the date of birth is connected with the date of superannuation.

Hope to be considered with the pray and oblige.

Advance copy send by post for information and early action please.

Date : 12th. Sept/2001.

Yours faithfully,

Nirodh Kumar Das

(NIRODH KUMAR DAS)
FPO/II, SE/Works/RPAN.

Attested by —

Jyotirmil Gogoi
04/09/2002

Advocate,
CAT, Guwahati Bench

<p>24/9</p> <p>Chandrayit Saikia</p> <p>APD</p> <p>Signature</p>	<p>No. —</p> <p>1964</p> <p>Stamp</p> <p>Signature</p>
--	--

Correction of date of birth.

Based on the request I beg to state you that in spite of all the efforts, the correction of date of birth I have not informed with any decision from administration side, and for the same reason sorry.

So, again I would remind your honour to consider correction of date of birth as possible.

Copy of the report submitted locally on 12th Sept/2001 for your reference and consideration please.

12th Dec/2001.

Yours faithfully,

(Mishra K. S.)

FC/II, FC/II/REAL.

1. FC/II for review of information and early action please.
2. The Divisional Secy. H.M.U. FC/II
He should through the Branch Sec. FC/REAL
Branch II.
3. Branch Secy. FC/REAL Branch II for
information & necessary action please.

FC/II/REAL

Under FC/II/REAL.

Attested by —

Jendranil Gogoi
04/09/2002

Advocate,

CAT, Guwahati Bench.

Divisional Railway Manager (.),
Guwahati/Chirangpur Jn.

30

Subject : Proper Channel.

Re : Correction of date of birth in service Record.

I beg to state you that inspite of several reminders and submission of documents in support of actual date of birth, I have not yet received proper judgement or decision from administration and it is seen that I have to face retirement from service this way without getting proper judgement and correction of the date of birth.

Memorandum issued on the said issue of which defence also submitted in time. Lastly I submitted appeal on 12/9/2001 which acknowledged on 19/9/01.

But after such a long period no response from administration side.

So as the date of my retirement according to service record is reaching shortly, I would take the help of court for final judgement waiting upto 7th. May/02.

Hope to be considered with the pray within 7th. May/02 and oblige.

Yours faithfully,

Nirodh Kr Das
(NIRODH KUMAR DAS)

PFQ/II/RPMH

Under SE/W/RPMH.

Advance copy send by post for early action please.

Copy to :- (I) Sr. DM/C/ARJ.

(II) Divisional Secretary/NFRMU/A-2J

For information and necessary action please.

Date : 27.4.2002

Nirodh Kr Das

Signature :-

Attested by —

Jendranil Gogoi
04/09/2002

Advocate,
CAT, Guwahati Bench.

Re
2/7/2002

N.F. Railway.

Office of the
Divl. Rly. Manager (Works),
Alipurduar Junction.

No. E/213/30(E)/AP/Pt.II.

Dated: -6-2002.

To:

Shri Nirodh Kumar Das,
FPD/Gr.II under IQW/RPAN.

Through :- IQW/RPAN.

Sub:- 'NIP' against Minor Memorandum of
Charges vide No. E/213/30(E)/AP-Pt.II
dated 11.04.2001.

Defence submitted by Shri Nirodh Kumar Das
against the above Memorandum is not convincing. Shri Das is a
literate man and he was ~~as~~ possessing of School Leaving
Certificate or could have obtained the same and produce it
as documentary proof as a proof of Date of Birth at the time
of entering into Railway Service, therefore the following
orders are passed :-

"With holding of Increment for One Year
non-cumulative".

Appeal if any, lies with Sr.DEN(C) provided
it is preferred within next 45 days.

06/09/2002
(Baldev Singh)
Divisional Engineer/V,
Alipurduar Junction,
N.F. Railway.

Copy to:-

(1) DRM(P)/APDJ.

(2) ADEN / RPAN.

(3) SSE(Works)/RPAN.

} For information please.

---(0)---

Mohanta/256.

Divisional Engineer/V,
Alipurduar Junction,
N.F. Railway.

Attested by -

Jordhrajit Gogoi
04/09/2002

Advocate,
CAT, Guwahati Bench

Forward
13/8/2002
Divl. Rly. Manager (Works)
Alipurduar Junction

To Sr. D.E.N. (C)
Railway
Alipurdwar Junction

Dated: 26.7.2002

(Through Proper Channel)

Sub: An appeal against punishment order under No. E/213/30(E)/AP/Pt-II date 26/6/2002 issued by Div. Engineer/Alipurdwar Junction and charge memorandum under No. E/213/30(E)/AP/Pt-II dated 11.4.2001

Sir,

With due respect I beg to draw your kind attention to the following fact:-

1. That Sir, I was served with the above mentioned charge sheet without any basis and in violation of the statutory provision of law. In the said charge sheet, allegation has been leveled that I prayed for alteration of date of birth and that I entered into service by giving false certificate. But the fact is that at the time of entry into service I submitted my true and genuine certificate and accordingly my date of birth was correctly entered in the service book. Later on, the same was changed by overwriting in the service book.
2. That Sir, after knowing about the wrong date of birth from the seniority list which I got in the year 1999, I preferred application for correction of the wrong. After my application Divisional Railway Manager (P) APDJ sent cno Shri S. Ghosh, SLWI to the school from where I obtain school certificate and made an enquiry. The said authority has also observed that my certificate is genuine. In spite of the same the Divisional Engineer/v, APDJ served the above the mentioned charge-sheet. Be it mention that from the 'statement of misconduct' which is enclosed with the charge-sheet it is clear that the charges has no relevancy at all.

Contdp/2

Niradha K. Das
P.P. 6/2002

Further, the said charge sheet has been passed in violation of statutory provision of law in as much as along with the charge memorandum, no list of documents and/or list of witnesses have been served on me.

4. That Sir, after a long gap from the issuance of charge-sheet, the Divisional Engineer/v issued the punishment order of 25/6/2002, i.e. during the pendency of one case before the Hon'ble C.A.T. where in I have challenged the charge-memorandum. I also like to mention that the punishment order has been passed without serving me any relevant document basing on which the said authority has come to the conclusion and without hearing me on the matter.

Under the fact and circumstances, I humbly request your kind favour to call all the records and after going through the same pass necessary order setting aside and quashing the impugned punishment order including charge memorandum and also be pleased to pass necessary order correcting the date of birth which has been overwritten and altered later on and I shall oblige thereby for ever.

Thanking you.

Yours faithfully,

Nirodh Kr Das
F.S.O. II

Copy Encls :-

1. Certificate of age from School which I produced at time of entry in service.

Advance copy:-

DEN(C), APDJ for information and necessary action.

Attested by —

Jordramil Gogoi
04/09/2002

Advocate,

CAT, Guwahati Bench

Nirodh Kr Das
F.S.O. II

Filed in the Court on 19/5/2003,

At Guwahati

40

W. P. No. 1114
State Personnel Officer
M. F. Riv. / Malgaon
Guwahati-78

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

Filed by
Sukomal Banerjee
Railway Advocate,
Guwahati.
15.5.2003.

O. A. No. 292 of 2002

IN THE MATTER OF :

Sri Nirodh Kumar Das Applicant.

Vs.

1. Union of India.
2. Divisional Railway Manager(P),
N. F. Railway,
Alipurduar Junction,
West Bengal.
3. Divisional Engineer (V),
N. F. Railway,
Alipurduar Junction,
West Bengal.
4. Senior Divisional Engineer(C),
N. F. Railway,
Alipurduar Junction,
West Bengal.

.... Respondents.

- AND -

IN THE MATTER OF :

Written Statement for and on behalf of
the respondents :

Contd.....2

41
dy
Chief Personnel Officer
A. F. Ry. / Malgaon
Guwahati-12

-: 2 :-

The answering respondents most respectfully beg to sheweth as under :

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, the applicant has got no valid cause of action and/or right to file this application.
3. That, the application suffers on ground of misrepresentation of facts and mis-interpretation of rules on the subject.
4. That, the application suffers on ground of infirmity on the point of limitation.
5. That, for the sake of brevity, the respondents have been advised to confine their replies only to those averments in the application which are relevant and material for a proper decision in the case. All other allegations to the contrary in the application are denied herewith, and the applicant is put to strict proof thereof.
6. That, the application is premature. He has filed the application when his appeal against the punishment order was clearly under consideration by the Sr.DEN(C), N.F. Railway, Alipurduar Junction.

Contd.....3

7. That, with regard to paragraphs 4(i) and 4(ii) of the application it is submitted that except those averments which are borne on records and/or are admitted specifically herein-after, all other averments of the applicant are denied herewith and the applicant is put to ~~the~~ strict proof the statements which have not been admitted as correct. There is no record which may also show as to when and where and in which educational institutions he studied prior to his admission in Class VIII in Sudhani High School in Bihar and what age he recorded in these schools. In absence of the knowledge of such matters and the averments made in these paragraphs in the application, the applicant is put to strictest proof of his statements in these paragraphs specifically when it appears that the applicant, who was appointed in Class IV Category as Khalasi (Present category 'D'category) on the N. F. Railway Organisation on 3.8.1968 did produce no certificate like the present alleged Transfer Certificate ~~xxxxxxx~~ dated 16.4.1965 etc. before the Railway Administration as a token of proof of his age. It is correct that the applicant was promoted as F.P.O. Grade II in 1986. Rather, the entries in his Service Book which bears his own signature as a token of acceptance and the supporting medical examination certificate (while he entered in the Railway service) confirms that no such certificate dated 16.4.1965 was even produced by him before the authorities.

Contd.....4

43
Chief Personnel Officer
S. F. Rly. / Maligaon
Guwahati. 98

-: 4 :-

8. That, with regard to averments at paragraph 4(iii) of the application it is submitted that the respondents do not admit correctness of any of his averments in the application except those which are borne on records or are specifically admitted hereunder. The applicant is put to strict proof about the rest of his averments. It is submitted that the date of birth and the educational qualifications etc. as were declared by him at the time of his appointment were entered in the Service Book on his appointment in the Railways and same was also authenticated by him under his signature in the respective page of the Service Book and there was nothing which the Railway administration did on its own initiative or that there were any hand of any of the Railway employees in such matters as alleged.

The applicants contentions forwarded after about 35 years are completely incorrect and untenable. If the applicant produced the Transfer Certificate dated 16.4.65 (Annexure A to the application) then there would have been no occasion to make verbal submissions etc about age and qualifications etc..

9. That, with regard to averments at paragraph 4(iv) of the application it is submitted that the contentions of the applicant are not accepted as correct and hence these are denied. The seniority lists are published periodically and given wide circulation amongst staff and service Unions and all the respective offices/officers concerned for proper information and taking necessary steps. There is no question of knowing about the seniority list from some colleagues in

Contd.....5

44
Chief Personnel Officer (A)
M. P. Ry. / Maligaon
Guwahati 78

-: 5 :-

the year 1999 as alleged, since not only in above said nodes these are circulated, but also these are displayed properly in the notice boards etc. in the work places of the staff concerned. It is submitted that as in the Service Book 'Date of birth column', his date of birth as 2.12.1943 was properly shown in the seniority list as per recorded date of birth in the Service Book of the applicant, (which was in accordance with his own declaration/submission) ^{and as such} the question of over-writing ^{in the Seniority List's Date of birth Column etc} as alleged, does not arise. The typed digit '3' which was not properly legible in the date of birth column of this seniority list dated 23.9.89 (Annexure B to the application), was only made 'clear and legible', and, no changes in the recorded date of birth was effected by any other person/Railway official etc. on the seniority list's column. It is also to submit herein that no such alleged school certificate (which is only a transfer certificate and annexed as Annexure 'A' to the application) is traceable in Railway record and this certificate/document has been produced only in 1999 by the applicant apparently with motive to derive benefit of extra period of service (showing date of birth as 9.6.49 instead of 2.12.1943 as was recorded in his Service Book in 1968). The over-writing as alleged by the applicant, did not have any adverse effect on the applicants actual date of birth as recorded in Service Book.

10.(a) That, with regard to averments of the applicant at paragraphs 4(v), 4(vi), 4(vii), 4(viii), 4(ix) and 4(xi) of the application, it is submitted that nothing are accepted

Contd.....6

45
Chief Personnel Officer
E. F. Riv. / Maliga
Enrolled-11

-: 6 :-

as correct except those which are borne on records or which are specifically admitted hereunder as correct and for the rest of his averments the applicant is put to strictest proof of his assertions.

(b) It is to state that it is quite incorrect to say that the enquiry as mentioned by the applicant was conducted with a view to effect any change in the recorded date of birth of the applicant which was incorporated in his service records while the applicant entered into Government service. There are specific set rules and procedures for effecting changes in the date of birth in genuine cases within stipulated time frame and the applicants case does not fall within the set rules etc. under which changes in the date of birth could be effected and that holding of enquiries cannot be the accepted process.

(c) It is also submitted that the memorandum of charges had to be issued against the staff for his forwarding contradictory story/statements concerning his date of birth which materially differed from his earlier authentications on the subject. The Transfer certificate (date of iss-ue as 17.4.65) of Sudhani High School, Purnea, Bihar which he has advanced now, presented the following anomalies etc. :

- i) In this T.C. his date of birth has been shown as 9.6.49 whereas as per Service Book the recorded date of birth is 2.12.43.

Contd.....7

46
Chief Personnel Officer (A)
R. S. R. / Maligaon
Summit 14

ii) He studied in this school for only 2½ months i.e. 16.1.63 to 31.3.63 and then left his education. Nothing can be gathered as to whether it was his first admission in any school on 16.1.63 and as to whether he declared his age earlier to any other institutions.

iii) He took admission in Class VIII in this school and then left the school and education, and thus the entry in his Service Book (which bears his signature) to the effect that he is Matriculate is incorrect and contradictory to his earlier declaration.

(d) The irrevalence of the present assertions of the applicant can also be well visualised from the following also even if the alleged Transfer Certificate is assumed to have been produced by him at the time of appointment in Railways in 1968 :

Q40
i) There was no reason to put 2.12.1943 or ~~1.1.40 (and then making it 1.1.1950)~~ in Service Book (which bears his signature also). Instead, straight away the date 9.6.49 would have been put in the Service Book.

ii) Against the item No.6 of Service Book (i.e. Educational qualification) the words "Passed Matriculation Examination from Purnea Education Board" would not have been written,

-: 8 :-

when his assertion is that he gave up education when he was reading in Class VIII (Annexure A to the application).

iii) In column 5 of the seniority list against his date ^{of birth} the figures 2.12.43 would not have occurred. Even if his argument that the digit '3' in figure '43' is tampered one is taken to have any substance, then by putting '49' in place of '43' it does not make his date of birth as "9.6.49" i.e. it would have been only 2.12.49 and not 9.6.49 as asserted by him.

iv) There was no cause for the Medical authorities to put "25 years" as his age on the medical fit certificate (which bears applicant's signature also) issued on 2/3.12.68.

Copies of opening page of his Service Book and copy of Medical certificate showing his age as 25 years are annexed hereto as Annexure I and II respectively.

(e) It is also to submit herein that it is completely impossible to throw light as to what happened in 1968 and how these entries were made at the relevant time. But it is apparent that everything was done as per declaration/consent and knowledge of the applicant.

Contd.....9

48
de
 Chief Personnel Officer
 S. P. Rly. / Malabar
 Bangalore

Within these 35 years so many transfer and *promotions and* retirement of concerned officials have taken place. The applicant has in the meantime got promotions from Class IV ('D' Category) to Class III ('C' Category) in Supervisory scale *on merit and on seniority basis also* and it is beyond reasons that he remained ignorant about Railway rules/his seniority/service aspects etc., all these years. The application clearly reveals about his after-thought actions.

(f) That, the memorandum of charges had to be issued for his contradictory statements as regards date of birth etc. which were not in consonance to his earlier declarations/ authenticated by him and the main spirit of the charge is ~~false~~ declaration of the date of birth not to speak of the wrong declaration as regards educational qualification as well.

It is also to submit herein that at the time of appointment in Railway service he was of 25 years age and though there had been some clerical errors in the wording/ construction etc. of the memorandum of charges where the date of birth to be altered was put as 9.6.49 to 2.12.43 inadvertently, the substance and main spirit of charge remains unaltered to the effect that his present after-thought actions/ attempts for effecting a change in the recorded date of birth in the Service Book was not legal and not convincing and cannot be accepted and the same has also been correctly echoed/ vindicated in the Railway

41
Chief Personnel Officer (A)
Q. P. Riv. / Mangalore
Dated: 18.6.2002

-: 10 :-

Railway Administration's following reasoned order communicated to him vide letter dated 25.6.2002 (a copy of which has been annexed as Annexure H to the application):

Extract from Order dated 25.6.2002.

"Defence submitted by Sri Hirodh Kumar Das against the above Memorandum of charges is not convincing. Sri Das is a literate man and he has in possession of School Leaving Certificate or could have obtained the same and produce it as documentary proof as proof of date of birth at the time of entering into Railway Service, therefore the following orders are passed -

'Withholding of increment for one year
non-cumulative.'

It is denied that the impugned order has been issued by the authority without application of mind. The punishment has been imposed for the applicants contradictory statements which was the genus of the charge.

g) Further, it is submitted that there had been no violation of statutory Rules etc. as alleged and for imposition of minor penalties no further disciplinary proceedings are to be drawn and as his appeal involved consultation etc. of various records and matter concerned is about 35 years old, it naturally takes time to dispose of

Contd.....11

50
Chief Personnel Officer
G. P. Rly. / Malabar
Government of India

-: 11 :-

any application after due application of mind and hence delay, if any caused, is unavoidable in the circumstances of the case. The reasons for imposition of this minor penalty has already been intimated to the applicant. Further, the stoppage of increment is for one year with non-cumulative effect.

11. That, with regard to averments made at paragraphs 4(xiv), 4(xv) and 4(xvi) of the application it is submitted that all the allegations of the applicant are baseless and untenable and hence denied herewith.

For the alleged difficulties as expressed by the applicant, the applicant is to blame himself. It is submitted that all the steps/actions as have been taken in the case by the respondents are quite as per rules and laws on the subject and are valid, legal and proper.

12. That, in view of what have been submitted in the foregoing paragraphs of this written statement, none of the grounds as mentioned in paragraph 5 and relief claimed at paragraph 8 of the application are sustainable under the law and fact of the case and the prayers of the applicant are liable to be rejected.

It is emphatically denied that there has been any illegal, arbitrary, malafide action etc. on the part of the respondents or there has been any violation of the

Contd.....12

51
Chief Personnel Officer
G. F. Riv. / Malacca.
Sunderland, 15

-: 12 :-

principle of natural Justice etc. or any extant statutory rules or procedure or that the charges of the misconduct as pointed out is irrelevant or not maintainable or that the entries in the Service Book of the staff and seniority list published is not sustainable in the eyes of law or there has been any violation of any of the fundamental rights as provided in the Constitution e.g. Article 15 and 21 or that the impugned order is liable to be set aside. Rather, from the fact of the case, it is well apparent that his case has been well considered after due application of mind and going through the case thoroughly and the cause for which minor punishment order has been passed has been well explained in the reasoned order dated 25.6.2002.

13. That, it is submitted that all actions taken in the case by the respondents are quite legal, valid and proper and have been taken after due application of mind and that the present case is based on wrong premises and suffers from misconceptions and mis-interpretation of rules and laws on the subject.

14. That, necessary enquiries are still under progress and the answering respondents crave leave of the Hon'ble Tribunal to file additional Written Statement, if found necessary after enquiries, for ends of Justice.

15. That, under the facts and circumstances of the case as stated in the foregoing paragraphs of the Written statement, the instant application is not maintainable under law and fact of the case and is liable to be dismissed.

VERIFICATION

I, *A. K. Nigam* son of
Late S. P. Guarcha aged about 47 years,
by occupation, Railway service, working as *Chief*
Personnel Officer/A of the N. F. Railway Administration
at *Maligaon* do hereby solemnly affirm and state
that the statements made at paragraphs 1 and 4 are true
to my knowledge and those made in paragraphs 6 to 9 are
based on informations as gathered from records of the
cas-e file which I believe to be true and the rest are
my humble submissions and I sign this verification on
the *15th* day of *May*, 2003.



NORTHEAST FRONTIER RAILWAY
FOR AND ON BEHALF OF RESPONDENTS.

Chief Personnel Officer (A)
N. F. Rly, / Maligaon.
Gawahati-18

(0179F189)

1) Date of appointment - 2.8.68
 2) P.S. No. - 179710
 3) Date of joining to P.F. - 2.8.69

सेवा पुस्तिका/SERVICE BOOK

Temporary Ser. 3, 8, 686 1-6.78 9 yrs 10 months 14
 (50%) 4 yrs 11 months 53

1. पूरा नाम (साफ - साफ अक्षरों में)
Name in full (Block Capitals) SRI. NIRODH KUMAR DAS
2. पिता का नाम/Father's Name L. AKHIL CHANDRA DAS.
3. राष्ट्रीयता/जाति/धर्म
Nationality/Caste/Religion INDIAN / KASTH / HINDUISM
4. अधिवास जो सिद्ध हो चुका है
Domicile as established INDIAN.
5. निवास का पूरा पता
Residence (in Full) VILL. LUTIPUR, P.O. SUDHAN, P.S. BALRAMPUR
6. जन्म तिथि/Date of birth 2.12.1943 (Two - Twelve - Nineteen forty three) As per medical certificate
7. जन्म स्थान/Place of birth Lutipur, District Purnea
8. शिक्षा योग्यता
Educational qualification Second - December Nineteen Nineties passed matriculation examination from Purnea education board.
9. शिनाख्त के लिए वैयक्तिक चिह्न
Personal mark for identification (1) Two black moles above nose (just middle of fore head)
10. बायें हाथ के अंगूठे और अंगुली का निशान
Left hand thumb and finger impression (2) one scar mark about 2 1/2" long over right tooth

कनिष्ठिका/Little finger

अनामिका/Ring finger

अंगूठा/Thumb

मध्यमा/Middle finger

तर्जनी/Fore finger

11. लंबाई/Height 5 (feet) 8 (inches) 8 1/2 inches

12. सरकारी कर्मचारी का हस्ताक्षर/Signature of Government Servant. x NIRODH KUMAR DAS

13. कार्यालय प्रधान या अन्य साक्ष्यकन अधिकारी का हस्ताक्षर और पदनाम
Signature and designation of the Head of the office or other Attesting Officer. Inspector of Works
U. F. Rly/Bangrapur North

नोट / Note :- इस पृष्ठ पर दर्ज की गयी जानकारी कम से कम पांच वर्ष बाद नये से दर्ज की जायगी, उसे पुनः साक्ष्यकित किया जायगा तथा १२ और १३ पंक्ति में किये गये हस्ताक्षरों के साथ तारीख दी जायगी / The entries on this page should be renewed or re-attested at least every five years, and the signature in lines 12 and 13 should be dated.

इस नियम के अन्तर्गत हर पांच वर्ष के बाद फिर से अंगुलिओं के निशान लेने की आवश्यकता नहीं है / Finger prints need not be taken afresh every five years under this rule.

91

APPENDIX III (Annexure 6):

HOSPITAL APAN No. 88

a candidate for appointment as (designation) Chowkidar

has been appended below in my presence.

I consider him * $\frac{nc}{unfit}$ for such appointment.

Signature of Rail-
way Medical
Examiner. } M. O. 1. C. N. R. Ry.
Designation Medical Officer North,

Designation _____ North.

• Signature _____
Thumb impression of candidate _____

Strike out where inapplicable.

तारीख Date	उत्तीर्ण विषय/ Subject Passed	नियंत्रण अधिकारी का आक्षेप Initial of the controlling officer.
---------------	----------------------------------	--

55

R. 142.

N. E. HY.

O. T. M. 2

APPENDIX III (Annexure C).

Form of Certificate to be used when a candidate is medically examined for fitness for appointment to a State-managed Railway.

Disability

No. 88

गवट
नियुक्ति

अ
D

I hereby certify that I have examined
(name) Shri N. G. K. Kumar (age) 25 years
a candidate for appointment as (designation)
Charitable (class) 1/1 in the 1st
branch/departement, whose
signature
thumb impression
has been attested below in my presence.

I consider him fit for such appointment.

Signature of Railway Medical Examiner.

N. S.

Designation

1st

N. G. K. Kumar
Signature
Thumb impression of candidate

Since cut where inapplicable

11, 88