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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4  
 (SEE RULE 42 )  
 CENTRAL ADMINISTRATIVE TRIBUNAL  
 GUWAHATI BENCH

ORDER SHEET

92/05

original Application No.

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicant(s)

Swapan Choudhury

Respondents

u. o. & G. S.

Advocate(s) for the Applicant(s) G. K. Bhattacharya, B. Choudhury  
 D. Sonwani, M. K. Sinha

Advocate(s) for the Respondents

Case

Notes of the Registry	Date	Order of the Trial
Application is filed is filed/C. F. No. 92/05 deposited vide P. R. No. 206160351 Dated 12-4-05  1/6 Dy. Registrar  steps taken.	27.4.2005	<p>Present : The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman</p> <p>Heard Mr. B. Choudhury, learned counsel for the applicant and also Mr. S. Sengupta, learned counsel for the Railways.</p> <p>The application is admitted. The respondents to file written statement within four weeks. Post on 27.5.2005.</p> <p><i>Choudhury</i> Vice-Chairman</p>
Notice & order sent to D/Section for issuing to resp. Nos 1, 2 & 3 by regd. A/D post.  2/5/05. D/No=668 to 670 Dt=4/5/05.	27.5.05 mb	<p>On the plea of learned counsel for the respondents four weeks time is allowed to file written statement as a last chance.</p> <p>Post the matter on 28.6.05.</p> <p><i>Subash</i> Member</p>

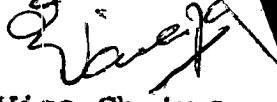
26-5-05

1 Notice duly served.  
2000 1.2.83 - Service completed.  
2 No. ofts has been filed.

N.B.

28.6.2005

Ms. B. Devi appearing on behalf of Mr. S. Sarma, learned Railway counsel seeks for further time to file written statement. Post on 27.7.2005. No further time.

  
Vice-Chairman

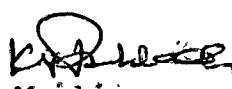
No. written statement has been filed.

bb

27.7.2005

Heard Mr. B. Choudhury, learned counsel for the applicant and Ms. B. Devi, learned counsel appearing on behalf of Mr. S. Sarma, learned counsel for the Railways.

Mr. Choudhury submits that the case can be posted for hearing. Hence, post the matter on 5.8.2005 for hearing.

  
Member

  
Vice-Chairman
28.7.05

W/C submitted by the Respondents.

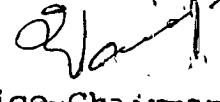


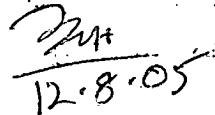
lm

16.8.05.

The counsel for the applicant seeks for adjournment. The Railway counsel is present but no objection. Post the matter before the next available Division Bench.

  
Member

  
Vice-Chairman

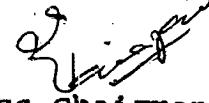
  
12.8.05

4.10.2005

Mr. B.C. Pathak and Mr. M. Chanda, learned counsel for the parties submit that question of jurisdiction of this Tribunal is involved in this case. Post this case immediately after the vacation alongwith the batch of cases.

bb

  
Member

  
Vice-Chairman

7.10.2005

Counsel for the parties/ submits  
that this case may be taken up after  
the vacation. Post on 29.11.2005.

Wts him been bked.

28/11/05

Member  
Member

29/11/05  
Vice-Chairman

bb

29.11.2005

post before the next Division  
Bench.

No Rejoinder him  
been bked.

29  
8.3.06

bb

29/11/05  
Vice-Chairman

O

9.3.2006 Present: Hon'ble Shri B.N. Som,  
Vice-Chairman (A)

Hon'ble Shri K.V. Sachidanandan,  
Vice-Chairman (J)

The learned counsel for  
the respondents is not present. Let the  
case be posted before the next Division  
Bench.

Vice-Chairman (J)

Vice-Chairman (A)

nkm

04.08.2006 Present: Hon'ble Sri K.V. Sachidanandan,  
Vice-Chairman.

Hon'ble Sri Gautam Ray,  
Administrative Member.

Heard learned counsel for the parties  
Hearing concluded. Judgment delivered in  
open Court, kept in separate sheets. The  
application is disposed of in terms of the  
order. No order as to costs.

Member  
Member

Vice-Chairman  
Vice-Chairman

mb

Received  
Smt. Chandrav.  
26.7.06.

Received  
Advocate  
14/11/06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

92 of 2005

O.A. No. ....

04.08.2006

DATE OF DECISION .....

Sri Swapan Choudhury ..... Applicant/s

Mr G. K. Bhattacharyya, Sr. Advocate, Mr B. Choudhury, Mr D. Goswami, ..... Advocate for the  
..... Applicant/s.

- Versus -

Union of India & Others ..... Respondent/s

Mr S. Sarma and Ms B. Devi ..... Advocate for the  
..... Respondents

CORAM

HON'BLE MR K.V. SACHIDANANDAN, VICE-CHAIRMAN  
HON'BLE SRI GAUTAM RAY, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment ?	Yes/No
2. Whether to be referred to the Reporter or not ?	Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench ?	Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment ?	Yes/No

Vice-Chairman

WJ 8/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 92 of 2005.

Date of Order : This the 4th day of August 2006.

The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.

The Hon'ble Sri Gautam Ray, Administrative Member.

Sri Swapan Choudhury  
S/o Sri Judisthir Ranjan Choudhury  
Suddha Colony,  
P.O. - Badarpur,  
Dist. - Karimganj, Assam.

... Applicant.

By Advocates Mr G. K. Bhattacharyya, Sr. Advocate, Mr B. Choudhury, Mr D. Goswami, Advocate.

- Versus -

1. Union of India,  
Represented by the General Manager,  
N.F. Railway, Maligaon,  
Guwahati.
2. Divisional Railway Manager (P)  
N.F. Railway, Lumding,  
District - Nagaon, Assam.
3. N.F. Railway Employees' Co-operative  
Society Ltd.,  
P.O. - Badarpur  
Dist. - Karimganj, represented by its Secretary.

... Respondents.

By Advocates Mr S. Sarma and Ms B. Devi.

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

The Applicant was engaged as Salesman-cum-Peon under the Respondent No. 3 Society. The Respondent No. 3 Society vide office order dated 05.07.1987, the Applicant was promoted to officiate as Sales Assistant-cum-Accounts Clerk of the said Respondent Society

in a resultant vacancy. The Applicant filed an Application, which was duly forwarded by the Respondent No. 3 Society for absorption in Group-D post in the Railways and he was asked by the Respondent No. 2 vide letter dated 03.11.2001 to report to the office on or before 23.11.2001 with the required testimonials. There was an anomaly regarding the date of birth of the Applicant, which was recorded as 02.01.1959 in his service record with the Respondent No. 3. In view of the anomaly, the General Manager (P), Maligaon wrote to the Respondent No. 2 to verify the relevant school certificate and other documents and arrange to offer appointment to the Applicant as per procedure. The Respondent No. 2 advised the Applicant to submit document in support of his date of birth. The Applicant wrote a letter on 28.12.2001 to the Respondent No. 2 informing that he had already submitted the school certificate indicating his date of birth. The Applicant submitted representations on 13.02.2002 and 11.03.2002 before the Respondent No. 2 stating the entire facts of his case and requested to make necessary arrangement for his appointment. The Respondent No. 2 vide letter dated 19.04.2002 informed the Applicant that since he could not produce any document to prove his date of birth as 02.01.1959, his appointment in Group - D post could not be considered. Aggrieved the said action, the Applicant preferred a Writ Petition before the Hon'ble Gauhati High Court challenging the action of the Respondents in denying his right for consideration of absorption to the Group - D post and the Hon'ble High Court after hearing the case disposed of the same with liberty to Applicant to approach this Tribunal. Hence, this Application seeking the following reliefs:-

" It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the

entire records of the case, ask the Respondents to show cause as to why the impugned letter dated 19.04.2002(Annexure XII) shall not be quashed and set aside and absorb the applicant in a Group - D post for which he is eligible and after perusing thereof if any hearing the parties quash and set aside the impugned letter dated 19.04.2002 (Annexure - XII) and direct that the applicant be absorbed in a Group - D post for which he is eligible and/or pass such order/order as Your Lordships may deem fit and proper."

2. Heard Mr B. Choudhury, learned Counsel for the Applicant and Ms B. Devi, learned Counsel represented the Respondents on behalf of Mr S. Sarma, learned Railway Counsel for the Respondents.
3. Ms. B. Devi, learned Counsel on behalf of the Respondents submitted that she has filed a detailed written statement contending that the Divisional Railway Manager (P), Lumding issued a letter on 01.12.1999 to the Secretary to the Quasi Administrative Officer/Organisation connected with the Railways for providing a list of staff working in their organization as on 10.06.1997 and who were already eligible for screening as on 10.06.1997 in a prescribed proforma for regular absorption in Group - D post in the Railways. Pursuant to the said letter, the Secretary, ECCS, Badarpur sent a list of the staff working in his organisation vide a forwarding letter dated 07.12.1999. In the said list, the date of birth of the Applicant was shown as 02.01.1959 and date of appointment was shown as 22.03.1981. But so far as the school certificate (Annexure - I to the O.A.) and Employment Exchange Card (Annexure - II) are concerned, the date of birth of the Applicant is 22.02.1972. The Respondents stated that if the date of birth of the Applicant is taken as 22.02.1972 then it means that he was just 9 years 1 month when he was engaged

in the Consumer Co-operative Society, Badarpur. It is further stated that no person can be employed at the age of 9 year old. Accordingly, the General Manager (P), Maligaon communicated its observation vide letter dated 12.04.2002 inter alia stating that since the party concerned could not produce any document to prove his date of birth as 02.01.1959, the appointment cannot be considered. The Applicant submitted his school leaving certificate wherein his date of birth has been recorded as 22.02.1972, but as per the Railway records the date of birth of the Applicant is 02.01.1959 and the Applicant could not produce any testimonial to prove his date of birth as 02.01.1959.

Therefore, the Respondents are justified in denying his appointment.

4. Mr B. Choudhury, learned Counsel for the Applicant submitted that in either way if the date of birth is taken as 02.01.1959 or 22.02.1972, the Applicant is eligible for appointment in Group - D post. Learned Counsel for the Applicant also submitted that even the Railway has admitted that it was a mistake in the date of birth that has been shown as 02.01.1959 as the date of birth should have been 22.02.1972 as per the School leaving certificate that has been produced before the Respondents.

5. We have given due consideration to the arguments, pleadings and materials placed on record. The crux point to consider is what is the date of birth of the Applicant and whether the Applicant is entitled for offer of appointment that has been intimated by the Railways. Annexure - I is the School Leaving certificate, where date of birth of the Applicant is recorded as 22.02.1972 while he was reading in Class - IX and had passed the examination for promotion to class - X. In the said certificate only School Headmaster has signed.

Annexure - II is the Employment Exchange Identity Card, which was issued by the Government of Assam, Department of Labour, in which the date of birth of the Applicant was recorded as 22.02.1972. For better illustration, the letter issued by the General Manager (P), Maligaon dated 27.11.2001 (Annexure - VII) is reproduced below: -

"In reference to above, one Sh. Swapan Choudhury, No. 1 attached to N.F. R. E.C.C.S./BPB attended this office and submitted an application indicating that his date of birth as per certificates/documents is 22.2.72 where as by mistake has been indicated as 2.1.59. The original School certificate of the candidate has been verified and it is revealed that his date of birth should be 22.2.72 and not 2.1.59 although, in the statement the date of birth was indicated as 2.1.59. One of the Committee member has been consulted and it is clarified by the said member that the statement available with the Committee was rectified and date of birth was taken as 22.2.72.

In view of the above, you are requested to verify the relevant School certificates and other documents and arrange to offer appointment to the candidate as per extant procedure. I might be that due to some mistake, the date of birth was shown earlier as 2-1-59."

6. On going through the said letter, it is very clear "in the statement the date of birth was indicated as 2.1.59. One of the Committee member has been consulted and it is clarified by the said member that the statement available with the Committee was rectified and date of birth was taken as 22.2.72." Now, the question comes, what is the date of birth ? It is settled legal position that in case of a dispute regarding date of birth, the date of birth shown in the School leaving certificate or shown in the service book to be taken as the true date of birth of the concerned Applicant. On going through the pleadings of the Respondents, We find that the Applicant

was engaged at the age of 9 years, which is violative of the child labour rules. In such case, a responsible Co-operative Society has engaged the Applicant at the age of 9 years for their purpose. Therefore, the date of birth that has been recorded by the Railways as 02.01.1959 cannot be taken as true date of birth. After many deliberation, the Divisional Railway Manager (P), Lumding vide letter dated 19.04.2002 refused to offer appointment stating "As you could not produce any documents to prove your date of birth 02.01.1959, your apptt. on the Railways in Group - D post could not be considered as communicated by GM(P)/MLG's letter No. E/41/5(C) Pt. VQVA dated 12.04.2002."

7. It is an admitted fact that the Applicant produced the School leaving certificate and Employment Exchange Card wherein the date of birth was shown as 22.02.1972, but on going through the School leaving certificate it is seen that there is only signature of Headmaster of School, therefore, the genuineness of the said documents is doubted by the Learned Counsel appearing for the Respondents. All in fairness, the Applicant requires to obtain the counter signature of Inspector of School to prove the genuineness of the said certificate. It is also an admitted fact that either the date of birth is 22.02.1972 or 02.01.1959; the Applicant is eligible for offer of appointment. Therefore, the Applicant will be done medical test to ascertain the actual age and if it more or less tally with 1972, 22.02.1972 may be taken as the date of birth of the Applicant. The Applicant may be permitted to take medical examination to ascertain the actual age in the Railway Hospital by the Respondents. After production of the correct medical documents the Applicant be considered for the post that has already been offered to him.

8. In the circumstances, we are of the view that the order dated 19.04.20062 (annexure - VIII) issued by the Divisional Railway Manager (P) is to be set aside and, accordingly we set aside the same. We direct the Respondents that after verification of the documents produced by the Applicant and if the Respondents convinced that the Applicant is eligible for the offer of appointment, the Respondents are directed to proceed further on the basis of the verified school certificate and medical certificate in offering the employment to the Applicant.

The O.A. is disposed of as above. In the circumstances, no order as to costs.



(GAUTAM RAY)  
ADMINISTRATIVE MEMBER



(K.V. SACHIDANANDAN)  
VICE-CHAIRMAN

/mb/

27/5

Central Administrative Tribunal	13 APR 2005
गोपनीय न्यायालय	न्यायालय नं 9
ORIGINAL APPLICATION NO. 9	OF 2005

17  
Filed by the applicant  
through Devjit Goswami,  
Advocate  
13.4.2005

Sri Swapan Choudhury ... Applicant

-Versus -

Union of India & ors. ... Respondents

LIST OF DATES/SYNOPSIS

22.3.1981 : Applicant was engaged as Scaleman-cum-peon under the Respondent No.3. A certificate dated 20.11.2001 was issued by the Respondent No.3 to this effect.

(Annexure-III at page- 19)

5.7.1987 : Respondent No.3 issued office order No.ECCS /87 whereby the applicant was promoted to officiate as Sales Assistant-cum-Accounts Clerk of Respondent No.3 society in a resultant vacancy.

(Annexure-IV at page- 20)

14.9.2001 : The applicant filed an application, which was duly forwarded by the Respondent No.3 for absorption in Group-D posts.

(Annexure-V at page- 21)

3.11.2001 : Applicant was asked by Respondent No.2 by his letter No.E/227/MISC/LM/RECTT/ (QAO) to report to the office on or before 23.11.2001 with the required testimonials.

(Annexure-VI at page- 23)

27.11.2001 : In view of the anomaly regarding the date of birth of the applicant, which was recorded as 2.1.59 in his service record with the Respondent No.3, the General Manager (P) Maligaon, Guwahati-11, wrote

letter No.EE/41/5(C) Pt.V-UA to the Respondent No.2 requesting him to verify the relevant school certificates and other documents and arrange to offer appointment to the applicant as per procedure.

(Annexure-VII at page-25)

18.12.2001 : The Respondent No.2 wrote letter No.E/227/MISC/LM/Rectt (QAO) to the applicant advising him to submit document in support of his date of birth.

(Annexure-VIII at page-26)

28.12.2001 : Upon receipt of the above letter the applicant wrote a letter to Respondent No.2 informing that he had already submitted the school certificate indicating his date of birth.

(Annexure-IX at page-28)

13.2.2002 : The applicant filed a representation before the Respondent No.2 stating the entire facts of his case and requested to make necessary arrangement for his appointment.

(Annexure-X at page-29)

11.3.2002 : Having come to know that a number of candidates were appointed to Group-D posts, the applicant submitted another representation vide registered A/D before the Respondent No.2 with similar prayer.

(Annexure-XI at page-30)

19.4.2002 : The Respondent No.2 issued letter No.E/227/Misc/IM/Rectt (QAO) informing the applicant that since he could not produce any document to prove his date of birth as

2.1.59, his appointment to Group-D post could not be considered.

(Annexure-XII at page- )

30.5.2002 : The applicant on being wrongly advised filed a writ petition before the Hon'ble Gauhati High Court challenging the action of the Respondents in denying his right for consideration of absorption to the Group-D post.

22.2.2005 : The Hon'ble High Court, after hearing the case, disposed of the same as withdrawn with the liberty to approach the appropriate forum (Central Administrative Tribunal) within two months.

(Annexure-XIII at page-32)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI  
BENCH : GUWAHATI

(An Application under Section 19  
of the Administrative Tribunals Act, 1985)

O.A. NO. 92 OF 2005

Sri Swapan Choudhury ... Applicant  
-VS-

Union of India and others ... Respondents

I N D E X

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Filed by

*Derojit Goswami*  
13. 4. 2005  
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI

BENCH: GUWAHATI

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

O.A NO 92 of 2005

Sri Swapan Choudhury,  
S/o Sri Judisthir Ranjan  
Choudhury, Suddha Colony, P.O.  
Badarpur, Dist. Karimganj,  
Assam.

... APPLICANT

-Versus-

1. Union of India  
Represented by the General  
Manager, N.F. Railway  
Maligaon, Guwahati.
2. Divisional Railway Manager  
(P), N.F. Railway, Lumding,  
District:- Nagaon, Assam.
3. N.F. Railway Employees' Co-  
operative Society Ltd.,  
P.O. Badarpur Dist.  
Karimganj, represented by  
its Secretary

... RESPONDENTS

Filed by the applicant  
Sri Swapan Choudhury  
through  
Dwijit Goswami  
Advocate

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

- i. Illegal and arbitrary action of the Respondent No.2 in issuing letter No.E/227/Misc./LM/Rectt.(QAO) dated 19.4.2002 whereby the applicant was informed that since he could not purportedly produce any document to prove his date of birth as 2.1.59 he could not be considered for appointment/absorption in Group-D post.
- ii. Arbitrary action of the respondent in depriving the appellant from absorption in Group-D posts for no fault of his own non-existing reason.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the order against which he wants redressal/relief is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

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

*Swayam Choudhury*

4. FACTS OF THE CASE :

1. That the applicant is a permanent resident of the district of Karimganj and a citizen of India. The present application is being filed against the arbitrary and unreasonable action on the part of the Respondents in denying the appellant the right to be considered for absorption in Group-D post in the office of the Respondent No.3.

2. That the applicant begs to state that he belongs to a very poor family and due to adverse financial condition he could prosecute his studies only upto Class-X and thereafter he had to look out for avenues to earn a living for his family. The School authority has issued a certificate in this regard where the date of birth of the applicant has been recorded as 22.2.72. The applicant has also got himself registered with the Employment Exchange, wherein his date of birth has been recorded as 22.2.72.

Copies of the certificate issued by the School Authority and Employment Exchange is annexed herewith and marked as Annexure-I & II respectively.

*Swayam Choudhury*

3. That the applicant states that even while prosecuting his studies he tried to support his family by earning a livelihood and on 22.3.81, the applicant was engaged as a Scaleman-cum-peon under Respondent No.3. In this regard the Secretary of the Respondent No.3 has issued a certificate dated 20.11.2001.

A copy of the certificate dated 20.11.2001 is annexed herewith and marked as ANNEXURE-III.

4. That the applicant states that being satisfied with his performance and sincerity the Respondent No.3 issued an Office Order under reference ECCS/87 dated 5.7.87 whereby in terms of the suitability test held on 25.4.87 and as per resolution of the Managing Committee held on 28.4.87 the applicant was promoted to officiate as Sales Assistant-cum-Accounts clerk of the Respondent No.3 Society in a resultant vacancy. The applicant accordingly joined in the said post and started discharging his duties to the best of his abilities and full satisfaction of the authorities.

A copy of the order dated 5.7.87 is annexed hereto and marked as Annexure-IV.

Swapan Choudhury

5. That the applicant states that applications were called for by the N.F. Railway for absorption of the quasi-administrative office's workers in Group-D posts. In pursuance thereof, the applicant filed an application, which was duly forwarded by the Secretary of the Respondent No.3 as his existing employer. In the said application, the date of birth of the applicant was stated as 22.2.72.

A copy of the said application is annexed herewith and marked as Annexure-V.

6. That on receipt of the application, the applicant was informed by the Respondent No.2 vide letter dated No.E/227/MISC/LM/RECTT/ (QAO) dated 3.11.2001 whereby the applicant was asked to report to the office on or before 23.11.2001 with the requisite testimonials as given in the letter.

A copy of the letter dated 3.11.2001 is annexed herewith and marked as ANNEXURE-VI.

7. That the applicant states that he duly reported to the office of the Respondent No.2 and submitted all the requisite testimonials including

*Swayam Choudhury*

ZUM MOUZA HIGH SCHOOL  
BADARPUR, KARIMGANJ

School Leaving Certificate in support of his date of birth which is 22.2.72.

8. That the applicant begs to state that somehow in his service record with the Respondent No.3 his date of birth was wrongly recorded as 2.1.59. In view of such anomaly the Office of the General Manager (P) Maligaon, Guwahati-11 wrote a letter No.EE/41/5(C) Pt.V-UA dated 27.11.2001 to the Respondent No.2 requesting him to verify the relevant school certificates and other documents and arrange to offer appointment to the applicant as per procedure. It was further written that by some mistake the date of birth was earlier shown as 2.1.59 which has been rectified by the Committee and accepted as 22.2.72.

A copy of the letter dated 27.11.2001 is annexed herewith and marked as Annexure-VII.

9. That the applicant states that in pursuance to the aforesaid letter, the Respondent no.2 wrote a letter No.E/227/MISC/LM/Rectt (QAO) dated 18.12.2001 to applicant in the address of the Respondent No.3 advising him to submit the document in support of his date of birth immediately for further verification.

*Swayam Choudhury*

A copy of the letter dated 18.12.2001 is annexed herewith and marked as ANNEXURE-VIII.

10. That, the applicant states that immediately on receipt of the aforesaid letter, your applicant wrote a letter dated 28.12.2001 to the Respondent No.2 informing that the applicant had already submitted the school certificate, which indicates his date of birth. Further, there was no basis as to how the Respondent No.3 Society submitted the date of birth as 2.1.59. However, the applicant again submitted the attested copy of the school certificate along with the said letter.

A copy of the letter dated 28.12.2001 is annexed herewith and marked as ANNEXURE-IX.

11. That the applicant states that in spite of submitting an attested copy of the school certificate with the date of birth as 22.2.72 afresh, there was no response from the Respondent authorities for which grave prejudice was suffered by the applicant. Having no other option, your applicant filed a representation dated 13.2.2002 before the Respondent No.2 wherein the entire facts and circumstances were stated and it was requested

Swagat Choudhury

that necessary arrangement may be made for his appointment and save him from further distress.

A copy of the letter dated 13.2.2002 is annexed hereto and marked as Annexure-X.

12. That the applicant begs to state that he could learn that in the meantime a number of candidates were appointed in the Group-D post and only your applicant was left out without any grounds or reasons. Therefore, the applicant sent another representation dated 11.3.2002 vide Registered A/D to the Respondent No.2 praying for making arrangements for his early appointment so that he can mitigate the hardships. It was specially stated that the applicant had fulfilled all the eligibility criteria for appointment in Group-D and did not suffer from any disqualification.

A copy of the letter dated 11.3.2002 is annexed herewith and marked as Annexure-XI.

13. That to the shock and surprise of the applicant a letter No.E/227/Misc/IM/Rectt(QAO) dated 19.4.2002 has been issued by the Respondent No.2 to your applicant informing that as your applicant could not purportedly produce any

*Swayam Choudhury*

document to prove his date of birth as 2.1.59, his appointment in Group-D post could not be considered as communicated by letter No.E/41/5(C) Pt.V QA dated 12.4.2002 of the GM (P)/Mlg. I.e. General Manager (P), N.F. Railway, Maligaon. It may be mentioned that copy of the said letter dated 12.4.2002 has not been addressed to the applicant and as such, he is not aware of its contents.

A copy of the letter dated 19.4.2002 is annexed herewith and marked as Annexure-XII.

14. That in the meantime, your applicant was verbally asked by the Respondent No.3 Society not to come for duties on the ground that he has been appointed in Group-D posts under Respondent No.2.

15. That thereafter the applicant on being wrongly advised filed a writ petition before the Hon'ble High Court <sup>on 30.5.2002</sup> challenging the action of the Respondents authorities in denying the applicant the right for consideration for absorption to the post of Group-D in the office of the Respondent No.2 and also order dated 19.4.2002 (Annexure-XII) and the same was registered and numbered as W.P. (C) No.3563/02.

16. That the applicant begs to state that in the writ petition before the Hon'ble High Court the

Swayam Charchitay

Respondent No.3 filed an affidavit-in-opposition stating the date of birth of the applicant was recorded as 2.1.59 in his service on the basis of the information given by the applicant. The applicant then filed an additional affidavit stating that he has no objection if his date of birth which is purportedly taken to be 2.1.59 for such absorption.

17. That, on 22.2.05, the writ petition came up for hearing and the Hon'ble High Court disposed of the same as withdrawn with the liberty to approach the appropriate forum/ Central Administrative Tribunal within 2 months. As such, the applicant is approaching this Hon'ble Tribunal for relief which is otherwise due to him.

Copy of the Hon'ble High Court order dated 22.2.05 is annexed herewith and marked as Annexure- .

#### 5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

I. For that, in the given facts and circumstances of the case, the action of the Respondents is highly illegal, arbitrary, unreasonable, capricious, discriminatory and bad in law and is liable to be quashed and set aside.

Swagat Choudhury

II. For that the purported reason which appears from the impugned order for non-consideration is absolutely irrelevant and has no bearing with the facts and circumstances of the case. The date of birth of the applicant being 22.2.72, which is recorded in all correspondences including certificates and application for absorption and has also been admitted by the Respondent authorities, unable to produce document in support of incorrect recording of his date of birth as 2.1.59 in the initial record of the Respondent No.3 Society cannot be a justiciable ground for rejecting the case of your petitioner and the same is liable to be quashed and set aside.

III. For that when the applicant's date of birth is 22.2.72, which is also testified by certificates, it is wholly unreasonable on the part of the Respondent authorities to demand from him documents to show that his date of birth is 2.1.59. No prejudice, whatsoever would be suffered by the Respondents in as much as, there is no dispute with regard to the age of absorption in Group-D posts. Non-consideration of the case of the applicant

Sugon Choudhury

for absorption in Group-D post for being able to produce documents showing his date of birth is 2.1.59, which is apparently incorrect reflects malice in law as well as in facts.

IV. For that, the impugned action is based on extraneous and irrelevant factors and the relevant factors have not been taken into consideration. The action lacks bonafide by which the applicant has been sought to be deprived of his legitimate right and there has been a colourable and arbitrary exercise of power of collateral purpose not conferred by law.

V. For that, the applicant has been meted out with hostile discrimination in as much as, all similarly situated candidates have been absorbed in Group-D posts and only the applicant has been left out without any justiciable grounds. The right to equality of the applicant as enshrined under Article 14 of the Constitution of India has been latently violated calling for judicial interference. The existing engagement of the applicant under the Respondent No.3 also having been discontinued, his right to means of livelihood under Article 21 has

*Swapan Choudhury*

been infringed by procedure not established by law.

VI. For that, in any view of the matter the impugned action of the Respondent authorities is bad in law and is liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicant had submitted a representations dated 13.2.02 (Annexure-X) and 11.3.02 (Annexure-XI) upon which there is no reply from the authorities but, the Respondent No.2 by his letter dated 9.4.02 (Annexure-XII) informed the applicant that as he could not produce any document to prove his date of birth as 2.1.59 his appointment in Group-D post could not be considered.

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

The applicant further declares that on being wrongly advised he had previously filed a <sup>on 30.5.2002</sup> writ petition <sup>^</sup> regarding the present matter before the Hon'ble High Court and the Hon'ble Court on 22.2.05, disposed of the same as withdrawn with the direction to approach the appropriate forum within 2 months, if so advised.

*Swyam Choudhury*

8. PRAYER:

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, ask the Respondents to show cause as to why the impugned letter dated 19.4.2002 (Annexure-XII) shall not be quashed and set aside and absorb the applicant in a Group-D post for which he is eligible and after perusing thereof if any hearing the parties quash and set aside the impugned letter dated 19.4.2002 (Annexure-XII) and direct that the applicant be absorbed in a Group-D post for which he is eligible and/or pass such order/order as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

*Swayam Choudhury*

9. INTERIM ORDER:

It is, therefore, prayed that pending disposal of the application Your Lordships would be pleased to allow the applicant to continue in the post of Sales Asstt-cum-Accounts Clerk and/or pass such order/order as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

10. DOES NOT ARISE:11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN  
RESPECT OF THE APPLICATION FEE.

(i) I.P.O No. : 206 166 351

(ii) Date. : 12.4.2005

(iii) Issued by Guwahati Post Office.

(iv) Payable at Guwahati.

12. LIST OF ENCLOSURES :

As stated in the INDEX

Swayam Choudhury

32

- 16 -

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

I, Sri Swapan Choudhury, aged about 33 years, S/o Sri Judhisthir Ranjan Choudhury, resident of Suddha Colony, P.O. Badarpur in the district of Karimganj, Assam, do hereby verify that the statements made in Paragraphs No. 4(1, 2, 3, 5, 7, 10, 11, 12, 14 and 15) are true to my personal knowledge and the statements made in paragraphs No. 4(4, 6, 8, 9, 13, 16 and 17) are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this the 13<sup>th</sup> day of April, 2005 at Guwahati.

Place:

*Swapan Choudhury*

Date:

SIGNATURE

## ANNEXURE-I

Assam Schedule XLI (Part I), Form No. 68

No. 12-A/87

of 31-12-87

CERTIFIED that Swapan Choudhury, son of Jyoti Prakash Choudhury, an inhabitant of Rly. Colony, Badarpur, <sup>P.O.</sup> <sup>DIST. KATIAKHAL</sup> left the ZUIM Mowza H.S. School on

31-12-87 His age at that date according to the Admission Register was 22-2-72 years date of birth months 0 days

He was reading in class IX (Hindi) and had passed the examination for promotion to class X (Hindi)

All sums due by him have been paid; viz, fees upto Dec/87 (date)

Fines nil

Character Good

Reasons for leaving

- (i) Unavoidable change of residence
- (ii) Ill health
- (iii) Completion of the School-course
- (vi) Minor reasons

31/12/87

Headmaster.

Headmaster OM KUZA HIE School 22/12/87  
22/12/87 District

\*Enter here 'had' or 'had not' as the case may be,

\*(The Officer granting the certificate will delete from the note opposite the reason which do not apply.)

22/12/87

Attested by  
Choudhury  
Adv.

ANNEXURE-II

(5)

-12-

Assam Schedule EXHIBIT Form No. EX-10(B)

GOVERNMENT OF ASSAM  
DEPARTMENT OF LABOUR  
EMPLOYMENT EXCHANGE

IDENTITY CARD

(Not an Introduction card for interview with employees)

1. Name of Applicant Shri. S. S. Choudhury
2. Date of Registration 19.3.91
3. Registration No. 1941/91
4. N. C. O. Code No. X0210  
Dali & Bilk 22-02-72

INSTRUCTION TO APPLICANT

(a) Bring this card with you whenever you come to the Exchange.	Date before which registration should be renewed
(b) Quote your Registration Number and N. C. O. Number whenever you write to the Exchange.	<u>3/9/91</u>
(c) Renew your Registration every three months.	<u>2/7/91</u>
<u>If you do not renew by the due date your registration will be cancelled.</u>	
(d) You can renew your registration personally or by post. For renewal by post DO NOT SEND THIS CARD. Apply to the Exchange on a REPLY PAID POST CARD.	<u>3/2/91</u>

CERTIFIED TO BE TRUE

Deka.

ADVOCATE

Employment  
Exchange  
Assam  
Government

Attested by:  
B. D. Choudhury  
Adv.

- 13 -

N. F. RLY. EMPLOYEES CONSUMERS'  
CO-OPERATIVE SOCIETY LTD.

REGD. NO. S/91. ESTD. 1959  
P.O.—BADARPUR. DIST. KARIMGANJ

Ref.....

Date, 20.11.2001

APPOINTMENT PARTICULAR OF SRI SWAPAN CHOWDHURY (I) ,SCALEMAN-CUM-PEON,N.F.RLY.E.C.C.C.S LTD/BADARPUR .

Certified that Sri Swapan Chowdhury<sup>(I)</sup> son of Sri Judhistir Ranjan Chowdhury, Buddha Colony, Badarpur is working in the N.F.Rly. E.C.C.S.Ltd./Badarpur since 22-3-1981 as Scaleman-Cum -Peon /Badarpur with full satisfaction of the Co-operative Management.

As per Office record his date of appointment is 22-3-1981.

20.11.2001  
Secretary,  
N.F.Rly.E.C.C.S. Ltd.,

Badarpur.

Secretary,  
N. F. RAILWAY  
Employees Consumers' Co-operative  
Society Ltd., Badarpur

CERTIFIED TO BE TRUE

ADVOCATE

Attested by  
Swapan Chowdhury  
Advocate

N. F. RLY. EMPLOYEES CONSUMERS' CO- OPERATIVE SOCIETY LTD.

Regd. No. S / 91, Estd. 1959 .

P.O. - Badarpur

Dt.-Karimganj

Ref: - ECCS / 87

Date 5/7/87

OFFICE ORDER

In terms of the suitability test held on 25/4/87 Shri Swapan Choudhury, (I) Scaleman of the society is considered to be suitable for the post of Sales Asstt-Cum-Accounts Clerk.

As per resolution of the Managing Committee Meeting held on 28.4.87 and in context of the written refusal of Shri Manik Lal Singha Roy, Sr. most Scaleman of the Society, Shri Swapan Choudhury, (I) is hereby promoted to officiate as Sales Asstt-Cum-Accounts Clerk of the Society against the resultant Vacancy of Shri Pradip Rakshit, ex. Sales Asstt-Cum-Accounts Clerk tendered resignation from the service of this Society consequent on his appointment in Railway Service.

The promotional benefit of Shri Choudhury, (I) is effective from 1.5.87.

This order for promotion is made subject to the app. of the general Assembly.

Sd/-

M. K. Nath.

Secretary

N. F. Railway

Employees Consumers' Co-  
operative Society Ltd., Badarpur

Copy to staff concerned through Manager of the Society for guidance

Attested by  
Swapan Choudhury

FORMAT OF APPLICATION.

Application for absorption of the Quasi-administrative Offices' Workers in Group-'D' Post in N.F.Railway.

(To be filled by the candidate in his/her own handwriting )

Serial No. 32

To  
The Chief Personnel Officer,  
N.F. Railway, Maligaon.  
Guwahati- 781 011;



With due respect I beg to state  
working as a worker in N.F.Rly.E.C.S. &t

As a Scale man since 22.3.81  
( date of engagement ) continuously and still working in the  
same Co-operative Society/ Staffs/ Club/ office.

My bio-data are furnished below for my absorption  
against the available vacancy of Group-'D' Post in N.F.Railway.

- 1) Name of the worker:- SWAPAN CHOUDHURY  
( in capital letters ).
- 2) Father's name:- Sri. Jyudhisthrit Ram Choudhury
- 3) Home Address:- Buddha Colony
  - (a) Village:- Badarpur
  - (b) Post Office:- Badarpur (788806)
  - (c) Police Station:- Badarpur
  - (d) District & State:- Karimganj (ASSAM)
- 4) Present address:- Swapan Choudhury N.F.Rly.E.C.S.  
C/o Badarpur P.O. Badarpur Dist. Karimganj  
(ASSAM)
- (5) Date of birth:- (In Christian era ):-  
( Attested copy of birth  
certificate to be attached ). 22-2-1972

Contd..2/

Attested by  
Choudhury  
Swapan

6) Educational Qualification :-  
(Attested copy of school certificate Class IX Pass  
to be inttached) (Enclo attested copy) - 16

7) Nationality :- Indian (by birth) - 16

8) State whether scheduled Caste/  
Scheduled Tribe/ Other Backward  
Community. - NO

9) Any other qualification, if any:- NIL

10) If, you are a handicapped, please  
produce requisite medical  
certificate issued by the  
Medical Board attached to Vocational  
Rehabilitation Centre for Handicapped/  
Special Employment Exchange for  
physically Handicapped. NO

I do hereby declare that the statements furnished above  
are true, complete and correct to the best of my knowledge and  
belief. I, further understand that in the event of any  
particulars of above information is found false or incorrect,  
I shall be liable to be terminated from Railway Service under  
the extant rules of the Railway Authority.

Place:- Badarpur

Date:- 14.9.2001

Yours faithfully,

Swajani Choudhury

Signature of the Worker

Signature of the

Forwarding authority under whom the applicant is working  
with office seal.

Forwarded to DRM(P) / King for further disposal Please.  
(This is in reference to your of NO E/227/Misc/Imp/Recd/  
dated 7.9.2001) - 100

T/Mistry

14/9/2001  
Secretary,  
M. J. P. RAILWAY  
Employees' Consumers' Co-operative  
Society (U.P.) Bedarpur

ANNEXURE VI

(3)

Copy of Letter of Postage

-17

BY AIR MAIL POST.

H. F. Railway.

Office of the  
Divl. Railway Manager (P)  
Lumding.

Dated 13 / 11 / 2001

No. 227/MSC/LM/RECTT( 030 ).

To Sri Swapnil Choudhury (1)

S/o. Late/shri Jyotishthire Choudhury  
G/o. Buddha Colony - Vill -  
P.o. Badarpore - Dist. Karleonganj PIN - 788806  
(Narayan).

Sub :- Appointment in Group 'D' post. (Trackman).

In connection with consideration of your appointment in Group-D category to Rly. you are advised to report to the office of the undersigned immediately.

No TA/DA will be paid to you for your journey to and from Lumding and also for your stay at Lumding which may be for more than one day.

You should also come prepared to deposit an amount of Rs. 16/- only as medical examination fee on first appointment, if approved for appointment.

You must bring with you the following certificate in original and also two copies of each duly attested.

(i) School certificate for academic qualification. )

(ii) Proof in support of date of birth viz., ) Any one.

(a) School leaving certificate or )

(b) Baptismal certificate or )

(c) Affidavit sworn before Court of Law. )

No other proof including Horoscope will be accepted.

No other proof including Horoscope will be accepted.

(iii) Two character certificates from two Gazetted Officers.

(Proforma enclosed as per Annexure-'A').

(iv). 4(four) copies of your passport size recent photograph duly attested by the Gazetted Officer on the front side of the photograph and another copy without attestation i.e. total 05 copies.

Contd... P/No. 2

Attested by  
Swapnil Choudhury  
X/No

EX-1000

- 2 -

The Scheduled Caste/Scheduled Tribe/OBC candidates should submit certificate in support of their belonging to Scheduled Caste and/or Scheduled Tribe & OBC community from any of the following in original and also two copies of the same duly attested.

I) District Magistrate/Additional District Collector/  
Deputy Commissioner/Additional Deputy Commissioner/  
Collector/Sub-Divisional Magistrate/Extra Asstt. Commissioner

II) Sub-Divisional Officer of the area where the candidate or his family normally resides.

III) Gazetted Officer Central or of a State Govt. duly countersigned by the District Magistrate concerned. No certificate will be accepted for or on behalf of the above.

Inclco :- Annexure-'A'.

N.B. :- The validity of the call letter is upto 29.11.2001.  
If you do not report or inform your acceptance on or before 23.11.2001 your offer will be cancelled and in future you will not be considered for Apptt.

23.11.01  
for Divl.Railway Manager (P)  
N.F.Railway, Lumding.

(A.K.DEY, APO/LMB)

FOR SC/ST CANDIDATES ONLY.

N.B. :- This will pass you from your nearest Railway station to Lumding by any available train on date.

for Divl.Railway Manager (P)  
N.F.Railway, Lumding.

ANNEXURE VII

(4)

N. F. RAILWAY

-19-

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

NO.E/41/5(C)Pt.V - QA

Dated: 27.11.2001

To  
DRM (P)/MLG  
N.F. RAILWAY

Sub: Correction of date of birth.

Ref: This office letter of even number  
dated 19.10.2001.

In reference to above, one Sh. Swapnil Choudhury, No. 1 attached to N.F.R.E.C.C.S/BPS attended this office and submitted an application indicating that his date of birth as per certificates/documents is 22-2-72 whereas by mistake has been indicated as 2-1-59. The original School certificate of the candidate has been verified and it is revealed that his date of birth should be 22-2-72 and not 2-1-59 although, in the statement the date of birth was indicated as 2-1-59. One of the Committee member has been consulted and it is clarified by the said member that the statement available with the Committee was rectified and date of birth was taken as 22-2-72.

In view of the above, you are requested to verify the relevant School certificates and other documents and arrange to offer appointment to the candidate as per extant procedure. It might be that due to some mistake, the date of birth was shown earlier as on 2-1-59.

( K. SAHA )  
SPO/Recd.  
for GENERAL MANAGER (P) /MLG

Attested by  
Choudhury  
Add.

\* \*

N. F. Railway

N. F. - G. 40A  
RB - GL.19

No. E/ 227 / MISC / LM / Rectt (QAO)

Dated 18.12.2001

From: DRM (P)'s Office  
Lumding

To Shri Swapan Choudhury (I)  
S/Asstt Employees Consumers'  
Co-op Society Ltd.  
N. F. Rly, Badarpur  
C/o Secy. Eccs Ltd.  
N. F. Rly, Badarpur

Sub : Date of birth

It is seen from the statement submitted by Secy. Employees Consumers' Co-opt Society Ltd. Badarpur that your date of birth is recorded as 02.01.1959.

You are hereby advised to submit the document in support of your date of birth to the undersigned immediately for further verification.

This should be treated as most urgent.

Sd/-  
Illegible  
For Div. Rly, Manager (P)  
N. F. Rly, Lumding

*affected by  
Swapan Choudhury  
Adv.*

ANNEXURE - VIII (contd)

-21

स्वतं पर होने वाले  
को लिखें  
(to be filled in if required)

पुस्तकालय  
N.F.R. Railway

N.F.G. 40A  
RB-GL 19

Recd/Dated 18-12-2001

संख्या/No. E/227/Misc/LM/Recd. (RAO)

From DRM(P)'s office  
Lumding

रिक्विएशन/Sub: Date of birth

रिक्विएशन/Req:

मिस्ट्री/To Shri Swapnil Chaudhury (1)  
S/Ass'tt. Employees Commi-  
munity Co-Op. Society Ltd.  
N.F.Rly. Badarpur  
C/o Secy. ECOS Ltd.  
N.F.Rly. Badarpur.

It is seen from the statement  
submitted by Secy. Employees Consumers  
Co-Opt. Society Ltd. Badarpur that  
your date of birth is recorded as  
02-01-1959.

You are hereby advised to  
submit the document in support  
of your date of birth, to the under-  
signed immediately for further  
verification.

This should be treated as most  
urgent.

10/20/2001

मिस्ट्री विवरण (कार्ड)

पुस्तकालय

Mr. Devkumar Manager (P)  
N.F.Rly. Lumding

फॉर्म द्वारा द्वारा  
चाहू चाहू  
द्वारा

To

The Divisional Railway Manager (P)/LMG  
N.F.Rly.

- 22 -

Sub :- Date of Birth.

Ref :- Your letter No.E/227/Misc/ Recd/ QAO  
dtd.18/12/2001.

Sir,

In terms of your above cited letter, I like to draw your kind attention that there is no any birth certificate except my school certificate which was submitted ~~was submitted~~ earlier and it indicates the record of date of birth.

That sir, I can not understand in what basis Secy. Co-opt. Society/Badarpur submitted the record of date of my birth to you as 02-01-1959 which is completely wrong.

Further, I am re-submitting a attested copy of school certificate which desired by you for favour of your kind necessary verification.

Dated, Badarpur  
the 28th Dec. 2001.

Yours' faithfully,

Enclo : As above.

.....  
( Shri Swapan Choudhury (I )  
S/Asstt. Employees Consumers'  
Co-opt. Society Ltd /N.F.Rly,  
Badarpur.  
.....

CERTIFIED TO BE TRUE

ADVOCATE

Attested by  
Swapan Choudhury  
Adv.

To

The Divisional Rly. Manager (P) / Lumding.

Sub :- Prayer for my due appointment.

Ref :- (i) your letter No. E/227/Misc/LM/Rectt (QAO)  
dtd. 7-9-2001.

(ii) No. E/227/Misc/LM/Rectt (QAO) dtd. 08/11/2001

(iii) No. E/227/Misc./LM/Rect (QAO) dt. 18/12/2001.

.....

Sir,

With reference to your above mentioned letters I like to draw your kind attention that I have not yet been favoured for my due appointment whereas other staff on the same ground of Rly. Co-operatives and Rly. Institutes in various stations of this Division have already been appointed.

But still now I am kept detained from appointment without any reason.

In this regards, I have deposited fees of Rs. 16/- for medical tests to the Rly. booking office at Lumding as per your instruction as it is a conventional rule of Rly.

This process only when it is done after verifying all kind of papers and bio-data of the candidate as authentic.

On production medical fees receipt, I have not been medically tested rather sent back to my original place on saying that I would be recalled later on.

After few days I have been asked to re-submit school certificate in support of date of birth vide your letter item No. (iii) in spite of medical test.

Accordingly I have submitted the same certificate against my date of birth which was also acknowledged by you on 28.12.01

Since then no response as my letter from your end received by me as a result I am being delayed in getting appointment.

In view of the above, you are earnestly requested to make necessary arrangements for my due appointment at your earliest convenient so that a poor man can be survived like me.

Date: 13.02.02  
Place: Badarpur

Yours' faithfully,

Swapan Choudhury 1401

Swapan Choudhury (I)

Sales Assistant  
Employees Consumers' Co-Opt. Sociecy Ltd.  
N.F.Rly. Badarpur

£££££

Attested by  
Swapan Choudhury  
X.D.W.

To

The Divisional Rly. Manager (P) / Lumding.

Sub :- Prayer for my due appointment.

Ref :- (i) your letter No. E/227/Misc/LM/Rectt (QAO)  
dtd. 7-9-2001.

(ii) No. E/227/Misc/LM/Rectt (QAO) dtd. 08/11/2001

(iii) No. E/227/Misc./LM/Rect (QAO) dt. 18/12/2001.

.....

Sir,

With reference to your above mentioned letters I like to draw your kind attention that I have not yet been favoured for my due appointment whereas other staff on the same ground of Rly. Co-operatives and Rly. Institutes in various stations of this Division have already been appointed.

But still now I am kept detained from appointment without any reason.

In this regards, I have deposited fees of Rs. 16/- for medical tests to the Rly. booking office at Lumding as per your instruction as it is a conventional rule of Rly.

This process only when it is done after verifying all kind of papers and bio-data of the candidate as authentic.

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After few days I have been asked to re-submit school certificate in support of date of birth vide your letter item No. (iii) in spite of medical test.

Accordingly I have submitted the same certificate against my date of birth which was also acknowledged by you on 28.12.01

Since then no response as my letter from your end received by me as a result I am being delayed in getting appointment.

In view of the above, you are earnestly requested to make necessary arrangements for my due appointment at your earliest convenient so that a poor man can be survived like me.

Date: 13.02.02  
Place: Badarpur

Yours' faithfully,

*Swapan Choudhury*

Swapan Choudhury (I)

Sales Assistant  
Employees Consumers' Co-Opt. Sociecy Ltd.  
N.F.Rly. Badarpur

£££££

*Attested by  
Swapan Choudhury  
JAN*

N.F.Rly.

No.E/227/Misc/IM/Recd (QAQ):

Office of the  
Divil.Rly.Manager (P),  
Lumding, dtd: 19/04/2002.

To

Shri Swapan Chowdhury (I),  
S/Asstt. Employees Consumer's Co-operative Ltd.  
N.F.Rly. Badarpur.

C/o Secretary,  
SCCS Ltd. Badarpur.

Sub:- Absorption of Staff working in the Quasi  
Administrative Offices to Group-D Post  
in the Rlys.

As you could not produce any document to prove  
your date of birth as 2-1-59, your apptt. on the Railways  
in Group-D post could not be considered as communicated by  
GM(P)/MLG's letter No.E/41/5(C) Pt.V QA dtd: 12-4-2002.

This is for your information.

for Divil.Rly.Manager (P),  
N.F.Rly. Lumding.

Copy to:- GM(P)/MLG for information in ref. to his  
L/No.E/41/5(C) Pt.V-QA dtd: 12-4-2002.

for Divil.Rly.Manager (P),  
N.F.Rly. Lumding.

Attested by  
Chowdhury  
Adv.

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दस्तावेज़ की अपेक्षित तारीख Date fixed for no. of requisite number of stamps and folios.	अपेक्षित दस्तावेज़ और फोलिओ की तारीख Date of delivery of the copy and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
16/2/05	16/2/05	16/2/05	17/3/05

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## ANNEXURE - XIII

**IN THE GAUHATI HIGH COURT**  
**(The High Court of Assam : Nagaland: Meghalaya: Manipur:  
 Tripura: Mizoram & Arunachal pradesh)**

### CASE NO.W.P. (C) 3563 OF 2002

Shri Swapan Choudhury  
 S/O Shri Judhisthir Ranjan Choudhury  
 Buddha Colony, P.O. Badarpur,  
 District Karimganj, Assam. .... . . . Petitioner.  
 Versus.

1. Union of India  
 Represented by Secretary to the Ministry of Railways, Rail Bhawan, New Delhi.
2. N.F.Railways,  
 HeadQuarter at Maligaon, Guwahati  
 Represented by its General Manager.
3. The Divisional Railway Manager (P),  
 N.F.Railway, Lumding, Dist.Nagaon.
4. M.F.Railway Employees Consumers' Co-operative Society Ltd.,  
 P.O.Badarpur, Dist: Karimganj, Assam  
 Represented by its Secretary. .... . . . Respondents.

BEFORE  
 THE HON'BLE MR.JUSTICE R.B.MISRA

For the Petitioner	: Mr.P.C.Deka, Sr.Adv. Mr.N.Deka, Advocate
For the Respondents	: Mr.S.Sarma, Adv. Miss B.Devi, Adv.
Date of hearing and judgment	: 22-02-2005

### JUDGMENT AND ORDER (ORAL)

1. Heard Mr.P.C.Deka, the learned senior counsel assisted by Mr.N.Deka, the learned counsel appearing on behalf of the petitioner and Mr.S.Sarma, the learned counsel assisted by Miss B.Devi, the learned counsel appearing on behalf of the respondent nos.1 and 2.

*Q.B*

2. The petitioner, by this writ petition, has prayed for quashing and/or setting aside the impugned letter No.E/227/Misc./IM/Rectt(QAO) dated 19.4.2004 issued by the respondent no.3, Divisional Railway Manager (P), N.F.Railway, Lumding and for absorbing him to a Group-D post for which he is duly eligible and till such absorption allow him to continue in the post of Sales Asstt-cum-Accounts Clerk under the respondent no.4, N.F.Railway Employees Consumers' Co-operative Society Ltd..

3. It has been urged by Mr.P.C.Deka, the learned senior counsel for the petitioner that the petitioner was initially appointed in a Group-D post under the respondent no.4, N.F.Railway Employees Consumers' Cooperative Society Ltd., Badarpur and he gave his date of birth in the official records as 2.1.1959. Subsequently, he was selected in a Group-D post in the office of the Divisional Railway Manager (P), N.F.Railway, Lumding, District Nagaon and he submitted all the documents including the certificate where it has been mentioned his date of birth as 22-2-1972. As a suspicion arose regarding his date of birth as 22-2-1972, the respondent no.3 did not issue any appointment letter in his favour. According to the petitioner, he resigned from the existing post of Sales assistant -cum-Accounts Clerk with the expectation that he will be given the appointment in the Class-III post under the respondent no.3. According to the respondents, if the date of birth of the petitioner is 22-2-1972, then every doubt is how the petitioner being a minor could have been appointed in the N.F.Railway Employees Consumers' Cooperative Society Ltd. However, this aspect is not to be discussed at this stage as the petitioner is even ready to join to his original post in the N.F.Railway Employees Consumers' cooperative Society Ltd by not claiming his date of birth as 22-2-1972 but by claiming as 2-1-1959. However, Mr.S.Sarma, the learned counsel for the respondent nos.1 and 2 has raised a preliminary objection as to the maintainability of such nature of cases before this court. According to him such type of cases are to be filed before the Central Administrative Tribunal. Therefore, he prayed for dismissal of the case as the case is not maintainable before the High Court. I find sufficient force in the argument of Mr.Sharma.

Q.B

4. This writ petition, at the request of Mr.P.C.Deka, the learned senior counsel for the petitioner, is disposed of as withdrawn with a liberty to approach the appropriate forum/Central Administrative Tribunal within a period of 2 (two) months from today, if so advised. It is made clear that the observations made above shall not affect the merits of the case to be adjudicated upon by the Central Administrative Tribunal/Appropriate Forum and it shall consider the case of the petitioner in accordance with laws and shall not throw the petition, if filed, only on the ground ~~of~~ <sup>of</sup> delay and ~~or~~ <sup>or</sup> laches.

5. With the above observations and directions, this writ petition stands disposed of.

*S. R. B. Misra  
Judge*

CERTIFIED TO BE TRUE COPY	
A. K. Deka, Deka, Deka	
S. R. B. Misra	
S. R. B. Misra (Signature)	
S. R. B. Misra (Signature)	
Authorised U. No. 76 on 18/2	

*14/3/05*

*PN 30266  
16/3/05*

*Attested by  
D. Devalley  
Adv.*

27 JUL 2005

Mr. Swapnil Choudhury  
Guwahati Office

Filed by -  
The respondents  
through  
Bambona Devi  
Advocate  
27-7-05  
26/7/17.

51  
Dy. Chief Personnel Officer / HQ  
N.F. Railway, Maligaon  
Guwahati-11

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A. No. 92/05

Sri Swapnil Choudhury, .....Petitioner.

-VG-

Union of India & Ors. .....Respondents.

WRITTEN STATEMENT FILED BY THE RESPONDENTS

1. That the respondents have received a copy of the OA and have gone through the same and understood the contents thereof. Save and except the statements which are admitted herein below other statements made in the OA are categorically denied the statements which are not borne on record are also denied.
2. That with regard to the statement made in para 4.1 the respondents denied the allegations made by the applicant the respondents do not admit anything contrary to the relevant records of the case.
3. That with regard to the statement made in para 4.2 of the OA the deponent begs to state that the Divisional Railway Manager (P)/Lumding issued a letter No.E/227/Misc/LM/Rectt (QAO) 1

dated 1.12.99 to Secretary to the Quasi Administrative Officer/organisations connected with the railways for providing a list of staff working in their organisation as on 10.6.97 and who were already eligible for screening as on 10.6.97 is a prescribed proforma for regular absorption in Group D post in the Railways. Pursuant to the said letter dated 1.12.99, the Secretary ECCS/Badarpur has sent a list of the staff working in his organisation vide a forwarding letter under memo No.L/No.- ECCS/Staff-P/II/99 dated 7.12.99. In the said list the date of birth of the applicant has been shown to be 2.1.1959 and date of appointment to be 22.3.1981. But so far as the school certificate (Annexure I to the OA) and Employment Exchange card (Annexure II to the OA) are concerned the date of birth of the applicant is 22.2.1972. Now the deponent begs to state that if the date of birth of the applicant is taken to be 22.2.1972 then it means that he was just 9 years 1 month when he was engaged in the consumer Co-operative Society, Badarpur. The deponent further states that no person can be employed at the age of 9 years old.

In these circumstances the matter was referred to the Head Quarter/Maligaon for necessary advice. Accordingly the GM(P)MLG has communicated its observation vide letter No.E/41/5(c)Pt.V-QA dated 12.4.82 interalia that since the party concerned couldnot produced any document to prove that his date of birth is 2.1.59 appointment cannot be considered.

Copy of the forwarding letter dated 7.12.99 along with the list is annexed herewith and marked as Annexure-1 (series).

4. That with regard to the statement made in para 4.3 of the OA the deponent does not admit anything contrary to the relevant record of the case.

5. That with regard to the statement made in para 4.4 of the OA the deponent begs to state that the matter of promotion of the applicant as has been mentioned is the internal matter of the Consumer Co-operative Society Badarpur and hence the deponent does not offer any comments into the matter of promotion.

6. That with regard to the statement made in para 4.5 and 4.6 of the OA the deponent does not admit anything contrary to the relevant record of the case.

7. That with regard to the statement made in para 4.7 of the OA the deponent begs to state that the applicant submitted his school leaving certificate wherein his date of birth has been recorded as 22.2.72. But as per Railway records the date of birth of the applicant is 2.1.1959 and the applicant couldn't produce any testimonial to prove his date of birth to be 2.1.59.

8. That with regard to the statement made in para 4.8 of the OA the deponent begs to state that due to the confusion regarding date of birth of the applicant the General Manager(P)/MLG re-examined the matter and communicated his observation to the Divisional Railway Manager (P)/MLG by a subsequent letter No. I/41/5(c)Pt.V-QA date 12.4.82. The GM(P)/MLG in the said communication observed that since the applicant could not produce any document to prove his date of birth to be 2.1.59 his appointment could not be considered. The GM(P) further observed that the applicant produced school certificate claiming

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His date of birth as 22.2.72 which effectively means that he was engaged in Co-operative Society, Badarpur when he was just 9 years 1 month old. The deponent further submits that no person can be employed at the age of 9 years which is violative of child labour laws.

A copy of the communication dated 12.4.02 is annexed herewith and marked as Annexure-2.

9. That with regard to the statement made in para 4.9, 4.10, 4.11 and 4.12 of the OA the deponent submits that it is admitted, the matter was referred to the GM(P)/MLG narrating the detail of the facts as to the date of birth as was shown to be 2.1.59 by the Secretary, Co-operative Society, Badarpur but on the other hand the school certificate produced by the applicant for the date of birth to be 22.2.92 and date of appointment in the Consumer Co-operative Society, Badarpur i.e. 22.3.81. The GM(P)/MLG examined the matter and passed its observation which was communicated to the DRM(P)/LMG vide letter No.E/41/5(c)Pt.V-QA dated 12.4.02 which was already mentioned above.

10. That with regard to the statement made in para 4.13 of the OA the deponent begs to state that the DRM(P)/LMG vide letter NO.E/27/Misc/LM/Rectt/QAO dated 19.4.02 inform the applicant the decision of the administration is the context of observations passed by the GM(P)/MLG vide letter dated 12.4.02.

The deponent further submits that the GM(P)/MLG's letter dated 12.4.02 was in reference to DRM(P)/LMG's letter dated 27.2.02. Hence question of addressing the letter to the applicant does not arise.

5  
D.C.O./Personnel Officer /48  
A.F. Review Officer  
Guwahati-12

A copy of the DRM(P)/LMG's letter dated 27.2.02 is annexed herewith and marked as Annexure-3.

11. That with regard to the statement made in para 4.14 the deponent does not admit anything contrary to the relevant records of the case.

12. That with regard to the statement made in para 4.16 and 4.17 of the OA the deponent begs to state that the applicant couldn't produce any document to prove his date of birth as 2.1.59 and therefore his appointment is the Railways in Group D post cannot be considered.

13. That in view of the above facts and circumstances of the case the application deserved to be dismiss with cost.

VERIFICATION

I Shri ... R. Aainu....., aged about 40....  
years, son of Late S. Ramasamy....., resident  
of ... Maligaon, Guwahati.....  
presently working as Dy. Chief personnel officer(HQ), Maligaon.  
N.F. Railway, do hereby verify and state that the  
statement made in paragraphs ... 4, 5, 6.....  
are true to my knowledge and those made in  
paragraph ... 3, 7, 8, 9, 10..... being matters  
of records are true to my information derived therefrom,  
which I believe to be true and the rest of my humble  
submissions before this Hon'ble Tribunal. I am also  
authorised and competent to sign this verification on behalf  
of all the Respondents.

And I sign this verification on this 27th day  
of ... July, 2005.

  
26/7.

Deponent  
Dy. Chief Personnel Officer / HQ  
N.F. Railway, Maligaon  
Guwahati-11

RAILWAY EMPLOYEES  
CO-OPERATIVE SOCIETY LIMITED  
BARDARPUR, DIST. KARIMGANJ (ASSAM)  
REGD. NO.— 5/91

Staff-P/II/99

Date 07-12-1999

To:

The Divisional Railway Manager (P),  
N. F. Railway/ L U M D I N G.

Thro:- The CPI (Welfare)/B.P.B.

Sir,

Sub:- List of the Staff working in the  
quasi Administrative Offices/Orga-  
nisations connected with Rlys.

Ref:- No. E/227/Misc/LM/Rcctt./ (Q.A.O)  
dated. 01-12-99.

With reference to the above I have sending  
Staff Position of N.F.Rly. Employees Consumers Co-Operative  
Society Limited/Bardarpur according to your advice is at-  
tached herewith.

Enclo:- One Staff Position  
is attached herewith.

Yours faithfully,

*12/12/99*  
Secretary,

N. F. RAILWAY  
Employees Consumers Co-operative  
Society Ltd., Bardarpur.

Attested  
By  
Advocate

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S U S : List of the staff working in the Quasi Administrative Offices / Organisations connected with Rlys.  
 Particulars of the staff working in Rly. Co-Operative, Badarpur of Lumding Division as / N.F.Rly. as on 10.6.1997  
 Ref:- No. F/227/Misc./LM/Rlyt. / (QAC). Dated: 01.12.1999.

Sl. No.	Divisional Unit.	Name of the Organisation	Name of the Workers	Father's / Husband's Name.	Designation	Date of birth	Date of Apptt.	No. of days of Service	Educational Qualifica-tion.	REMARK
01.	LUMDING DIVISION	N.F. RLY. CONSUMERS' CO-OPERATIVE SOCIETY LTD. BADARPUR.	sri Asim Kr. Sarkar	sri Nagen Ranath Sarkar.	Manager	01.01.1954	17.08.1976	7598	Dys H.S.Passed	
2).	"	P.O. BADARPUR D.T. KARIMGANJ (ASSAM)	sri Ashim Lohit (Lohit)	sri Priyalal Lohit	Sr. Sales Asstt.	04.01.1957	04.01.1980	6366	" H.S.L.C. passed	
3).	"		sri Pradip Kr. Mazumder	Late Mohinimohon Mazumder.	=do-	28.01.1952	07.06.1980	6213	" P.U.Passed	
4).	"		sri Swapan Choudhury (I)	sri Juddhistir Choudhury	Sales Asstt.	02.01.1959	22.03.1981	5922	" Read upto Class-IX	
5).	"		sri Kripachandra Chakraborty.	Late Kedar Chandra Chakraborty	Sr. Scaleman	10.01.1945	27.04.1982	5522	" Read upto Class-VI II	
6).	"		sri Tapan Barua	sri Birendralal Barua.	Sales Asstt.	18.05.1954	04.07.1982	5450	" Appeared H.S.L.C. Exam.	
7).	"		sri Swapan Choudhury (II)	Late Manindra Bijoy Choudhury.	Sr. Scaleman	29.05.1963	01.04.1984	4817	" Read upto Class-VII	
8).	"		sri Gautam Roy.	Late Bidhu Bhushan Roy.	Sr. Sales Asstt.	04.01.1958	30.10.1984	4603	" P.U. (Com) Passed.	
9).	"		smt. Manu Rani Dey.	W/O. Late Matilal Dey	Sr. Scaleman	31.09.1960	01.11.1984	4602	" Read upto Class-II	
10).	"		sri Raj Kumar Mandal	Shri Madhab Chandra Mandal.	Sr. Sales Asstt.	19.01.1954	21.08.1985	4307	" P.U.Arts.	
11).	"		sri Dilip Kumar Dey.	Late Shri Ram Chandra Dey.	Accountant-Cum-Office-Asstt.	22.02.1953	24.08.1985	4304	" E.Com Passed.	
12).	"		sri Babul Ch. Das	Late Jogesh Ch. Das	Night Guard	31.10.1969	01.05.1991	2231	" Read upto Class VI	
13).	"		sri Umesh Ch. Malakar	sri Hemanta Kumar Malakar.	Scaleman.	11.01.1961	01.08.1991	2136	" Passed Class-VII I	

D. Sonka  
12.12.99

SECRETARY,  
 N.F. RLY. EMPLOYEES CONSUMERS CO-OPERATIVE  
 SOCIETY LTD., BADARPUR.  
 P.O. BADARPUR - 782806, D.T. KARIMGANJ,  
 ASSAM.

Secretary,

Attested  
By  
Advocate

16/02  
13/4/02

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S/P/E/Rectt  
(2)  
1/2/02

## N. F. RAILWAY

04/02

NO.E/41/5(C)Pt.V- QA.

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

Dated: 12.04.2002

To  
DRM (P)/MLG  
NF RAILWAYSub: Absorption of staff working in the  
Quasi administrative offices to Gr. 'D'  
post on the Railways.Ref: Your letter No.E/227/Misc/LN/Rectt. (QAO)  
SN-134 dated 27.02.2002.

In reference to above, the case of Shri Swapani Chowdhury (1), a candidate of Quasi-administrative staff has been examined by this office and the Competent authority passed the following observations:

*Lynst*

"Since the party concern could not produce any document to prove that his D.O.B. is 2.1.59, his appointment can not be considered. As on date he has produced certificate claiming his D.O.B. as 22.2.72 which effectively means he was ~~not~~ 9 Yrs. 1 month when he was engaged in Co-operative. No person can be employed at the age of 9 Yrs. which is violative child labour laws."

This has the approval of CPO/A. Please take action accordingly.

*Jain*  
( K. SAHA )

SPO/Rectt.

for GENERAL MANAGER (P)/MLG

Attested  
By  
Advocate

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## N.F. Railway.

Office of the  
Divl. Railway Manager (P)  
Lumding.

No. E/227/MLSC/LM/Rectt (QAO) ..

Dated 27-2-2002.

To

GM(P)/MLG (For personal attention of CPO/A).

Sub :- Absorption of staff working in the  
Quasi administrative offices to Cr. 'D'  
post on the Rlys.

.....

GM(P)/MLG, vide their L/No.E/41/5(C)Pt.V-QA Dtd. 27-8-2001, has sent the name of one Shri Swapan Chowdhury (1) (Item 179) (whose date of birth shown 2-1-59 & date of App't. 22-3-81), alongwith others for screening and thereby absorption. Accordingly he has been screened and found fit for absorption in Cr. 'D' post.

But in the meantime GM(P)/MLG has intimated that the date of birth of Shri Chowdhury will be 22-2-72 instead of 2-1-59, vide L/No.E/41/5(C)Pt.V-QA Dtd. 27-11-2001. If the D.O.B. is assumed as 22-2-72 as intimated, then the entrance age of service into the Co-Opt. Society/BPB, of Shri Chowdhury, will be 9 Yrs. & 1 month only which is beyond doubt.

However, the matter has been discussed between CPO(A) & DPO/MLG and the former has advised to reckon the D.O.B. of Shri Chowdhury as 2-1-59 and not 22-2-72.

Accordingly Shri Chowdhury has been advised to produce document in support of his date of birth as on 2-1-59 but he failed to produce any document.

In view of the above, you are requested to advise this office as to how this case will be disposed of.

An early reply is solicited.

On 27/2/02  
( S. N. Roy )  
DPO/MLG.

for Divl. Railway Manager (P)  
N.F.Railway Lumding.

8/2  
27/2

Gm(P)'s reply  
at SNJ 144

Attested  
By  
Advocate

D  
R. Debnath  
27/2/2002

dbn/25202