

FROM No. 4.
(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GWAHATI BENCH:

ORDER SHEET

1. original Application No. 50/06
2. Misc Petition No.
3. Contempt Petition No.
4. Review Application No.

Applicant(s) Mrs. Joginder Kaur

Respondants W.O.I Joms

Advocate for the Applicant(s) Smti. Purnam Yadav

Advocate for the Respondant(s) case

Notes of the Registry	Date	Order of the Tribunal
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Application is filed
Deposited
No. 14986
Date 24.2.06

N. Joms
27.2.06
He Dy. Registrar
Di

Steps taken with
envelops.

Di

28.02.2006

Present: The Hon'ble Shri K.V. Sachidanandan, Vice-Chairman.

The applicant is working in the respondents' office and according to her, she is an illiterate lady and does not know to read and write. By the impugned order dated 30.1.2006 the respondents are seeking to recover the pay and allowances and other benefits she has drawn from 1.1.2002 to 12.12.2005 on the ground that she has overdrawn the amount and she should have retired on 31.12.2001 itself.

~~XXX~~ Smti P. Yadav, learned counsel for the applicant submits that despite of the said facts the applicant is being engaged by the respondents still now. The dispute regarding the retirement date is based on the date of birth that has been recorded in the Service Book by the respondents. Counsel further argued that even if the applicant has overstayed in service, it is not due to her mistake and such huge amount cannot be recovered from her at this distant

Contd.

O.A.50/2006

Contd.

28.2.2006 point of time.

Mr.G.Baishya, learned Sr.C.G.S.C. appearing on behalf of the respondents submits that notice should be issued to the respondents.

Considering the larger issue involved in this case, the O.A. is admitted. Six weeks time is granted to the respondents to file written statement. Post the case on 12.4.2006.

In the interest of justice I direct the respondents not to recover any amount as per Annexures C & D orders till the next date.

Vice-Chairman

bb

4.5.2006

None appears for the applicant. Mr.G.Baishya, learned Sr.C.G.S.C. requests for further time to file reply statement. Let it be done.

Post on 8.6.2006.

Vice-Chairman

bb

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08.06.2006

Mr. G. Baishya, learned Sr. C.G.S.

C. for the respondents submitted that he has already filed ^{be}reply statement but the same could not ^{be}serve to the learned counsel for the applicant or to the applicant since the counsel for the applicant and the applicant stay at Shillong. Counsel for the respondents is directed to serve the same by post. Post on 29.06.2006.

Vice-Chairman

mb

62. empty order
dated 28.2.06.
N-5
28.2.06.

Order dtd. 28.2.06

is received

Amol Goswami
Advocate

1.3.06

Notice & order
sent to D/section
for issuing to
resp. nos. 1, 2 by
regd. A/D post.

6/3/06 - D/No = 281, 282.
DT = 6/3/06.

Notice duly served
on resp no-2.

6/3/06

Notice received back
as unserved. resp. no-1,
with a remarks
"Incomplate address",

6/3/06

3-5-2006

① Notice received unserved
from R. no. 1.

② Notice duly send on R. 2.

③ no W/S filed.

bm

7-6-06

no W/S filed.

by 7

O.A. 50/06

Notes of the Registry	Date	Order of the Tribunal
<p><u>13.6.06</u></p> <p>W/s filed by the Respondents.</p> <p><i>Pri.</i></p> <p>W/s has been filed.</p> <p><i>M</i></p> <p><u>28.6.06</u></p> <p><u>18-7-06</u></p> <p>No rejoinder has been filed.</p> <p><i>M</i></p> <p><i>Revised. C.A. No. 9.06.06 2.8.06</i></p> <p><u>16.8.06</u></p> <p>Certified Copy of has been called by the applicant and a copy of same has been handed over to the R.C.G.S.C. for the Respondents.</p> <p><i>gk.</i></p>	<p>29.6.2006</p> <p>bb</p> <p>19.7.2006</p> <p>bb</p> <p>27.7.2006</p> <p>bb</p>	<p>Smt. P.Jadav, learned counsel for the applicant submits that she does not want to file rejoinder. Since pleadings are complete let the case be posted on 19.7.2006 for hearing.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Heard Smt P.Jadav, learned counsel for the applicant and Mr.G.Baishya, learned Sr.C.G.S.C. for the respondents. Hearing concluded.</p> <p>Reserved for orders.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Judgment pronounced in open Court, kept in separate sheets.</p> <p>The O.A. is allowed in terms of the order. No costs.</p> <p><i>[Signature]</i> Vice-Chairman</p>

4
CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

(O.A.No.50 of 2006.)

DATE OF DECISION: 27.06.2006.

Smt. Joginder Kaur

APPLICANT

Smt. Punam Yadav

ADVOCATE FOR THE
APPLICANT(S)

VERSUS-

Union of India and ors.

RESPONDENTS

Mr.G. Baishya, Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the judgments? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment? *no*
4. Whether the judgment is to be circulated to the other Benches? *Yes*

Judgment delivered by Hon'ble Vice-Chairman

27/7/06

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Original Application No. 50 of 2006.

Date of Order : This the 27th Day of July, 2006.

THE HON'BLE MR K.V.SACHIDANANDAN, VICE CHAIRMAN.

Smt. Joginder Kaur, Safaiwali,
Office of the Commissioner of Income Tax,
C/o Raju Singh, Office of the Addl. Commissioner
of Income Tax, Shillong.

...Applicant

By Advocate Mrs P. Yadav

- Versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Finance, New Delhi.
2. Shri H. Raikhan,
Commissioner of Income Tax,
Shillong.

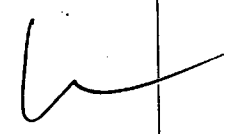
...Respondents

By Advocate Shri G. Baishya, Sr.C.G.S.C.

.....
ORDER

K.V.SACHIDANANDAN (V.C)

The applicant was serving as a Safaiwali in the office of the Commissioner, Income Tax Department, Shillong. She claims that she is an illiterate lady and she does not know her date of employment. As stated by the department her date of birth is 20.12.1941. The applicant had also given her statement and certified in the service book that the age of the applicant on 22.12.1976 was 35 years. Later on there was a over writing in the



service book and her date of birth was shown as 1.3.1948 instead of 20.12.41 which is said to be tempered with. The respondents confirmed the date of birth with the documentary proof vide office letter dated 6.12.05 (Annexure-A). The applicant also sworn an affidavit on 7.12.05 that there is no other document to prove her age before the Magistrate First Class, Shillong, in which she declared that her date of birth is 20.12.48 but could not produce any other documentary proof as she is illiterate. The department has taken the conclusion and given her superannuation on 31.12.2001 which has resulted overstaying in service by the applicant from 1.1.2002 to 12.12.2005. Overstaying in service by the applicant was not due to any misrepresentation of the facts by the applicant but was entirely due to the mistake of the employer i.e. respondent No.2 and the applicant cannot be held responsible for her over stay. The respondents did not follow the procedure laid down in CCS Pension Rules 1972. The attempt on the part of the respondents vide order dated 12.12.05 and 30.1.06 for recovery of the alleged excess amount drawn by the applicant for overstaying in service which is illegal. The applicant has worked during the period and rendered the service to the full satisfaction of the respondents. The alleged recovery is against constitutional safeguard guaranteed under the Constitution. Aggrieved by the said action the applicant filed this application seeking for the following reliefs:-


- i) For setting aside the order for recovery of amount of Rs.3,87,149/- for over stayal in



service from 1.1.02 to 12./2005 issued under impugned order No. F.No. Per/J/123/CIT/SHG/01-02/5576 dated 30.1.2006 and also the letter No. F. No. Per/J-123/CITSHG/05-06 dated 12.12.2005. The xerox copy of the orders are enclosed herewith as Annexure C & D.

- (ii) For payment of pensionary benefits i.e. pension, leave encashment, gratuity, CGEIS and other benefits.

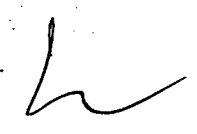
2. The respondents have filed a detail written statement contending that the applicant entered service and confirmed her date of birth to be 20.12.1941. This date was cancelled and changed to 01.03.1948 in the service book. The applicant therefore in this O.A has taken a plea that as on 22.12.1941 she was 35 years old. The medical fitness certificate which was certified by Asstt. Surgeon-I, Civil Hospital, Shillong state that she was born around 22.12.1941 (Annexure-I). The original entry in the service book is 20.12.1941 which was found cancelled in purplish ink and another date had been written in red ink as 01.03.1948. The latter date is written in words in blue colour through a ball point pen. In the verification affidavit filed before this Tribunal she has stated that as on 24.2.06 she was 60 years of age. Her date of birth should be 24.1.1946. The applicant had overstayed in service from 1.1.2002 and it is proved that her date of birth is 20.12.1941. Due to the overwriting in service book the confusion arose and hence the case of superannuation was not followed up earlier. There is no provision for paying salary beyond the superannuation date and hence the department has to recover salary etc. paid for the



overstayed period. The respondents wrote a letter dated 7.2.06 to the applicant for submission of her pension papers and therefore no merit of the case.

3. Heard Mrs P.Yadav, learned counsel for the applicant and Mr G.Baishya, learned Sr.C.G.S.C for the respondents at length. Also heard their pleadings, averments, evidence and materials placed on record. The learned counsel for the applicant argued that the applicant was an illiterate lady who was never informed about her superannuation on 31.12.2001, which is mandatory as per the provisions of CCA Pension Rules and she continued to be in service with consent, permission and bonafides belief. The learned counsel for the respondents on the other hand persuasively argued that since there was a correction in the service book there was a confusion in the minds of the respondents as to the date of birth of the applicant and therefore she was permitted to continue in service and over stayed and the benefits paid to her. There is nothing illegal to recover the excess amount paid. Therefore O.A does not merit.

4. I have given due consideration to the pleadings and arguments advanced by learned counsel for the parties. Admittedly the applicant worked with the respondents for a long time and the date of birth that was originally recorded in the service book as per record is 20.12.1941 and in that event the superannuation should have been on 20.12.01. The case of the applicant is that the applicant is an illiterate lady without any documentary proof as to



her date of birth and to her knowledge her date of birth was 20.12.48. She has made a sworn in affidavit before the first class Magistrate stating the same before the authorities on 7.12.2005. The case of the respondents is that the overwriting in service book was prior to the issuance of Annexure A-1. The letter dated 6.12.2005 was issued to the applicant asking her to furnish documents in support of the claim that the date of birth is not 20.12.1941. Since no other documents like school certificate etc. was available with the applicant and as she was illiterate she was sworn an affidavit before the Magistrate, 1st Class. Thereafter the impugned order dated 6.12.05 was passed declaring that her date of birth is 20.12.41 and she should have retired on 31.12.2001. For better elucidation Annexure A-1 letter is re-produced as under :

16.12.05

"To
Smt Joginder Kaur,
Safaiwala,
O/o the CIT, Shillong.
Subject :Confirmation of 'Date of Birth' - reg.

As per your Service Book, your date of birth is 20.12.1941. The medical fitness certificate signed by Asstt. Surgeon-I, Civil Hospital Shillong submitted by you from Civil Hospital Shillong also supports the said age.

Based on the above facts, your date of retirement from service should be 31.12.2001.

You are accordingly requested to please furnish documents in support of the claim that the date of birth is not 20.12.1941.

Your reply should be submitted with seven days from the date of receipt of this communication.

Yours faithfully,

Sd/

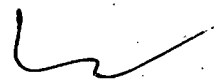
(A. Mazumdar)

Asstt. Commissioner of Income Tax, Hqrs.
For Commissioner of Income Tax. Shillong."



The learned counsel for the respondents was good enough to produce the record including the service book before this Tribunal, which the Court has perused and obviously in page 10 of the service book the original entry of the date of birth is made as 20.12.41 which was subsequently changed to 1.2.48. As per the original entry the date of birth is 20.12.41 and in that event the applicant should have retired from service on 31.12.2001 but the respondents kept mum for years thereafter according to their reason "due to the over writing, in the service book a confusion arose in the office that her date of birth was 1.3.1948 and not 20.12.1941 and hence the case of the superannuation was not followed up earlier." It is well settled position of law that in all service matters the date of birth entered in the service book should be followed in the absence of any other claim/evidence i.e. so that respondents should have initiated the proceeding well before 31.12.2001 for retiring the applicant which was not done in this case. On the other hand the initiative came from the respondents for retiring the applicant was for the first time on 6.12.2005 vide Annexure-A communication for which the applicant has replied by filing the affidavit stating that her date of birth is 20.12.1948. 4.

It is also brought to my notice that provisions of Rule 257(1) "Service Books maintained in the establishment should be verified every year by the head of Office in January each year", the Government servant shall handover his copy of the Service Book to his office for updation. The office shall update and return it to the Government servant within thirty days of its receipt (Swamy's



General Financial Rules page 110) (Annexure-B). In all cases in which a service book is necessary under rule 197, such a book shall be maintained for a Government servant from the date of his first appointment to Government service. It must be kept in the custody of the Head of the Office in which he is serving and transferred with him from office to office. As per S.R 199 "every step in a Government servant's official life must be recorded in his service book and each entry must be attested by the Head of his office, or, if he himself is the Head of an Office, by his immediate superior. The head of the office must see that all entries are duly made and attested, and that the book contains no erasure or overwriting, all corrections being neatly made and properly attested. Specific rules have been enacted keeping the service records of the Government servant which has not been followed in this case by the respondents. Apart from that chapter H, determination and authorization of the amounts of pension and gratuity as per CCA Pension rules different caution and directions are given to the head of the department in Rule 56 and 58 which are re-produced below :-

• "Preparation of list of Government servants due for retirement

(1) Every Head of Department shall have a list prepared every six months, that is, on the 1st January, and the 1st July each year of all Government servants who are due to retire within the next 24 to 30 months of that date.

(2) A copy of every such list shall be supplied to the Accounts Officer concerned not later than the 31st January or the 31st July, as the case may be, of that year.

(3) In the case of a Government servant retiring for reasons other than by way of

h

superannuation, the Head of Office shall promptly inform the Accounts Officer concerned, as soon as the fact of such retirement becomes known to him.

(4) A copy of intimation sent by the Head of Office to the Accounts Officer under sub-rule (3) shall also be endorsed to the Directorate of Estates if the Government servant concerned is an allottee of Government accommodation.


58. Preparation of pension papers

Every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier."

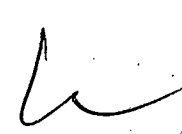
So these are all the precautionary measures taken in the case of retiring employee and it is also made clear that preparation should start six months prior to the superannuation to avoid any delay. Having regard to entry of date of birth available in the service book at that point of time (2001) the respondents could have and should have initiated the proceeding to retire the employee before December 2001 which is not done in the case. The respondents has no case to the effect that the alleged tempering/over writing in the service book was done prior to 2001. The record on that aspect was very clear and was to the clear knowledge of the respondents. Therefore, there is no reason for the respondents to have any confusion at that point of time. According to the applicant tempering if any made was at the instance of the respondents. The respondents counsel on the other hand argued that this over writing/tempering of the service entry was done by the applicant at her instance since she is the beneficiary. This argument cannot be accepted for the reason that there is no such presumption which could be drawn as per the Evidence Act or any other dictum. Apart

from that the service book is very important/crucial document which should be always kept in the safe custody of the respondents and it cannot be believed that somebody has tempered the said document without the knowledge of the respondents. Therefore, I am of the view that the tempering/over writing could not have been done without the knowledge of the respondents which was done for obvious reasons best known to them. However, the applicant was permitted to over stay for some years and all benefits like salary and allowances has already been disbursed to her without any objection or doubt.

5. The respondents had cited a decisions reported in (1)2006 (2) GLT 324 in the case of Surajit Das vs. State of Assam & Ors. where it is held that swearing false affidavit resorting to tempering with the relevant records and falsehood and swearing affidavit on the basis thereof and verification as the affidavits are very crucial and the applicant should be dealt with for such mischief. So also another decision(2) of the Guwahati Bench of the Tribunal reported in (2005) 4 SCC 605 in the case of MCD vs. State of Delhi, wherein it is held by the Apex Court that "litigation withholding the vital document in order to gain advantage of the case would be guilty of playing fraud on the Court as well as on the opposite party. A person whose case is based on falsehood can be summarily thrown out at any stage of the litigation. I am of the respectful agreement with the legal proposition that has been advanced by the respondents counsel but except otherwise than in



the written statement till date these allegations are not aired by the respondents against the applicant nor even a notice issued to her. The specific case of the applicant is that she is an illiterate lady, she has no knowledge about her date of birth but believe the same to be 1948. Therefore, the question of tempering and the question of filing false affidavit and suppression of material facts etc. will not come in this case and these decisions are not squarely applicable in the given facts of this case. Therefore, the respondents cannot rely on them. Apart from that on verification of the service book it could be seen that the date of birth has been altered from 20.12.41 to 1.3.48. Obviously the hand writing does not pertain to the applicant. This also written in red and blue ink. Designation of the ITO is also written in the corrected portion. The respondents did not taken any effort to verify the said ITO as to who has made this entry ? No such investigation/verification has been made in this case nor any police case registered. Therefore the possibility could only be an over site on the part of the respondents which has benefited the applicant thereby. The applicant cannot be blamed for the same. The right action could have taken at the right time in retiring the applicant in 2001, which has not done in this case. The case of the applicant is that she has not made any representation in order to achieve that benefit and the respondents also did not take any steps to make her retire in 2001. Therefore, the overstay in employment by the applicant is not due to her misrepresentation but should be an over sight on the side of the respondents. The applicant was subjected to a medical test in

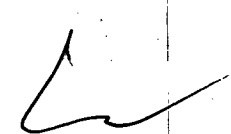


which also the expert has opined that her age/date of birth was around 20.12.41. The original entry in the service book was also 20.12.41. The contention taken by the applicant that she would have retired had the respondents insisted of her retirement in 2001. I am of the view that the date of birth of the applicant should be taken as 20.12.41 as per the original entry in the service book. Hence she should have accordingly retired on 31.12.2001 in accordance with the entry in the service book in the absence of any other claim. "If there is no misrepresentation no recovery could be affected from the employee."

6. The learned counsel for the applicant has drawn my attention to a relevant decision in Kailash Singh vs. State of Bihar and others, reported in 2005 AIR SCW 3273, wherein the Hon'ble Supreme Court interpreting Article 16 on an identical issue and facts of the case has held that post retiral benefits should not be denied to the employee for his overstayed period without there being any dispute about his age the employer cannot deny his salary for the same period. The relevant paras are quoted below :

"The service book of the appellant was opened in 1993. The Medical Board seems to have constituted and on the basis of the report of the Medical Board he was immediately retired. In these circumstances, the learned counsel for the respondents has very fairly submitted that there would be no recovery of the salary already paid to the appellant for the period from 1.4.1995 to 24.4.2000. The appellant has actually worked during this period without there being any dispute about age.

So far as post-retiral benefits are concerned it is submitted that they may not be admissible to him. We fail to appreciate the submissions made

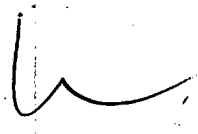


on behalf of the respondents in the background of the facts indicated in the earlier paragraph. The respondents took worked from the appellant without any dispute. He would obviously be entitled to his salary and there is no reason as to why he should be denied the post-retiral benefits. His total service comes to 32 years. We have already adverted to the fact that the medical report has not been placed on the record, nor as to what is meant by the term "average age", has been explained to us. In the totality of the facts and the circumstances of this case, we find no good reason to deny those benefits to the appellant.

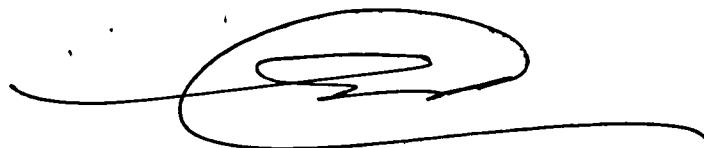
In the result, appeal is allowed and order of the High Court is set aside and it is directed that no recovery of the salary paid to the appellant for the period from 1-4-1995 to 24-4-2000 shall be made, as also submitted on behalf of the respondents, and the post-retiral benefits shall also be worked out accordingly."

This decision covers the issue and is on the exact point. Therefore, there is no reason to deny the applicant the post retiral benefits as well.

7. In the conspectus facts and circumstances mentioned above I am of the considered view that the applicant has made out a case and she should have been retired on 20.12.2001 and she was entitled for pensionary and other benefits of a retired employee and also the respondents are not entitled for recovery during her over stay period as already granted to her, in view of the facts, legal position and judicial pronouncement mentioned above. The O.A. is allowed and the respondents are directed to grant retirement/pensionary benefits to the applicant forthwith, in any case within 3 months from the date of receipt copy of this order and not to recover any benefit granted to her for the overstayed period, if done will be refunded.



Original Application is allowed. In the circumstances no order
as to costs.



(K.V.SACHIDANANDAN)
VICE-CHAIRMAN

pg

Safari Waller
Educational Group, NLC

20/12/1941 D/R when you

in Prof 9 Age (Dutch)

Dept - Board as advised
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making

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App. F

HR 2005 - SC V4 3273
Borshun Bampkun

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- 2 -

2 Annex A. 2005-
Fint

Ann c 30/11

Wittin bekkat wor
Payoh - inditak 6000 Shilling

Reply

2 20/12/1941 On demand

20/12/1948 Fintind

Madanit

20/12/1948

Penang Papers

20/2/1976

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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

Original Application No. 50 / of 06

1. a) Name of the Applicant: Mrs. J. Kam
b) Respondants: Union of India & Ors.
c) No. of Applicant(S): -
2. Is the application is the proper form: Yes / No.
3. Whether name & description and address of the all the papers been furnished in cause title: Yes / No.
4. Has the application been duly signed and verified: Yes / No.
5. Have the copies duly signed: Yes / No.
6. Have sufficient number of copies of the application been filed: Yes / No.
7. Whether all the annexure ~~parties~~ are impleaded: Yes / No.
8. Whether ~~English~~ translation of documents in the Language: Yes / No.
9. ~~Has~~ the application is in time: Yes / No.
10. ~~Has~~ the Vokatlatnama/Memo of appearance /Authorisation is filed: Yes / No.
11. Is the application by IPG/BD/for Rs. 50/- 194986
12. Has the application is maintainable: Yes / No.
13. Has the Impugned order original duly attested been filed: Yes / No.
14. Has the legible copies of the annexurea duly attested filed: Yes / No.
15. Has the Index of the documents been filed all available: Yes / No.
16. Has the required number of enveloped bearing full address of the respondants been filed: Yes / No.
17. Has the declaration as required by item 17 of the form: Yes / No.
18. Whether the relief sought for arises out of the Single: Yes / No.
19. Whether interim relief is prayed for: Yes / No.
20. Is case of Condonation of delay is filed is it Supported: Yes / No.
21. ~~Whether this Case can be heard by Single Bench/Division Bench:~~
22. Any other point: -
23. Result of the Scrutiny with initial of the Scrutiny Clerk:
The application is in order.

SECTION OFFICER(J)

DEPUTY REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 50 /2006

Shrimati Joginder Kaur

... Applicant

- Versus -

The Union of India & Ors.

... Respondents.

SYNOPSIS

06.12.2005

Order F. No. 1/HQS/CIT/SHG/05-06/4298 issued by the Commissioner of Income Tax, Shillong to confirm the date of birth of the applicant.

Annexure - A

Letter bearing No. F. No. E-1/Hqs/CIT/SHG/05-06/4298 dated 05/06.12.2005.

Annexure - B(1)

Rule 257 (I).

Annexure - B(II)

Pension Rule.

Annexure - C

Recovery order issued by the Commissioner of Income Tax, Shillong vide letter No. F.No. Per/J-123/CITS/SHG/01-02/5576.

Annexure - D

Order bearing No F. No. Per/J/123/CITS/SHG/05-06 dated 12.12.2005 for superannuating and recovery of amount by the Commissioner of Income Tax, Shillong for overstay in service.

Annexure - E

Ruling for overstay in service due to fault of the employer.

Annexure - F

Appeal dated 12.01.2006 against superannuation and illegal recovery for overstay in service by the Commissioner of Income Tax, Shillong.

Annexure - G

Reminder dated 30.01.2006 against appeal dated 12.01.2006.

Annexure - H

Application dated 03.02.2006 replying to the letter No. F. No./J-123/CIT/SHG/01-02/5576 dated 30.01.2006 issued by the Commissioner of Income Tax Office, Shillong.

Annexure - I

Application dated 13.02.2006 against the application dated 03.02.2006 of the applicant for redressal of grievance.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT GUWAHATI.

Title of the case : 50 OA NO 50 of 2006

BETWEEN

Shrimati Joginder Kaur
Safaiwalli, ITO, Shillong.

Applicant

AND

Union of India and others Respondents

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Filed by ;

Smt. Joginder Kaur

through Smt. Peenam Yadav,

Court, Shillong.

Dated: 24 Feb 2006

Applicant/Advocate
Shillong.

Filed by Joginder Kaur

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Peenam Yadav
(Advocate)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL : GAUHATI:
BENCH GAUHATI.

ORIGINAL APPLICATION 50 2006

(An application U/S 19 of Administrative
Tribunal Act, 1985)

Smt. Joginder Kaur, Safaiwali
of Commissioner of Income Tax,
C/O Raju Singh, Office of the Addl.
Commissioner Income Tax, Shillong.

.... Applicant.

Versus

1. The Union of India, represented by the
Secretary to the Govt. of India,
Ministry of Finance, New Delhi.
2. Shri H. Raikhan, The Commissioner of
Income Tax, Shillong.

.... Respondents.

DETAILS OF APPLICATION

- (i) Name of the applicant : Smt. Joginder Kaur.
- (ii) Husband's Name : Shri Chander Singh
- (iii) Designation and office in which employed : Safaiwali : Commissioner of Income Tax, Shillong.

contd..2..

JK

- (iv) Office : Commissioner of Income Tax, Shillong.
- (v) Address for service all notice. : Smt. Joginder Kaur, C/O Raju Singh, O/O The Additional Commissioner of Income Tax, Shillong Range, Shillong..

2. PARTICULARS OF RESPONDENT:

- (i) Name and Designation of the Officer. : Shri H. Raikhan, Commissioner, Commissioner of Income Tax, Shillong.
- (ii) Office Address : Income Tax Office, Police Bazar, Shillong.
- (iii) Address for service for all Notices. : Income Tax Office, Police Bazar, M. G. Road, Shillong-1.

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

The application is against the following orders :-

- (i) Order Nos. 1. : F. No. Per/ J- 123/ CITSSHG/ 05-06 dated 12.12.2005.
- ii. : F. No. Per/ J-123/CIT/SHG/ 01-02/5576 dated 30.1.2006.

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- 3 -

(iii) Passed by : Shri H. Raikhan, Commissioner,
Commissioner of Income Tax, Shillong.

(iii) Subject is : Applicant overstayed in service,
brief. beyond the date of superannuation,
paid salary for the overstayed
period from 1.1.2002 to 12.2005.
Ordered for recovery of salary paid
for overstayed periods.

4. JURISDICTION OF : The applicant declares that the
THE TRIBUNAL. subject matter of the order or
orders against which he wants
redressal is within the jurisdiction
of the Tribunal.

5. LIMITATION : The Applicant further declare that
the application is within the
limitation prescribed in section 21
of the Administrative Tribunal
Act, 85.

6. FACTS OF THE CASE

The fact of the case are given below :-

6.1. That the applicant is a citizen of India and belongs
to Scheduled Caste and is therefore, entitled to rights
and privileges granted to the citizen of India under
the Article 14 of the Constitution.

JK 6.2. That your applicant was an employee of the Office of
the Commissioner of Income Tax, Shillong and was serving

contd.... 4..

was serving as Safaiwali.

- 6.3. That the applicant is an illiterate lady, she does not know her date of employment. As stated by the Department her date of birth is 20.12.1941.
- 6.4. That in this connection, the applicant had also given her statement and certified in the Service Book that the age of the applicant on 22.12.1976 was 35 years.
- 6.5. That there appears a overwriting in service book as 1.3.1948 with out any initial shows that the date of birth had been tampered with.
- 6.6. That thereafter a show cause was issued to your applicant by the Department to confirm the date of birth with documentary proof vide his office letter No. E. 1/CIT/HQ/SHG/05-06 dated 6.12.05. A copy of the order dated 6.12.05 is annexed herewith as Annexure- A.
- 6.7. That there being no document of age proof with the applicant. Your applicant sworn an affidavit on 7.12.2005, before the Magistrate First Class, Shillong on the *direction of the Dept* with a conjectural statement stated her date of birth as 20.12.48, but could not produce any other documentary proof as she is illiterate and issuance of birth certificate was not so much vogue during those periods.

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20/12/48

6.8. That thereafter the department has taken its own conclusion and taken 20.12.1941 as date of birth and given superannuation to your applicant on 31.12.2001. This has resulted overstayed in service by the applicant from 1.1.2002 to 12.12.2005.

6.9. That the applicant begs to state that the overstay in service by the applicant from 1.1.2002 is not due to mis- representation of the facts by the applicant before the Authorities. But the overstay of the applicant is entirely due to the mistake of the Employer i.e. Respondent No. 2 and the applicant cannot be held responsible for over stay.

6.10. That the Respondent who did not follow the procedure laid down in Rule 257(i) of the GFR and Rule 56 to 61 of CCS Pension Rule of 1972. As extract of the Rules abovementioned are enclosed herewith as Annexure B(i) & B(ii)

6.11. That the applicant most respectfully begs to submit that the applicant has rendered service to the Department for overstayal period i.e. from 1.1.2002 and drawn salary for service rendered to the Department as such the question of recovery of salary for over stayal in service is illegal.

6.12. That in action of the Respondent No. 2 has sustained

contd....6..

JK

sustained heavy financial loss to the poor applicant which has resulted recovery of Rs.3,87,149/- for over stayal in service, even after the applicant discharged his duty most satisfactorily and rendered service to the Department.

6.13. That the Respondent No. 2 has infringed the Constitutional safeguard guaranteed under Article 14 of the Constitution.

6.14. That the applicant crave leave of the Hon'ble Tribunal to file additional written statement/Rejoinder if necessary for ends of justice.

7. RELIEF(S) SOUGHT FOR

In view of the facts mentioned in para 6 above the applicant prays for following reliefs :-

- i. For setting aside the order for recovery of amount of Rs.3,87,149/- for over stayal in service from 1.1.02 to 12/2005 issued under impugned order No. F.No.Per/J/123/CIT/SHG/01-02/5576 dated 30.1.2006 and also the letter No. F. No. Per/ J-123/CITSHG/05-06 dated 12.12.2005
The xerox copy of the orders are enclosed herewith as Annexure C & D .
- ii. For payment of pensionary benefits i.e. pension, leave encashment, Gratuity, CGEIS and other benefits.

contd...7..

- iii. For the applicant is relying on the case law of Tribunal, Jabalpur Bench, between Keshar Bai Versus Union of India, C.A. No. 459/2001, Jabalpur- 14/6/2004/ A xerox copy of the Case law is enclosed herewith as Annexure E .

8. INTERIM ORDER PRAYED FOR

Pending finalisation of decision on the application the applicant seeks issue of following interim order:-

- i. For setting aside the impugned order dated 30.1.2006 and 12.12.2005.
- ii. Provisional payment of pensionary benefits and pension.
- iii. For payment of salary for service rendered for the month of December, 2005 and January 2006.

(iv). To call for Records in connection with petitioner's service book etc. from the Dept.

9. DETAILS OF REMEDIES

- 9.1. The applicant declares that she has availed of all the
- 9.2. All the remedies available to her under the relevant service rules.
- 9.3. An application submitted on 12.1.2006 against the order dated 12/12/2005.
- 9.4. A reminder issued on 30.1.2006.
- 9.5. Again an application submitted on 3.2.2006 against the order dated 30.1.2006.

contd....8...

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9.6. Reminder issued on 13.2.2006.

(Copies of the application are enclosed herewith
as Annexure F, G, H + I)

9.7. The applicant has not received any reply from the
Respondent No. 2.

9.8. To get the grievances redressed under a relevant
service Rule to best of her capabilities, has come
to this Hon'ble Tribunal for having justice as per
Article 21 of the Constitution of India.

10. THE MATTER NOT PREVIOUSLY FILED OR PENDING OR PENDING
WITH ANY OTHER COURT.

10.1. The applicant most humbly submits that she has not
previously filed any application in this Tribunal
nor any other court nor any writ petition or suit
regarding this matter in respect of which this
application has been made before any Court or any
other Bench of Tribunal.

11. PARTICULAR OF BANK DRAFT

11.1. Name of the Bank on which drawn : State Bank of India

11.2. Demand draft No.

: 7810020121.

dt 24/2

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JK

12. DETAILS OF INDEX:

As per Index

13. LIST OF DOCUMENTS:

As enclosed

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contd...10...

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

I, Smti Joginder Kaur, wife of Shri Charan Singh,
aged about 60 years, resident of Income Tax Complex,
M.G. Road, Police Bazar, Shillong, East Khasi Hills
District, Meghalaya, do hereby solemnly affirm and verify
that the contents from 1 to 9
are true to the best of my knowledge and that I have not
suppressed any materials before this Hon'ble Tribunal and
I sign this verification on this 24th day of February,
2006, at Shillong.

JK
*Humble Applicant

Affidavit...11...

JK

A F F I D A V I T

I, Smti Joginder Kaur, wife of Shri Charan Singh, aged about 60 years, resident of Income Tax Complex, M. G. Road, Police Bazar, Shillong, East Khasi Hills District, Meghalaya, do hereby solemnly affirm and declare on oath as under :-

- 1) That I am the applicant in this Petition.
- 2) That I am fully conversant with the facts and circumstances of the Case.
3. That the statements made herein above in the paragraphs from 1 to 9

of the application are true to the best of my knowledge, belief and information as the same are matters of records and the rest are my humble submission which I believe to be true and I sign this Affidavit on this 24 day of February 2006 at Shillong.

Identified by :

JK

Advocate, Shillong.

JK
X Deponent

JK

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ANNEXURE A

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OFFICE OF THE
COMMISSIONER OF INCOME-TAX, SHILLONG.
Aayakar Bhawan, MG Road, Shillong-793001.

F.No.E-1/Hqrs/CIT/SHG/05-06/4298

Dated: 05-12-2005.

To
Smt. Joginder Kaur,
Safaiwala,
O/o the CIT, Shillong.

Subject: Confirmation of 'Date of Birth'- reg.

As per your Service Book, your date of birth is 20-12-1941. The medical fitness certificate signed by Asst. Surgeon-I, Civil Hospital Shillong submitted by you from Civil Hospital Shillong also supports the said age.

Based on the above facts, your date of retirement from service should be 31-12-2001.

You are accordingly requested to please furnish documents in support of the claim that the date of birth is not 20-12-1941.

Your reply should be submitted with seven days from the date of receipt of this communication.

Yours faithfully,

[Signature]

(A. Mazumdar)

Asst. Commissioner of Income-tax, Hqrs.,
For Commissioner of Income-tax, Shillong.

C
Certified to be true copy

[Signature]
Adv.

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Rule 257. (1) Service Book.— Detailed Rules for maintenance of Service Books are contained in SR 196 to 203. Service Books maintained in the establishment should be verified every year by the Head of Office who, after satisfying himself that the services of Government servants concerned are correctly recorded in each Service Book shall record the following certificate "Service verified from (the date record from which the verification is made) upto (date)"

Rule 257. (2) The service book of a Government servant shall be maintained in duplicate. First copy shall be retained and maintained by the Head of the Office and the second copy should be given to the Government servant for safe custody as indicated below :—

- (a) To the existing employees — within six months of the date on which these rules become effective.
- (b) To new appointees — within one month of the date of appointment.

Rule 257. (3) In January each year, the Government servant shall handover his copy of the Service Book to his office for updation. The office shall update and return it to the Government Servant within thirty days of its receipt.

Rule 257. (4) In case the Government servants' copy is lost by the Government servant, it shall be replaced on payment of a sum of Rs. 500.

Rule 258. Retrospective claim due from date of sanction.— In the case of sanction accorded with retrospective effect, the charge does not become due before it is sanctioned. In such cases the time-limit specified in Rule 264 (1) should be reckoned from the date of sanction and not from the date on which the sanction takes effect.

Rule 259. Due date of T.A. claim.— Travelling allowance claim of a Government servant shall fall due for payment on the date succeeding the date of completion of the journey. He shall submit the travelling allowance claim within one-year of its becoming due failing which it shall stand forfeited.

Rule 260. Reckoning the date in case of T.A. claims by retired Government servants appearing in a Court of Law for defending himself.— Retired Government servants become eligible for reimbursement of Travelling expenses in respect of travel(s) for appearing in court of law for defending himself only when the judgment relating to his honourable acquittal is pronounced by the court. In such cases, the date of pronouncements of the judgment shall be the reference point for submission and forfeiture of his T.A. claim.

Rule 261. Due date of Leave Travel Concession claim.— Leave Travel Concession claim of a Government servant shall fall due for payment on the date succeeding the date of completion of return journey. The time-limit for submission of the claims shall be as under :—

- (i) In case advance drawn : Within one month of the due date.
- (ii) In case advance not drawn : Within three month of the due date.

ANNEXURE - B (1)

In case of (i) above if the claim is not submitted within one month of the due date, the amount of advance shall be recovered but the Government employee shall be allowed to submit the claim as under (ii) above.

In case of failure to submit the claim in both the cases within three months of the due date, the claim shall stand forfeited.

Rule 262. Due date of Over Time Allowance claims.— A claim for overtime allowance shall fall due for payment on first day of the month following the month to which the overtime allowance relates. The claim shall stand forfeited if not submitted within one year of the due date.

Rule 263. Due date of a withheld increment.— In the absence of any specific order withholding an ordinary increment under FR 24 before the date on which it falls due for payment, the period of one year should be counted from the date on which it falls due and not with reference to the date on which the Increment Certificate is signed by the competent authority. Even where an increment is withheld, the time-limit should be reckoned from the date on which it falls due after taking into account the period for which it is withheld.

Rule 264. (1) Arrear Claims.— Any arrear claim of a Government servant which is preferred within two years of its becoming due shall be settled by the Drawing and Disbursing Officer or Accounts Officer, as the case may be, after usual checks.

Rule 264. (2) For the purpose of the above provisions, the date on which the claim is presented at the office of disbursement should be considered to be the date on which it is preferred.

Rule 264. (3) (i) A claim of a Government servant which has been allowed to remain in abeyance for a period exceeding two years, should be investigated by the Head of the Department concerned. If the Head of Department is satisfied about the genuineness of the claim on the basis of the supporting documents and there are valid reasons for the delay in preferring the claims, the claims should be paid by the Drawing and Disbursing Officer or Accounts Officer, as the case may be, after usual checks.

(ii) A Head of Department may delegate the powers conferred on him by sub-rule (i) above to the subordinate authority competent to appoint the Government servant by whom the claim is made.

Rule 265. (1) Procedure for dealing with time-barred claims.— Even a time-barred claim of a Government servant, shall be entertained by the concerned authority, provided that the concerned authority is satisfied that the claimant was prevented from submitting his claim within the prescribed time-limit on account of causes and circumstance beyond his control.

Rule 265. (2) A time-barred claim referred to in Rule 265 (1) shall be paid with the express sanction of the Government issued with the previous consent of the Internal Finance Wing of the Ministry or Department concerned.

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III—RECORDS OF SERVICE

DIVISION 7

[Rules made under F.R. 74 (a) (iv)]

GAZETTED GOVERNMENT SERVANTS

S.R. 196. A record of the services of a Gazetted Government servant will be kept by such audit officer and in such form as the Comptroller and Auditor-General may prescribe.

GOVERNMENT OF INDIA'S ORDER

Service Books of GOs to be maintained by the respective Head of Office.—It has been decided in consultation with the Comptroller and Auditor-General, that the service records including leave accounts of Gazetted Officers will be transferred by the Accountants-General/Pay and Accounts Officers to the departmental authorities, the arrangements in this regard synchronizing with the general scheme of separation of accounts from audit.

[G.I., M.F., O.M. No. F. 10 (9)-B (TR)/76, dated the 28th February, 1976-Paragraph 1.]

NON-GAZETTED GOVERNMENT SERVANTS

Service Books

S.R. 197. A Service Book in such form as the Comptroller and Auditor-General may prescribe must be maintained for every non-gazetted Government servant holding a substantive post on a permanent establishment or officiating in a post or holding a temporary post with the following exceptions:—

- Government servants the particulars of whose service are recorded in a history of services or a service register maintained by an audit officer.
- Government servants officiating in posts or holding temporary posts, who are recruited for purely temporary or officiating vacancies not likely to last for more than one year and are not eligible for permanent appointment.
- Permanent subordinate non-pensionable servants in State railways, for whom a special form of record has been prescribed.

GOVERNMENT OF INDIA'S ORDER

(1) **Revision in form of Service Book.**—The question of revision of the existing form of the Service Book has been under consideration of Finance Ministry and it has been decided after consultation with the Comptroller and Auditor-General to revise the form as per the specimen enclosed (*not printed*). The revised Service Book form will be applicable only to new entrants to Government service. In the case of existing Government servants, the new Service Book may be used, when the existing stock is exhausted and in that case the existing entries need not be re-written in the new form.

[G.I., M.F., O.M. No. F. 3 (2)-E. IV (A)/73, dated the 11th March, 1976.]

As per above, a photograph of the Government employee has to be affixed on the first page of Part I of the revised Service Book. A question has been raised whether the cost of the photograph has to be borne by the Government employee or by the Government. This matter has been considered and it has been decided that the cost of the photograph shall be borne by the Government in future.

[G.I., M.F., O.M. No. 17011/1/E. IV (A)/77, dated the 7th July, 1977.]

The revised Service Book form brought into use shall also be used in the Police and other similar Departments with an 'Appendix' for recording postings in the enclosed form (*not printed*).

[G.I., M.F., O.M. No. F. 3 (4)-E. IV (A)/76, dated the 14th March, 1977.]

S.R. 198. In all cases in which a Service Book is necessary under Rule 197, such a book shall be maintained for a Government servant from the date of his first appointment to Government service. It must be kept in the custody of the Head of the Office in which he is serving and transferred with him from office to office.

GOVERNMENT OF INDIA'S ORDER

Supply of certified copy of Service Book on quitting services.—The cost of Service Book should be borne by the Government and that it should not be returned to the Government servant on retirement, resignation or discharge from service even in cases where he might have paid for it already.

[G.I., M.F., O.M. No. F. 12 (6)-E. IV/54, dated the 31st January, 1955.]

The question whether it would be permissible to supply a certified copy of the service book of a Government servant who asks for it on quitting Government service by retirement, discharge or resignation has been considered and it has been decided that in such cases a certified copy of a Service Book may be supplied to the Government servant on payment of a copying fee of Rs. 5.

[G.I., M.F., O.M. No. F. 12 (16)-E. IV/6, dated the 9th May, 1961.]

Consequent on departmentalization of accounts and the maintenance of service books in respect of Gazetted officers having been introduced, a question has arisen whether copying fee is to be charged from Gazetted officers who were entitled to free supply of extract of service records on a requisition. It has been decided that for supply of a certified copy of service book to Gazetted officers, a copying fee of Rs. 5 is to be charged. The copying fee should be accounted for under the appropriate Receipt Major Head of the Office/Ministry/Department, under the Minor Head "Other Receipts".

[G.I., M.H.A., Dept. of Per. & A.R., O.M. No. P-17012/2/79-LU, dated the 27th September, 1980.]

S.R. 199. Every step in a Government servant's official life must be recorded in his Service Book, and each entry must be attested by the Head of his Office, or, if he himself is the Head of an Office, by his immediate superior. The Head of the Office must see that all entries are duly made and attested, and that the book contains no erasure or overwriting, all corrections being neatly made and properly attested.

GOVERNMENT OF INDIA'S DELEGATIONS

(1) In relaxation of the provision of S.R. 199, the Heads of the Offices are permitted to delegate to subordinate Gazetted officers under them powers to attest entries in Service Books of all Gazetted officers (except their own Service Books) for the maintenance of which the Heads of Offices are responsible.

The subordinate Gazetted officers who are delegated powers to attest entries in the Service Books of Gazetted officers are also authorized—

- (i) to keep these documents in their custody, and
- (ii) to attest entries in the leave accounts:

Provided that the Head of the Office concerned remains responsible for the proper maintenance of and attestation of entries in Service Books and leave accounts and for their custody. The Head of the Office should scrutinize at least ten per cent of these documents every year and initial the same in token of having done so.

The powers to attest entries in Service Books and leave accounts shall not be exercised by those Gazetted Officers who have been delegated such powers in respect of entries in their own Service Books and leave accounts. The entries in their Service Books should be attested by the Head of the Office who will also be responsible for their custody.

[G.I., M.F., O.M. No. 3 (3)-E. IV (A)/76, dated the 25th November, 1976.]

(2) The Superintendents/Accountants (non-Gazetted) in the Indian Audit and Accounts Department are delegated powers to attest entries in the service books and leave account of non-Gazetted staff, other than those on the first page of the service book and annual verification of the services.

These powers will not, however, be exercised by them in respect of entries in their own service books and leave accounts and will be subject to the condition that the Gazetted Officers, who are delegated powers to attest entries on the first page of service book, continue to inspect ten per cent of the service books and initial them in token of their having done so.

NOTE.—This delegation is subject to the following further conditions:—

- (i) Entries regarding increments, fixation of pay, etc., should be based on the increment certificates, pay fixation statements, etc., duly approved by the Branch Officer.
- (ii) In the case of leave, the title to leave should be verified by the Branch Officer-in-charge of Administration before the sanction to leave is accorded.

[G.I., M.F., Letter No. 3 (3)-EGI/67, dated the 20th April, 1967 and dated the 21st August, 1967; and Comptroller and Auditor-General's Letter No. 1348-Tech. Admn. I/698-66, dated the 3rd May, 1967.]

(3) The following officers of the Indian Posts and Telegraphs Department who are not Heads of Offices, are authorized to attest the entries in Service Books (except their own Service Books) which are required to be maintained by their Heads of Offices:—

- (i) Post Office Accountants in the selection grade and Junior/Assistant Accounts Officers (in the Engineering Divisions);
- (ii) Head Record Clerk, RMS;
- (iii) Any Gazetted Officer or a Superintendent in the Grade 'A' Circle Office (Rs. 350-450 old scale) or any officer in the selection grade authorized by the Head of the Office, if there is no Accountant in the selection grade in the office.

The above-mentioned officers who have been authorized to attest entries in Service Books and Service Rolls are also authorized (i) to keep these documents in their custody, and (ii) to attest entries in the leave accounts, provided that the Head of the Office concerned remains responsible for the proper maintenance of, and attestation of entries in, Service Books and Service Rolls and Leave Accounts and for their custody. In order to ensure that the Head of the Office does exercise general supervision in this matter, it is ordered that the Head of the Office should inspect at least ten per cent of these documents every year and initial them in token of having done so.

[F.A., P. & T.'s Endorsement No. S.A. 82 (23) 30, dated the 30th June, 1932; No. Es. B. 132-2/32, dated the 15th November, 1933 and F.A. (C/s), Endorsement No. 132-3/44, dated the 24th November, 1945.]

(4) The Junior/Assistant Accounts Officers, attached to whatever offices, are delegated with the following powers:—

- (i) To attest entries in Service Books and Service Rolls including entries about verification of services;

- (ii) To maintain Service Books, Service Rolls and Leave Accounts and keep them in their custody; and
- (iii) To attest entries in leave accounts.

2. The delegation of these powers is subject to the condition that the Head of the Office remains responsible for the proper maintenance and custody of Service Books, Service Rolls and Leave Accounts and for the attestation of entries in these documents; and that he inspects at least ten per cent of these documents, every year and initials them in token of having done so.

[G.I., M.F. (C), Endorsement No. SPA-302-3/53, dated the 14th May, 1954.]

(5) The Assistant Postmasters (Accounts) attached to Head Post Offices are delegated with the following powers in respect of those offices except for themselves:—

- (i) to attest the entries in Service Books and Service Rolls;
- (ii) to keep the documents in their custody;
- (iii) to attest the entries in the Leave Accounts; and
- (iv) to re-attest the descriptive particulars every 5 years.

2. This delegation is subject to the conditions that the Head of Office shall remain responsible for the proper maintenance of the service books, service rolls and leave accounts, for the attestation of entries in these documents and for their custody and he shall inspect at least ten per cent of these documents every year and initial them in token of having done so.

[G.I., M.F., (C), Endst. No. 127/1/60-SPB-II, dated the 30th June, 1960.]

(6) The Assistant Accountants (Lower Selection Grade) in GPO's are delegated with the following powers in respect of staff of those offices except for themselves:—

- (i) to attest the entries in Service Books;
- (ii) to keep the documents in their custody;
- (iii) to attest the entries in the leave accounts; and
- (iv) to re-attest the descriptive particulars every 5 years as required by Rule 288 (f) of the P. & T., FHB, Vol. I (Second Edition).

2. This delegation is made subject to the conditions that the Head of the Office shall remain responsible for the proper maintenance of the Service Books and Leave Accounts for the attestation of entries in these documents and for their custody and that he shall inspect at least ten per cent of these documents every year and initial them in token of having done so.

[D.G., P. & T.'s Memo. No. 127/2/61-SPB-II, dated the 28th February, 1962, issued with the concurrence of Ministry of Finance (C) Dn., vide their U.O. No. 1317-PT-A/62, dated the 26th February, 1962.]

GOVERNMENT OF INDIA'S ORDERS

(1) **Declarations and Pay fixation memos to be pasted in Service Books.**—The declarations of Government servants electing the scales of pay and statements showing the fixation of initial pay in the relevant scales of pay in support of the entries in the Service Books should be pasted in the Service Books themselves.

[G.I., M.F., U.O. No. 3622-Estt. III/A/55, dated the 10th May, 1955.]

(2) **Entries regarding outfit allowance.**—With a view to enable the Audit Officer to exercise a check over the payment of outfit allowance to non-Gazetted staff serving in Indian Missions and posts abroad, it has been decided that a note of every such payment (i.e., Bill No., amount and date of encashment) with its authority should be recorded in the body of the Service Book of the non-Gazetted Government servant in chronological order along with other entries.

[G.I., M.F., O.M. No. 15 (13)-E. II (B)/56, dated the 3rd July, 1958.]

(3) **Alteration of date of birth.**—See Note 6 below F.R. 56.

(4) **Attestation by a lower authority to which power to sanction leave is delegated by the appointing authority.**—In view of the fact that the authority competent to fill up the post of the Government servant, if it were vacant has been empowered to delegate its power to sanction leave to another authority to the extent it considers necessary the power to attest entries in the leave accounts of non-Gazetted Government servants may be exercised by the authority to which the power to sanction leave is delegated. However, to ensure the proper maintenance of leave accounts by the lower authorities to whom the power to sanction leave is delegated, it has been decided that the Heads of Offices should inspect at least 10 per cent of the leave accounts every year and initial them in token of their having done so.

[G.I., M.F., U.O. No. 4725-E. IV/A/58, dated the 31st July, 1958 and U.O. No. 1559-E. IV/A-59, dated the 20th March, 1959.]

(5) **Entries regarding counting of past service for pension treating resignation as technical formality.**—See Government of India's Decision (3) below Rule 26, CCS (Pension) Rules, 1972—Swamy's Pension Compilation.

(6) **GPF Account No. to be entered in Service Book.**—It has been decided in consultation with the Comptroller and Auditor-General that as soon as a Government servant is admitted to a Provident Fund, Account Number allotted to him should be entered on the right hand top of page 1 of his Service Book by means of a rubber stamp.

[G.I., M.F., O.M. No. F. 3 (1)-E. IV (A)/66, dated the 7th October, 1966.]

(7) **CGEGI Scheme nomination to be pasted in the Service Book.**—The nomination made by the members of the "Central Government Employees' Group Insurance Scheme, 1980" shall be countersigned by the

CHAPTER VIII

Determination and authorization of the amounts of pension and gratuity

56. Preparation of list of Government servants due for retirement

(1) Every Head of Department shall have a list prepared every six months, that is, on the 1st January, and the 1st July each year of all Government servants who are due to retire within the next 24 to 30 months of that date.

(2) A copy of every such list shall be supplied to the Accounts Officer concerned not later than the 31st January or the 31st July, as the case may be, of that year.

(3) In the case of a Government servant retiring for reasons other than by way of superannuation, the Head of Office shall promptly inform the Accounts Officer concerned, as soon as the fact of such retirement becomes known to him.

(4) A copy of intimation sent by the Head of Office to the Accounts Officer under sub-rule (3) shall also be endorsed to the Directorate of Estates if the Government servant concerned is an allottee of Government accommodation.

57. Intimation to the Directorate of Estates regarding issue of "No Demand Certificate"

(1) The Head of Office shall write to the Directorate of Estates at least two years before the anticipated date of retirement of the Government servant who is in occupation of a Government accommodation, (hereinafter referred to as allottee) for the issue of a 'No demand certificate' in respect of the period preceding eight months of the retirement of the allottee.

(2) On receipt of the intimation under sub-rule (1), the Directorate of Estates shall take further action as provided in Rule 72.

GOVERNMENT OF INDIA'S DECISIONS

(1) Issue of 'No Demand Certificate'.— 1. The existing procedure for the issue of "No Demand Certificate" by the Directorate of Estates has been incorporated in Rules 57 and 72 of the CCS (Pension) Rules, 1972. With a view to expediting the issue of 'No Demand Certificate', the question of simplifying and rationalizing the existing procedure was further examined and supplementary instructions were issued. Briefly, the

Administrative Ministries/Departments concerned are required to furnish a list of Government servants in occupation of Government accommodation, along with applications from the individual, on the prescribed form, for issue of 'No Demand Certificate', to the Directorate of Estates at least two years before the date of superannuation of the official concerned. Under the existing orders, the Directorate of Estates in its turn would issue an Advance 'No Demand Certificate' to the Department concerned with a copy endorsed to the individual concerned eight months before the date of superannuation informing—

- (i) the amount of licence fee due up to that period, i.e., eight months prior to the date of superannuation;
- (ii) the monthly rate of recovery of licence fee for the rest of the service, i.e., eight months; and
- (iii) the amount of licence fee recoverable for two months (*now four months*) period of retention allowed after retirement.

2. On receipt of such an intimation from the Directorate of Estates, the Department concerned is responsible for the recovery of the amounts as indicated above. Thereafter, it is at liberty to finalize the pension account of the individual without any further certificate from the Directorate of Estates. After permissible period of retention, i.e., from the date of cancellation, the occupant is to be dealt with by the Directorate of Estates as if it were a private party. Thus, the Department concerned is no longer required to correspond with the Directorate of Estates about that individual for the period beyond the cancellation of allotment. This procedure has been brought to the notice of all Ministries/Departments, etc., again by the Directorate of Estates *vide* their O.M. No. 3/28/82-(P-I)/RCS, dated the 4th May, 1983 (*copy reproduced below*).

3. From the position explained above, it is very clear that after ensuring recoveries mentioned in Para. 1, the Departments are at liberty to finalize the accounts of the retired Government servants. Besides, if the Directorate of Estates, for certain reasons, fails to inform the Department concerned about the dues eight months prior to his date of retirement, they are free to assume that nothing is due on account of rental dues in the books of the Directorate of Estates and they can finalize the pension papers of the individual concerned without waiting for any certificate from the Directorate of Estates, provided the Department had forwarded the application for No Demand Certificate two years in advance and had obtained an acknowledgement for the same.

4. It has been brought to the notice of this Department that most of the Ministries and their attached and subordinate offices do not adhere to these instructions and insist for a final "No Demand Certificate" from the Directorate of Estates to enable the retired Government servant to get back his withheld amount of the Retirement Gratuity. Scores of such retired Government servants visit the Directorate of Estates for this purpose which entails unavoidable work all round apart from harassment to the Government servants by their own Departments. It is, therefore, impressed

on all the Ministries/Departments that the existing prescribed procedure should be strictly and scrupulously followed by all concerned so that the retiring and retired Government servants do not experience any hardship due to delays in the settlement of their pension cases.

[G.I., M.H.A., Dept. of Per. & A.R., O.M. No. 41/6/84-Pension Unit, dated the 18th July, 1984.]

COPY OF DIRECTORATE OF ESTATES, O.M. NO. 3/28/82 (PI)/RCS, DATED THE 4TH MAY, 1983.

1. Attention is invited to the Directorate of Estates' Office Memo. No. 3/3/76-RCS, dated 23-6-1977, followed by another O.M. No. 3/28/81-RCS, dated 23-8-1982, according to which the Departments concerned are required to furnish a list of Government servants along with application from the individuals, on the prescribed form for issue of No Demand Certificate to the Directorate of Estates at least 2 years before the date of superannuation of the officials in occupation of General Pool Accommodation.

2. The Directorate of Estates in its turn would issue an Advance No Demand Certificate to the Department concerned with a copy endorsed to the individual concerned 8 months before the date of superannuation informing the amount of licence fee due up to that period, i.e., 8 months prior to the date of superannuation besides the rate of monthly recovery of licence fee for the rate of the service, i.e., 8 months. The amount of licence fee recoverable for 4 months period of retention allowed after retirement, is also to be intimated simultaneously. Thereafter, the Departments are at liberty to finalize the pension account of the individual. The Department has to ensure full recovery of the amount shown as due in the advance 'No Demand Certificate'. At the time of sanctioning pension, PPO No. and the particulars of Treasury/Bank on which it is issued, is to be intimated to the Directorate of Estates along with the permanent residential address of the retiring officer. After the permissible period of retention, i.e., from the date of cancellation, the occupant is to be dealt with by the Directorate of Estates as if it were a private party. The Departments concerned are no longer required to correspond with the Directorate of Estates about that individual for the period beyond the cancellation of allotment. However, it is seen that at the time of releasing the withheld amount of DCRG, many of the offices insist for another certificate from the Directorate of Estates on this account. As explained above, no such further certificate is normally required to be issued by the Directorate of Estates.

3. All the Ministries/Departments are requested to adhere to the time-schedule of informing the Directorate of Estates the date of superannuation of an allottee two years before his retirement and after the receipt of advance Final Demand Certificate issued by this Directorate, they should not normally ask for any further certificate on this account.

(2) Issue of 'No Demand Certificate' in case of Interpool exchange of Government accommodation.— 1. Interpool exchange of the General Pool accommodation with Departmental or other Autonomous Bodies accommodation is occasionally made in certain cases so that an Officer

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ANNEXURE B-(11)

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occupying a particular quarter does not have to shift unnecessarily at a particular station. In such cases, the Department concerned is required to deposit the licence fee collected from the allottee with the Directorate of Estates. Sometimes the Department fails to deposit the licence fee even though they have actually recovered the same from the officer occupying the accommodation in question. The amount remains in arrears in some cases even after termination of interpool exchange. Meanwhile if the allottee retires, he is not issued the 'No Demand Certificate' on the ground that some dues for the period of exchange have not been settled, notwithstanding the fact that the allottee had paid the licence fee to the department. As a result the allottee suffers, because part of his gratuity is withheld pending issue of 'No Demand Certificate'.

2. After due consideration, it has been decided that the 'No Demand Certificate' should not be withheld in respect of retired officer merely on the ground that some adjustment of dues between two organization is pending for the period the quarter remained exchanged with departmental pool, provided there are no other dues to be recovered from the officer for other periods and it has also been certified by the department concerned that the officer had actually paid the licence fee to the department, where he remained posted during the period the quarter was exchanged with department pool.

[G.I., Dir. of Estates, O.M. No. 12035 (18)/90-Pol. II, dated the 5th November, 1990.]

(3) Directorate of Estates to be informed forthwith regarding retirement/death of occupants of quarters.— As per present practice, all the Ministries/Departments are required to intimate this Directorate about the transfer/retirement/death of a Government servant working under their administrative control to enable this Directorate to cancel the quarter, if any, in the name of that Government servant. However, it has been observed that this practice is not being followed scrupulously by most of the Ministries/Departments with the result that the Government servants who are transferred out of Delhi or retired, continue to retain Government accommodation unauthorisedly for considerably long periods. The Comptroller and Auditor-General in his report ending 31st March, 1989, have taken a serious view of the situation and have pointed out 734 such cases where there was delay in cancellation of quarters due to retirement/transfer/death of the Government servant.

It is, therefore, impressed upon all the Ministries/Departments once again to intimate this Directorate about the transfer of Government servants from one office to another or to outstation and about retirement or death of the Government servant immediately on the occurrence of such events to enable this Directorate to take further necessary action in respect of Government accommodation, if any, allotted to that Government servant.

[G.I., Dir. of Estates, O.M. No. 23011/4/89/Pol. III, dated the 28th December, 1990.]

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58. Preparation of pension papers

Every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which a Government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

59. Stages for the completion of pension papers

(1) The Head of Office shall divide the period of preparatory work of two years referred to in Rule 58 in the following three stages:—

(a) First Stage.— Verification of service:

- (i) The Head of Office shall go through the Service Book of the Government servant and satisfy himself as to whether the certificates of verification for the entire service are recorded therein.
- (ii) In respect of the unverified portion or portions of service, he shall arrange to verify the portion or portions of such service, as the case may be, with reference to pay bills, acquittance rolls or other relevant records and record necessary certificates in the Service Book.
- (iii) If the service for any period is not capable of being verified in the manner specified in sub-clause (i) and sub-clause (ii), that period of service having been rendered by the Government servant in another office or Department, a reference shall be made to the Head of Office in which the Government servant is shown to have served during that period for the purpose of verification.
- (iv) If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-clause (i), or sub-clause (ii), or sub-clause (iii), the Government servant shall be asked to file a written statement on plain paper stating that he had in fact rendered that period of service, and shall, at the foot of the statement, make and subscribe to a declaration as to the truth of that statement, and shall in support of such declaration produce all documentary evidence and furnish all information which is in his power to produce or furnish.
- (v) The Head of Office shall, after taking into consideration the facts in the written statement and the evidence produced and the information furnished by that Government servant in support of the said period of service, admit that portion of service as having been

rendered for the purpose of calculating the pension of that Government servant.

(b) Second Stage.— Making good omission in the Service Book.—

- (i) The Head of Office while scrutinizing the certificates of verification of service, shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of emoluments and the service qualifying for pension.
- (ii) Every effort shall be made to complete the verification of service, as in Clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i) of this clause. Any omissions, imperfections or deficiencies including the portion of service shown as unverified in the Service Book which it has not been possible to verify in accordance with the procedure laid down in Clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the Service Book.
- (iii) Calculation of average emoluments.— For the purpose of calculation of average emoluments, the Head of Office shall verify from the Service Book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the Service Book, the Head of Office may verify the correctness of emoluments for the period of twenty-four months only preceding the date of retirement of a Government servant, and not for any period prior to that date.

(c) Third Stage.— As soon as the second stage is completed and in any case not later than ten months prior to the date of retirement of the Government servant, the Head of Office shall take the following action:—

- (i) He shall furnish to the retiring Government servant a certificate regarding the length of qualifying service proposed to be admitted for purpose of pension and gratuity as also the emoluments and the average emoluments proposed to be reckoned with for retirement gratuity and pension. In case the certified service and emoluments as indicated by the Head of Office are not acceptable to him, he shall furnish to the Head of Office the reasons for non-acceptance, *inter alia*,

1. Substituted by G.I., Dept. of P. & P.W., Notification No. 38/84/89-P. & P.W. (F), dated the 3rd September, 1993, published as G.S.R. No. 449, in the Gazette of India, dated the 11th September, 1993.

supported by the relevant documents in support of his claim.

- (ii) In case of any difficulty in determining the length of qualifying service on account of non-availability of service records, the retiring Government servant shall be asked to file a written statement of service as provided in Clause (ii) of sub-rule (1) and sub-rule (2) of Rule 64.
- (iii) Forward to the retiring Government servant Form 4 and Form 5 advising him to submit the same duly completed in all respects so as to reach the Head of Office not later than eight months prior to his date of retirement.

(2) Action under Clauses (a), (b) and (c) of sub-rule (1) shall be completed eight months prior to the date of retirement of the Government servant.

GOVERNMENT OF INDIA'S DECISIONS

(1) Staff dealing with pension matters to be trained properly in pension procedures.— The Study Team has pointed out that staff responsible for processing pension cases were found to be not fully aware of the urgency of maintaining the time-schedule for obtaining and processing of pension papers. It was also found that staff dealing with pension had not undergone any training on the subject. The Ministries/Departments are advised to ensure that staff dealing with pension matters are trained properly in pension procedures and they should be sent for in-service training from time to time.

(2) Periodical co-ordination meeting between Administrative Heads and Accounts Offices.— The Study Team has highlighted the need for co-ordination and periodical meetings between Administrative Head and Accounts Office to sort out any shortcomings in the service record of retiring persons. Such meetings should be monitored at the highest level.

[G.I., Dept. of P. & P.W., O.M. No. 38/116/93-P. & P.W. (F), dated the 2nd May, 1994.— Paras. 6 and 8.]

60. Completion of pension papers

The Head of Office shall complete Part-I of Form 7 ¹[not later than six months of the date of retirement] of the Government servant.

61. Forwarding of pension papers to Accounts Officer.

(1) After complying with the requirement of Rules 59 and 60, the Head of Office shall forward to the Accounts Officer Form 5 and Form 7 duly completed with a covering letter in Form 8 along with

1. The expression "not later than six months of the date of retirement" should be interpreted to mean "not later than six months before the date of retirement".

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Service Book of the Government servant duly completed, up-to-date, and any other documents relied upon for the verification of service.

(2) The Head of Office shall retain a copy of each of the Forms referred to in sub-rule (1) for his records.

(3) Where the payment is desired in another circle of accounting unit, the Head of Office shall send Form 7 in duplicate to the Accounts Officer.

(4) The papers referred to in sub-rule (1) shall be forwarded to the Accounts Officer not later than six months before the date of retirement of Government servant.

GOVERNMENT OF INDIA'S DECISIONS

(1) Pension Calculation Sheet to be given to Pensioner.— 1. Representations have been received from Pensioners' Associations about reforming the pension payment procedures. One of the suggestions made is that, Pension Payment Order should contain a Pension Calculation Sheet detailing therein the period of service rendered, date and rate of last increment with scale of pay, etc.

2. The matter has been examined in consultation with the Comptroller and Auditor-General of India and the Controller-General of Accounts and it is felt that there is need for the pensioner to be supplied with details leading to the computation of pension. With this end in view, it is proposed that the Head of Office preparing the pension case of a Central Government employee should prepare in triplicate a certified calculation sheet, as in the pro forma attached (see revised format under Form 7), certify the sheet at the bottom and pass it on to the concerned PAO/Accounts Officer along with the pension case.

3. The PAO/Accounts Officer, while issuing the pensionary authorization, countersign the calculation sheet as certified by the Head of Office, retain one copy (out of the three received by him from the Head of Office) and forward one copy as countersigned by him to the pensioner, along with the intimation of his having sent the pension payment authority/PPO to the AG/PAO, etc. The third copy of the certified calculation sheet as countersigned by the PAO/Accounts Officer, will be passed on by the PAO/AO to the Principal Accounts Officer of the Ministry/Department concerned, and the latter would record those calculation sheets as certified by the Head of Office and countersigned by the PAO/AO, in a guard file with a proper index.

[G.I., Dept. of P. & P.W., O.M. No. 38/19/85-PU, dated the 2nd September, 1985 and corrigendum, dated the 7th February, 1986 and O.M. No. 38/24/91-P. & P.W. (F), dated the 22nd November, 1991.]

(2) Scale of pay of the post last held, to be indicated in all the Pension Payment Orders.— The V Central Pay Commission in Para. 139.9 of their report in Chapter 139 have recommended that the scale of post last held by the pensioners need to be indicated in the Pension Payment Order by modifying the existing column in the present PPO showing "post/grade/rank last held....." for proving special mention of scale of pay. It has further been recommended that the above column should be indicated in all

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ANNEXURE -C

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F.No.Per/J-123/CIT/SHG/01-02/ 5576
OFFICE OF THE COMMISSIONER OF INCOME TAX
AAYAKAR BHAWAN ::: POST BOX - 20
SHILLONG.

Dated Shillong the 30th January, 2006

To
 Smti Joginder Kaur,
 C/O Raju Singh,
 O/o the Addl. Commissioner of Income-tax,
 Shillong Range,
 Shillong.

Sub:- Recovery of Pay & Allowances, Arrear, etc.-

Madam,

Please refer to the above subject.


Kindly refer to Order F.No.Per/J-1234/CIT.SHG/2005-06 dated 12-12-2005 which was served you on 12-12-2005 wherein your superannuation date was taken as 31-12-2001. From Office records it is noted that though having superannuated on 31-12-2001 you had drawn pay and allowances, arrear DA, Medical Re-imbursement, Adhok Bonus and LTC Totally to Rs.3,87,149/-. Such receipts drawn by you, beyond the period 31-12-2001 has caused pecuniary loss to the Govt. of India. The details of such loss is given below:-

1. Pay & Allowances(Gross receipt)	- Rs. 3,24,617/-
2. Arrear DA	Rs. 3,323/-
3. Medical reimbursement	Rs. 44,501/-
4. Adhok Bonus	Rs. 9,868/-
5. LTC	Rs. 4,840/-
	<hr/> Rs. 3,87,149/-

You are accordingly requested to make it convenient to refund the amount of Rs.3,87,149/- at an early date by the 17th February, 2006.

Failure to repay the said amount would entail adjustment of the same from your retirement benefits and as per a FR 56 and Rule 8 and 9.

Yours faithfully,


 (H. Raikhan)
 Commissioner of Income-tax,
 Shillong.

Certified to be true copy

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 (Poornam Sadan)
Advocate

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ANNEXURE-D
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OFFICE OF THE COMMISSIONER OF INCOME-TAX, SHILLONG,
SHILLONG.

F.No. Per/J-123/CITSHG/05-06

Dated 12th December, 2005

ORDER

1. The Service Book of Smti. Joginder Kaur, d/o Late Baswa Singh and w/o Shri Charan Singh, presently employed in the Office of the Commissioner of Income-tax, Shillong as a Safaiwallah was inspected. It was noticed that her date of birth was entered as 20-12-1941 in black ink. This entry was cancelled by a purplish ink. In its place an entry in red ink was made to indicate the date of birth as 01-03-1948. This date in words was written in blue colour through a ball point pen. The designation of I.T.O. Hqrs., Shillong was also written in red ink. This correction was not signed. No confirmatory evidence or any sanction Order was passed as required under F.R. 56 Note 6.

2. The Assistant Surgeon-I, Civil Hospital, Shillong in Form-A attached to the Service Book certified on 22-12-1976 that Smti. Joginder Kaur as per her statement on that day was 35 years old, This reconfirmed the fact that her date of birth was somewhere around 20-12-1941 as entered in her Service Book. As there was reasonable belief that the date of birth had been tampered, a show cause notice vide this Office No. E-1/CIT/Hqrs/SHG/05-06/4298 dated 06-12-2005 was issued to her to confirm her date of birth with documentary proof. Smti. Joginder Kaur replied on 09-12-2005 by producing an Affidavit dated 07-12-2005 which was affirmed before the Honourable Magistrate First Class at Shillong. In the affidavit, amongst other statements, Smti. Joginder Kaur swore that her date of birth was 20-12-1948. She also stated that her date of birth recorded in the Service Book was 20-12-1948. No documentary proof was produced on grounds of illiteracy.

3. The contention of Smti. Joginder Kaur in the affidavit that her date of birth is 20-12-1948 as entered in the Service Book does not match with the entries in the Service Book which is 20-12-1941 (cancelled one) or 01-03-1948 (the changed one). As the date of birth sworn in the Affidavit to have been recorded in the Service Book is not found

Certified to be true copy

Poonam Yadav.
Advocate

entered in the Service Book, the veracity of her submission is in doubt. Her submission is also not supported by any documentary evidence or proof. As the requirement of F.R. 56 has not been satisfied, the correction that her date of birth is 01-03-1948 (as entered in the Service Book) or 20-12-1948 as sworn in the Affidavit cannot be entertained. Her date of birth is therefore correctly taken to be as and when it was first entered in the Service Book i.e. 20-12-1941 and as was also confirmed by the Assistant Surgeon-I, Civil Hospital, Shillong.

4. In this view of the matter, the date of superannuation for Smti. Joginder Kaur would be 31-12-2001.

5. As Smti Joginder Kaur had drawn emoluments which she was not entitled to w.e.f. 01-01-2002 till date, the said amounts drawn by her shall have to be recovered. For this purpose, but also keeping in mind her critical financial position as also her advanced age, I would deem it proper and reasonable to order that the recoveries to be made from Smti Joginder Kaur be made at 20% of her entitled pension per month till the whole amount is recovered.

6. Smti. Joginder Kaur's service, having superannuated on 31-12-1941 itself, stands discharged and vacated as on this date.

Sd/-
[H.Raikhan]
CIT, Shillong

F.No.Per/J-123/CIT/SHG/05-06 4460-66

Dated 12-12-2005

Copy to:

1. Smti. Joginder Kaur for information.
2. CCIT, Guwahati for information and necessary action.
3. CCIT, Shillong for information.
4. DDO, o/o CIT, Shillong for information and necessary action.
5. ZAO, Shillong for information.
6. PCU, ZAO CBDT, Shillong for information.
7. Bill Section, o/o CIT, Shillong for information and necessary action.

Certified to be true

(Pomam Yadav)

[A.Majumdar]

ACIT, Hqrs., Shillong.

24 ANNEXURE - E (xli) JB

Highlights of 2005

Malafide

Malafide cannot be decided without evidence on record.

Ranjit Kumar Sahay vs. State of Maharastra & Others
OA No. 2162/2003 Mumbai 29.7.2004

Medical Decategorization

(1) A Railway employee on medical decategorisation will be adjusted in a suitable post with same scale of pay. If it were not possible, he will function against a supernumerary post with same pay scale.

H.T. Gondalis vs. UOI & Others O.A. No. 466/2001 Ahmedabad
29.10.2004

(2) An employee not accepting the job offered on his medical decategorisation and seeking alternate appointment (without reporting at the post offered) could not be considered as having resigned from service. If he has put more than 10 years of service he is entitled for pensionary benefits.

B. Jaya Rao vs. UOI & Others O.A. No. 218/2004 Hyderabad 31.8.2004

Misconduct

(1) A minor negligence, lack of efficiency, inability to attain highest standards etc. cannot be taken as misconduct.

Shri Dilip Kumar Rabidas vs. UOI & Others O.A. 237/2003
Guwahati 18.6.2004

(2) A minor mistake/ negligence (resulting in a loss of Rs. 437 due to the negligence of an employee) would not constitute misconduct when there is no ulterior motive behind the failure due to negligence.

Dilip Kumar Rabidas vs UOI & others O.A.No. 237/2003 Guwahati 18.06.2004

Need for Enquiry

Before passing an advisory order, when allegations are made, an enquiry has to be done.

T. Sudhakhar vs. UOI Other O.A. No. 132/2002 Hyderabad 7.10.2004

Notional Promotion - when junior promoted

If while the finalisation of seniority list is in process, a person A is promoted and on finalisation of seniority it is seen that person B is senior to person A, then B, even if he has retired from service by that time, can seek notional promotion on par with his junior for the purpose of fixation of pension and other retiral benefits.

P.Sreemitasulu vs. Th. GM SC Railway Secunderabad and Other
OA No. 46/2004 Hyderabad 8.9.2004

Order in Revision

An order in revision passed without show-cause notice and/or after limitation period of 6 months is liable to be set aside.

Eknath Shridhar Dharmadhikari vs. UOI & Others
O.A. No. 54/2004 Bombay 31.8.2004

Overstay in post - due to fault of the employer

When an employee has not misrepresented the facts before the authorities, but the overstay of the employee was entirely due to the mistake of the employer, the employee could not be held responsible for the overstay and penalized at the time of retirement by making recoveries from pension.

Kesar Bai vs UOI & Another O.A. No. 459/2001, Jabalpur 14.06.2004

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ANNEXURE - F
M7

To

The Commissioner of Income tax
Shillong

Subject: Appeal against superannuation on discrepancy in service
Records and illegal recovery for over stayal in service

Reference: Your Superannuation order bearing no. F.no. Pers/J-123/
CIT/SHG/05-06 dated 12.12.2005: Smt. Joginder Kaur,
Safaiwalli.

Sir,

56,57,61

With reference to your order cited above, I beg to approach you with the following facts, with the hope that my prayer will meet with ends of Justice:-

1. That regarding tampering with my date of birth in my service book, I most respectfully beg to submit that the Service Book in the prescribed form is to be maintained by the Head of the Office, and it should be in the custody of the subordinate Gazetted officer/Dealing Assistant. Under S.R 199, every step in a Government servant's official character/career must be recorded in his/her service book and each entry attested by the Head of the Office or the officer entrusted with this duty, who should ensure that all entries are duly made and the service book contains no eraser or over writing and all correction being neatly made and properly attested.
2. That it is further stated that under GFR-81, the head of the Office should ensure that the verification of service ~~BOOK~~ of the Government servant under his control is carried out annually in order to ensure the correctness of the entries with reference to actual facts and record of certificate to that effect. That it shall also be the responsibility of the officer maintaining the service book to verify the services of the retiring Govt. servant who have completed 25 years of service or left 5 years of service before retirement and to communicate the qualifying service to the retiring Govt. servant.
3. That it is further stated that as per rule 56 of CCS Pension Rule'1972, the head of the Office should have a list prepared of employees due to retire within 24 to 30 months and the concerned retiring employee should have been intimated his/her date of retirement. In my case, the Administrative Authority totally ignored the abovementioned procedures laid down in Rule 57 to 61 of the CCS Pension Rule'1972, as a result of which a poor Govt. servant has to suffer an irreparable loss due fault of the Department.

certified to be
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by
Adv.

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4. That I further like to state that as per Rule 202 of the S.R. it shall be the duty of the Head of the Office to XXXXX inniate action to show the service book to the Government Em- ployee under his control every year and signature obtained therein in every entry of the service book in token of having noted the contents.

5. That in this connection ,I most respectfully beg to submit that inspite of the procedures laid down above for maintenance of service book, it is not understood as to how the tampering with my date of birth in my service book could not be detected, and at the gag and end of my service I have been asked to produce documentary proof of my age, when it is known to the Department that at the fags and end of service the date of birth cannot be altered or corrected.

6. That it will not be out of line to mention here that the Authority didnt try to investigate or find out the truth as to how my date of birth has been tampered with when it is under the Officer responsible for custody of the service books.

7. That keeping in view of the facts and circumstances, I would like to state firmly that there is a huge lapse on the part of the Administrative Department/Branch who has ignored the procedures for maintainaing of service records, for which a retiring Govet servant is to suffer.

8. That in this case, I would like to say that the Government cannot uniletrally determine the date of birth when the date of ME is tampered with, it must be determined by holding an Inquiry or where there is a wide discrepancy in the record regarding date of birth , there should be a medical Board for determining the date of birth.

9. That in fine, regarding recovery for overstayal in service as per para 5 of your order dated 12.12.2005, I most respectfully beg to submit that I have rendered service to the Department w.e.f 1.1.2002 and drawn salary for service rendered to the Department, as such the question of recovery of my salary for overstayal in service doesnot arise.

IN THE LIGHT OF THE ABOVE FACTS, it is most humbly prayed that my case may please be investigated by holding an Inquiry and the person responsible for tampering with my date of birth may kindly be pin-pointed and punished accordingly by fixing the responsibility on him/her and the recovery pointed for

contd.....3

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true
f. yadav
Adv.

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contd....3

for overstayal in service may kindly be waived/
write off being a procedural irregularity on the
part of the Department.

The date of superannuation as shown in para 6 of
your order dated 12.12.2005 may please be re-perused
and clarify.

Thanking you sir,

Dated, Shillong
12.01.2006

Yours faithfully,

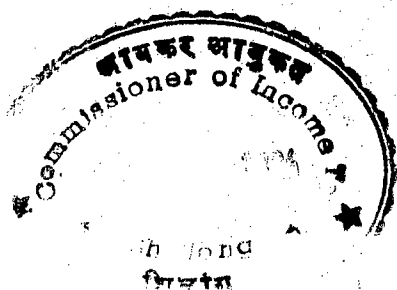
J K

(Smt. Joginder Kaur)
Ex-Safaiwali, CIT, Shillong

Copy to:

1. Chief Commissioner of Income Tax, Gauhati for
information and necessary action
2. Drawing and Disbursement Officer, C/O Commr. of
Income Tax, Shillong for information and necessary
action.

Received
12/1/06



Yours faithfully,

J K

(Smt. Joginder Kaur)
Ex- Safaiwali, CIT, Shillong



Certified to be true

Signature
for

28

ANNEXURE - G^B

To

The Commissioner of Income Tax
Shillong

Subject: Appeal against superannuation on discrepancy in
service records and illegal recovery for over stayal
in service: Smt. Joginder Kaur, Ex-safaiwali

Reference: My appeal dated 12.1.2006

Sir,

Most respectfully, I beg to draw your kind attention
to my appeal under reference and request you to intimate the
present position of my case at the earliest,

2. That I further beg to submit that due to non receipt of
salary for service rendered and the Pensionary benefit, which
I am entitled to, I am facing acute financial hardships.

Yours faithfully,

[Signature]
(Smt. Joginder Kaur)
Ex-safaiwala
O/ O the C.I.T Shillong

Copy to:

1. The General Secretary, Income Tax Employees Union,
Shillong for information and necessary action. He is
requested to take up the case with the department and
see that there should not be illegal recovery for overstayal
in service due to the fault of the employer.

Yours faithfully,

Shillong

Dated 30.1.2006

[Signature]

30/1/06



[Signature]
(Smt. Joginder Kaur)
Ex-safaiwala, CIT, Shillong

Certified to be true

[Signature]
W

28

ANNEXURE-H

To

The Commissioner of Income Tax
Shillong

Subject: Recovery of pay and allowances for overstayal in service

Reference: Your no. F.no. Per/J-123/CIT/SHG/01-02/5576 dt.30.1.2006

Sir,

In reply to your letter under reference, I am to state the following:-

1. That in this connection, it is stated that the department has miserably failed to give correct decision in my case and issued order ibid making vague reference to FR 56, which has got no relevancy on the subject.
2. That it is abundantly clear that if the impugned order cited under reference is allowed to stand good on record, it will cause serious miscarriage of justice.
3. That in view of the fact that the department have not been able to show any legal reason for sustaining the impugned order cited under reference.
4. That it is crystal clear that the department do not want to pinpoint the responsibility which has been caused due to the mistake of the Employer and forcibly want to recover the salary for overstayal in service penalising the employee at the time of retirement.
5. In view of the above it is most humbly prayed that your honour would be graciously pleased to re-examine my case by holding an Inquiry and the person responsible for tampering with my date of birth may kindly be pin-pointed and punished accordingly, and recovery pointed out for overstayal in service vide your letter under reference may kindly be regularised under the power of the C.F.A being a procedural irregularities on the part of the Department and my pension may kindly be released at the earliest as I am facing great financial hardships.

If the department will not bestow me Justice, I shall be compelled to take the shelter of the legal Authority.

Hope my request will meet with ends of Justice at your end.

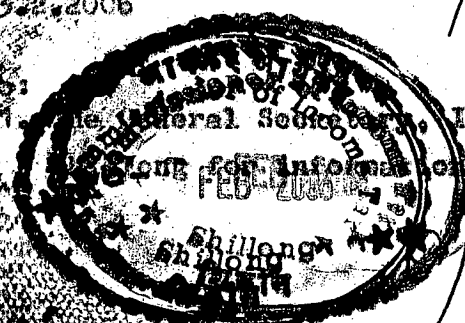
Shillong

Dated 3.2.2006

Yours faithfully,

(Smt. Joginder Kaur)
Ex- Safaiwali , CIT Shillong

Copy



Income Tax Employees Federation,
and necessary action .

Yours faithfully,

(Smt. Joginder Singh)

Certified to be
true
Joginder
Kaur

Received
3/2/06

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ANNEXURE-I

52

To

The Commissioner of Income Tax,
Shillong.

Subj : Recovery of pay and allowances
for over stayal in service.

Ref : My application dt.3.2.06.

Sir,

I most respectfully beg to draw your kind attention
to my application under reference and request you to
intimate the presence position of my case. If my
prayer will not be considered, I shall knock the door of
the legal authority for redressal.

Thanking you.

Dated Shillong,
The 13th Feb. 2006.

Yours faithfully,

J/K

(Smti Joginder Kaur)

Ex-Safaiwale.

Office of Income Tax.

Personal

Copy to :-

1. General Secretary,
Income Tax Employees Federation,
Shillong, for information.

J/K

(Smti Joginder Kaur).

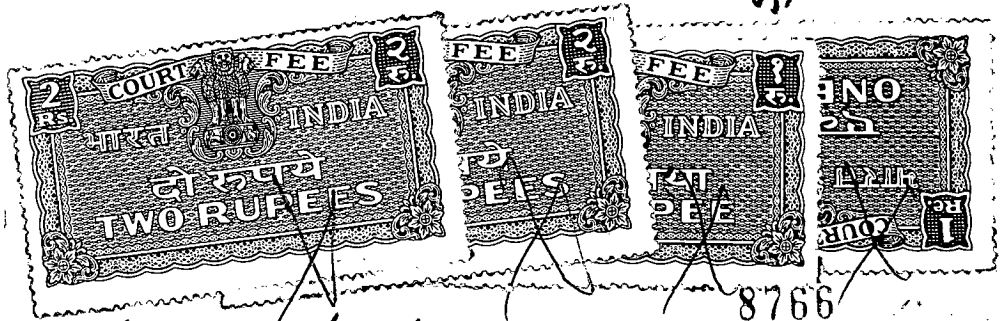


Confidential to be true

Ryadars

udu

Received
13/2/06



IN THE Central Administrative Tribunal No. 8766
Tribunal
AT Gauhati
04.50 of 2006
Primali J. Kam

VERSUS

2012 ORS.

VAKALATNAMA

I/WE Joginder Kumar
of Commissioner of Income Tax, Shillong
do hereby nominate and appoint Smt. Poonam Yadav, Advocate,
Shillong - 1

Advocate(s), and those named below, who has/have signed here-unto indicating his/her/their acceptance of such appointment, as my/our true and lawful attorney(s) in this matter and all, proceedings arising out of it, to represent me/us and on my/our behalf, to appear, plead, and act before the Honourable Court, and to sign, verify and present pleadings, to deposit and/or to do all and whatsoever that may be expedient to be done in the premises, before the Honourable Court, and I/We do hereby agree to ratify and confirm all and whatsoever that may be lawfully done by virtue hereof, and further I/We do hereby bind myself/ourselves to pay the stipulated fees of my/our said attorney(s) in advance failing which he/she/they shall be free to refrain from appearing and/or acting on my/our behalf, and in testimony whereof I/We do set and subscribe my/our hand(s) hereunto this the Twentieth day of July 2006 at Gauhati.

- | | | | | | |
|----|--------------------------|----|------------------------------|----|------------------------------|
| 1 | SHRI B. DUTTA | 34 | SHRI EDNELSON DIENGDOH. | 67 | SHRI DEEPAK KUMAR CHOUDHARY |
| 2 | SHRI N. M. LAHIRI | 35 | SHRI J. KISHORE SHARMA | 68 | SHRI HELETSON NONGKHLAW |
| 3 | SHRI H. AHMED | 36 | SHRI P. C. DAS | 69 | SMTI. SWATI D. BHATTACHARJEE |
| 4 | SHRI L. MARBANIANG | 37 | SHRI STAR LIGHT DKHAR | 70 | SHRI T. R. LYNGDOH |
| 5 | SHRI B. P. DUTTA | 38 | SHRI H. B. RAI | 71 | SHRI HARMEET SINGH |
| 6 | SHRI G. S. MASSAR | 39 | SHRI B. C. DAS | 72 | MRS. JAHANARA BEGUM KHARBHIH |
| 7 | SHRI S. R. SEN | 40 | SHRI V. K. JINDAL | 73 | SHRI SAILAJA RANJAN DAS |
| 8 | SHRI B. B. DUTTA | 41 | SHRI SAJJAN KUMAR THARAD | 74 | SHRI MAURICE G. LYNGDOH |
| 9 | SHRI S. R. NONGRUM | 42 | MRS. TSHERING YANGI GUHA | 75 | SHRI H. R. NONGRUM |
| 10 | SHRI M. P. THARAD | 43 | SHRI RANABIR CHOUDHURY | 76 | SHRI B. N. DUTTA |
| 11 | SHRI J. N. SHARMA | 44 | SHRI DILIP KR. DAS CHOUDHARY | 77 | SHRI SUBRANGSHU S. DAS |
| 12 | SHRI N. R. LAITPHLANG | 45 | SHRI BIMALENDU KUMAR DEB ROY | 78 | SHRI SUKUMAR DAS |
| 13 | SHRI A. MASSAR | 46 | MRS. JYOTSNA DUTTA ROY | 79 | SHRI N. B. DUTTA |
| 14 | SMTI. K. R. MEHRA | 47 | SHRI CHANDRAMANI ADHIKARI | 80 | SHRI K. TARIANG |
| 15 | MRS. MINATI SHARMA | 48 | SHRI ODEO VALENTINE LADIA | 81 | SHRI H. R. NATH |
| 16 | SHRI A. S. BHATTACHARJEE | 49 | SHRI MOHAN MASSAR DIENGDOH | 82 | SHRI S. CHAKRABARTY |
| 17 | SHRI E. S. JYRWA | 50 | SHRI RANJIT KAR | 83 | SMTI. BINU HAZARIKA |
| 18 | SHRI N. A. LYNGDOH | 51 | SHRI STEPHEN SUN | 84 | SHRI S. K. DAS CHOUDHURY |
| 19 | SHRI P. K. SHAH | 52 | SHRI K. RAHAMAN | 85 | SHRI H. SUCHIANG |
| 20 | MRS. R. A. BEGUM | 53 | SHRI NIRMAL DEY | 86 | SMTI P. DUTTA BUJAR BARUAH |
| 21 | SHRI S. P. S. SEHDAVE | 54 | SHRI PARIMAL CHANDRA DAS | 87 | SHRI A. ALAM KHAN |
| 22 | SHRI A. S. SIDDIQUE | 55 | SHRI J. W. KHARIR | 88 | SHRI T. B. CHETRI |
| 23 | SHRI LOHIT R. DAS | 56 | SHRI SHRIPRAKASH MAHANTA | 89 | SHRI S. D. CHETIA |
| 24 | SHRI C. P. UPADHAYA | 57 | SHRI AIBOR SINGH NONGKYNRIH | 90 | SHRI S. T. LASO |
| 25 | SHRI V. S. KHONGJOH | 58 | SHRI DEVENDER SINGH VIRDI | 91 | SMTI. B. RAJKHOWA |
| 26 | SHRI W. H. D. SYNGKON | 59 | SHRI K. LALHLUNA | 92 | SHRI S. ESH CHOUDHURY |
| 27 | SHRI G. BHATTACHARJEE | 60 | SHRI S. K. DEB PURKAYASTHA | 93 | MD. T. RAHAMAN |
| 28 | SHRI SUBHAS C. SHYAM | 61 | SHRI N. K. DEY | 94 | SMTI POONAM YADAV |
| 29 | SHRI J. K. BHATTACHARJEE | 62 | MRS. L. MALANGIANG | 95 | SHRI T. T. DIENGDOH |
| 30 | SHRI EMBOT PYRBOT | 63 | MRS. KALPANA DAS | 96 | SHRI P. AONAK |
| 31 | SHRI K. S. KYNJING | 64 | SHRI D. S. LYNGDOH | 97 | SHRI B. M. LYNGDOH |
| 32 | SHRI I. LAMARE | 65 | SHRI VIVANSTONE G. K. KYNTA | 98 | SHRI B. R. PURKAYASTHA |
| 33 | SHRI M. Z. AHMED | 66 | SHRI J. S. KHONGMALAI | 99 | SHRI B. M. LANONG |

54

100	SHRI K. MARBANANG	158	SHRI C. H. MAWLONG	216	SMTI. FATIMA ZAREEN NONGBRI
101	SHRI M. M. SHARMA	159	SHRI R. ROCKY SHARON	217	SHRI LALNUN TLUANGA
102	SHRI R. DEB NATH	160	SHRI SUBIR SEN	218	SHRI MESACH GANGAMEI
103	SHRI JAGADISH CH. DEY	161	SHRI D. K. KHARSHING	219	SHRI KALIDAS CHAKRAVARTY
104	SHRI R. B. PRADHAN	162	SHRI ISMAILSYED USMAN	220	MS. ANOSUA CHAKRABORTY
105	MRS. SIMA BHATTACHARJEE	163	SHRI S. N. MARAK	221	SHRI KALI PRANAB BHATTACHARJEE
106	SHRI M. F. QURESHI ASHRAFI	164	SHRI R. JHA	222	SHRI KARIPAL THUNDIYIL NANAPPAN
107	SHRI SHIV PRASAD SHARMA	165	MRS RAMA DEB NATH	223	SHRI SUSANT KR. PARIDA
108	MD. A. H. HAZARIKA	166	SHRI LA-I-KYNTIWARPHIRA	224	SHRI OLIVERMENT SHYRMANG
109	SHRI KRISHNA SUNAR	167	SHRI UMASHADYA BHATTACHARJEE	225	SMTI. PUNAKON SHABONG
110	MISS ANURADHA PAUL	168	SHRI MAHENDRA GURUNG	226	SMTI. CHANCYMAI SYNGKON
111	SHRI P'TOSH DE	169	SHRI TEST WELL KHARIR	227	SHRI NOOR-AIN-KNAN
112	SHRI BISWADEEP BHATTACHARJEE	170	SMTI. SHISHA BALARI LAITHAMA	228	SHRI RAJESH KUMAR THARAD
113	SHRI PARAMBIR SINGH SEHDAVE	171	SHRI KESHAV CH. GAUTAM	229	SMTI. RITA CHOWDHURY (DEY)
114	SHRI N. D. CHULLAI	172	SHRI YOGENDRA PRASAD CHOUDHURY	230	SHRI RAM KUMAR GIRI
115	SHRI SENTILONG CHANGKIJIA	173	SHRI TUSHAR CHANDA	231	SHRI E. L. LYTLOH
116	SMTI. BISHNU MAYA JOSHI	174	SMTI. AFREEN BEGUM	232	SHRI SANKAR PROSAD DASS
117	SHRI LURSHAI WAHLANG	175	SHRI LEMONDEE LYGDOH	233	SHRI K. BASAIAWMOT
118	MS. MEENA KHARKONGOR	176	MISS MRINALINI KHARSHING	234	MRS. PURABI SARMA
119	SHRI MONOJ KUMAR DEY	177	SHRI SHOUMEN SENGUPTA	235	SHRI NITESH MOZIKA
120	SHRI GOPAL CHANDRA DAS	178	MRS. SUJATA GURUNG	236	MISS RITU LIMBU
121	SHRI J. I. BORBHUYAN	179	MISS JEANE CLARA LYGDOH NONGBRI	237	SHRI PROJEND D. SANGMA
122	SHRI BHANU SENAPETHI	180	SHRI NIRIJAN CHAKRABORTY	238	SHRI BIKRAM WARJRI
123	SMTI. KALPANA ROY	181	SHRI BIPLAB KR. DAS	239	SMT. MANJU THAPA
124	MISS DEBJANI DAS PURKAYASTHA	182	SHRI BIRU BIR MIZAR	240	SHRI DHURBO CHETTRI
125	SHRI S. WAHLANG	183	SHRI ABDUL MABOOD	241	MISS ASHA KUMARI
126	SHRI ISHWAR CHANDRA JHA	184	SHRI CHANCHAL KARMAKAR	242	SHRI SANJAY D. SWER
127	MR. E. LYGDOH	185	MISS DIL NASIN RAHAMAN	243	SHRI ALLENBY MACTERSON RIPNAR
128	SHRI S. N. SINGH	186	SHRI CORDELIA DKHAR	244	SMTI ANINDITA YADAV SARKI
129	SHRI SUNIL KUMAR AGARWAL	187	SHRI A. N. DIENGDOH	245	SHRI KIRON BARUA
130	SHRI K. T. HARIANAL	188	SMTI. IBARIDOR KATHERINE WAR	246	SHRI MASAUD HUSSAIN
131	SHRI C. M. MARTINSAMATA	189	SMTI. JOTI K. MARAK	247	MISS FENELA LYGDOH NONGLAIT
132	SHRI SUDIP PAUL CHOUDHURY	190	SHRI EDMUND CH. SUJA	248	SHRI SUDHIR RANA
133	SHRI H. S. THANGKHEW	191	SHRI DARRL THABAH	249	SMTI. SUCHITRA HRANGKHAWL
134	SHRI DILIP KUMAR THAPA	192	SMTI. GASALYNN RANI	250	SHRI EHBOKLANG KHARUMNUID
135	SHRI ARUN MUKHOPADHYAY	193	SHRI DWIJENDRA KUMAR ACHARJEE	251	SHRI RICHESLY JANA NONGBET
136	MISS MAMATA CHAKRABORTY	194	SHRI SANDEEP KUMAR JINDAL	252	SHRI PRAVIN THAPA
137	SHRI ANIL KUMAR AGARWALLA	195	SHRI P. M. PASSAH	253	SHRI KRISNA SHARMA
138	SHRI TABRIS JALAL AHMED	196	SHRI BALARAM JOSHI	254	SHRI H. L. SHANGREISO
139	SHRI S. I. USMAN	197	SMTI MUMTAZ MEHER SHULLAI	255	MISS SUJATA CHAMARIA
140	SHRI NIRMAL KUMAR GOLDSMITH	198	SHRI THOMAS DIENGDOH	256	SHRI SUBHASISH JOSEPH MONGAL
141	SHRI JASHODHIR SHYAM CHOUDHURY	199	SHRI K. PAUL	257	MISS IBANROILIN LYGDOH
142	SMTI. SUDIPA MODOK	200	SHRI SUDHIR KUMAR DUTTA	258	SHRI IQBAL AHMED
143	SHRI SUKUMAR DUTTA	201	MD. HUSSAIN ALI	259	SHRI NELSON KHARNARBI
144	MRS. DEEYA SINGH RATORE	202	SHRI A. BASAIAWMOIT	260	SHRI RIHUNEY SWER
145	MISS GAURI PURKAYASTHA	203	SHRI H. ABRAHAM	261	SHRI BASUKLANG MYLLEMNGAP
146	SHRI LESLEY KHYRIEM	204	SHRI CHEMPHANG SYRTI	262	MRS. RITA DAS SARMA (CHETIA)
147	SHRI RABI GURUNG	205	SHRI NARENDRA KUMAR	263	MISS BATHSHEBA G. PYNGROPE
148	SHRI PURUSHOTTAM UPADHYAY	206	SMTI. SUNITA SINHA	264	MISS MEREY URIAH
149	SHRI RAJIV NATH	207	SHRI P. ADHIKARI	265	MISS REBINA SUBBA
150	MISS. MONA WAHLANG	208	MD. NAZRUAL-ISLAM CHOUDHRY	266	MISS LAWANDA AUGUSTA LYNDEM
151	MRS. VIJAY LAKSHMI DUTTA	209	SHRI DAWEWAN KYNDIAH	267	MISS JOPLIN MARBANING
152	SHRI PETER SHALLAM	210	SMTI. UTTARA DAS	268	MISS PERSARA SYNGKON
153	SHRI PRADYUMNA KUMAR BORAH	211	MISS LALMUANKIMI KHIANGTE	269	SHRI GYAN SINGH GAHIRE
154	MD. AYUB KHAN	212	SHRI RAJESH BORUAH	270	SHRI UTTAM PRADHAN
155	MD. NOOR MD. MANSURI	213	SMTI BELMA MAWRIE	271	SMTI F. CATHERINA RYMBAI
156	MD. KHALID KHAN	214	SMTI. SUSMITA HUI	272	SMTI ALAMANDA DAKERRSYNREM
157	SHRI BIDROMOHON ROY	215	SHRI BINAYAK DUTTA	273	SMTI PERVEEN BANO
				274	SHRI GILBERT DKHAR
				275	SHRI P. SOMASUNDARAN

Received **VAKALATNAMA** from the Executant
Satisfied and accepted

ADVOCATE :

and accepted

ADVOCATE(S)

JK
Executant

To

The Senior C.G.S.C.
Central Administrative
Tribunal Gauhati
branch Gauhati.

Gauhati, Dated 24 Feb 06

Sir

Please find herewith a
copy of original application
no 211 dated 24.2.06. Which
will be listed before the
Honble Tribunal, Gauhati
on 28.2.06.

~~Dear~~

I undertake to
deliver to C.G.S.C.
a copy of the
petition.

Yours,

Yours faithfully

fyadav
24/2/06
(Poonam Yadav)
Advocate

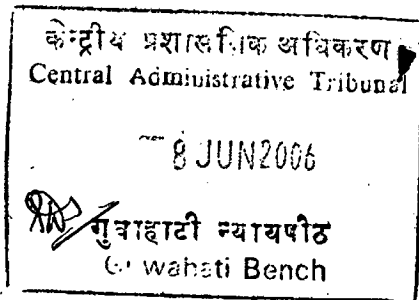
Prudh
24/2/06
(M.V. Shinde)

AIR SC ~~out~~

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2005 AIR SCW

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58
Filed by
The respondents
Mangla Bhandari
Sr. Case
8.6.06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI

G.A. NO. 50 OF 2006

Smt Joginder Kaur

..Applicant

-vs-

Union of India & Ors...Respondents

The written statement on behalf of
the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regards to the statement made in paragraph 1 to 3 of the instant application the answering respondents beg to state that the same are not correct and hence denied.
2. That with regards to the statement made in paragraph 4 and 5 of the instant application the answering respondents beg to offer no comment.
3. That with regards to the statements made in paragraph 6, 6.1 and 6.2 of the instant application the answering respondents have no comment.

Contd....P/-

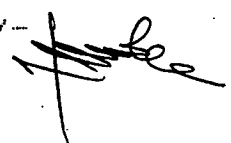
4. That with regards to the statements made in paragraph 6.3 of the instant application the answering respondents beg to state that the same are untrue, false and incorrect and hence the same are denied. The respondents beg to state that the applicant Smt Jaginder Kaur her age when she entered service and had confirmed her date of birth to be 20.12.1941. *This date was cancelled and changed to 01.03.1948 in the Service Book.*

5. That with regards to the statements made in paragraph 6.4 of the instant application the respondents beg to state that the applicant confirmed in her instant paragraph that on 22.12.1976 that she is 35 years old, in her medical fitness certificate which was certified by Asstt. Surgeon-1, Civil Hospital, Shillong, it means that she was born around 22.12.1941 that is 20.12.1941 which is the fact and the case of the department.

A copy of the said medical certificate is annexed herewith as Annexure - 1.

6. That with regard to the statements made in the paragraph 6.5 of the application, the respondents beg to state that the original entry in the service book is 20.12.1941 in the black ink which was found cancelled in purplish ink and another date had been written in red ink as 01.03.1948. The latter date is written in words

Contd....P/-



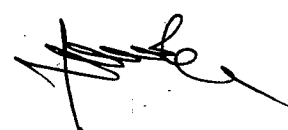
in blue colour through a ball point pen. The designation of ITO, Hqrs. Shillong was also written but the same was not signed.

a photostat copy of the service book is annexed herewith as Annexure - 2.

7. That with regards to the statements made in paragraph 6.6 of the application the respondents beg to state that the same is matter of record and the respondents do not admit anything which is not born out of record.

8. That with regard to the statements made in paragraph 6.7 of the application the respondents beg to state that the applicant was asked to furnish documents in support of the claim that her date of birth is not 20.12.1941. The applicant tried to prove that her age is 20.12.1948 by producing an affidavit issued by Magistrate, 1st Class, Shillong dated 7.12.2005 affirming her date of birth to be 20.12.1948, whereas her date of birth attempted to be falsified in the service book is 1.03.48. This attested new date of 20.12.1948 was inconsistent with the earlier falsified date of 1.3.1948. The applicant has further submitted a "VERIFICATION" and one "AFFIDAVIT" before the Hon'ble CAT, Guwahati dated 24.1.06 wherein the applicant has mentioned her age as 60 years as on 24.2.06. If she was 60 years old on

Contd....P/-



24.2.2006, then her date of birth should be 24.1.1946 which is again inconsistent with her earlier claims. The applicant's submissions indicate her unreliability and reflects her to be a perpetual liar.

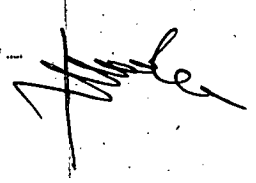
The copies of verification and affidavit dtd. ^{and affidavit dtd 7.12.05} 24.2.06, are annexed herewith as Annexure-3 & 4, 4(a)

9. That with regards to the statements made in paragraph 6.8 of the application the respondents beg to state that the same is matter of record and the respondents do not admit anything which is not born out of record.

10. That with regards to the statements made in para 6.9 of the application the respondents beg to state that the applicant has admitted in this paragraph to the fact that she had overstayed in the service from 1.1.2002 and therefore it is proved that her date of birth is 20.12.1941.

11. That with regards to the statement made in paragraphs 6.10 of the application the respondents beg to state that this is not the question to follow the procedure laid down in GFR and Rule of CCS Pension Rules 1972. Due to the over writing in the service book a confusion arose in the office that her date of birth was 1.3.1948 and not 20.12.1941 and hence the case of superannuation was not followed up earlier.

Contd.....P/-



12. That with regards to the statement made in paragraph 6.11 of the application the respondents beg to state that there is no rule or provision for paying salary beyond the superannuation date and hence the department has to recover salary etc. paid for the overstayed period.

13. That with regards to the statement made in paragraphs 6.12 of the application the respondents beg to state that the same are false and untrue. In fact recovery has been made. The Hon'ble CAT, Guwahati had infact stayed recovery proceeding vide its order dated 28.2.06 which this department is faithfully abiding to.

14. That with regards to the statement made in paragraphs 6.13 of the application the respondents beg to state that there is no infringement of Article 14 of the Constitution. The department has taken the stand only to stop pecuniary loss to the Govt. of India.

15. That with regards to the statement made in paragraphs 6.14 of the application the respondents have no comment.

16. That with regards to the statement made in paragraphs 7(i) of the application the respondents beg

Contd....P/-



to state that there is no rule or provision for paying salary beyond the superannuation and as she had drawn salary which she is not entitled to under any Rule and as such prayer of the applicant should be rejected and hence the petition is liable to be dismissed.

17. That with regards to the statement made in paragraphs 7(ii) of the application the respondents beg to state that the respondents had written a letter dated 7.2.2006 to the applicant for submission of her pension papers. But the letter could not be served on her in person or by post due to her refusal to accept the letter. It was latter on pasted on the notice Board of this office during the same month.

A copy of the letter dtd. 7.2.06 is annexed herewith as Annexure - 5.

18. That with regards to the statement made in paragraphs 7(iii) of the application the answering respondents have no comments.

19. That with regards to the statement made in paragraphs 8(i) & 8(ii) of the application the answering respondents have no comment.

20. That with regards to the statements made in paragraph 8(iii) of the instant application the respon-

Contd....P/-

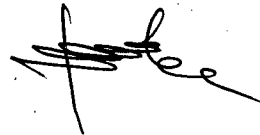


dents beg to state that due to the applicant's superannuation and order of the superannuation dated 12.12.2005 the applicant did not and cannot work for the months of December, 2005 and January, 2006.

21. That with regards to the statement made in paragraphs 8(iv) of the application the answering respondents have no comments.

22. That with regards to the statement made in paragraphs 9.1 to 9.8 of the application the answering respondents have no comments.

23. That with regards to the statement made in paragraphs 10. to 11.2 of the instant application the answering respondents have no comments.

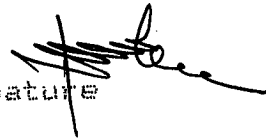
A handwritten signature in black ink, appearing to be 'J. Lee' or similar, located at the bottom right of the page.

VERIFICATION

I, H. RaiKhem S/o A. RaiKhan
 aged about 54 years, R/o Shillong
 District East Khasi Hills, and competent officer of the
 answering respondents, do hereby verify that the state-
 ment made in paras 1, 2, 3, 15, 18, 19, 21, 22 & 23 are true to my
 knowledge and those made in paras 4 to 14, 16, 17 & 20 being
 matters of record are true to my information derived
 therefrom which I believe to be true and the rests are
 my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 10th day
 of May 2006 at Shillong.

Signature



FORM - A

I hereby certify that I have examined Shri/ Smti. Joginder Kaur, a candidate for employment in the Income Tax Department and cannot discover that he/ she has any disease constitutional weakness or bodily infirmity except

. I do not consider this a disqualification for employment in the above office.

Shri/ Smti. Joginder Kaur 's age according to his/ her own statement is 35 years and months and by appearance about Thirty five years.

Registration No.

Signature :-

Seal :

22/12/2001
Assistant Surgeon
Civil Hospital
Shillong

FORM - D

I declare that I migrated to India from Pakistan before 19-7-48 and have ordinarily been residing in India in the State of since then.

I declare that I migrated to India from Pakistan after 18-7-48 but before 30-9-48. I further declare that I have got myself registered as a citizen of India before 26-1-50.

- * entered the Union Service without a certificate of eligibility under the old instructions before the 26-1-50.
- * Delete the portion not applicable.

Signature of the candidate :-

FORM - E

I understand that my appointment to the post of SI is purely provisional pending the issue of a certificate of eligibility in my favour after necessary verification of my antecedents and that in the event of such a certificate being refused, my appointment shall stand cancelled.

Signature of the Candidate :-

FORM - F (OATH OF ALLEGIANCE TO THE CONSTITUTION)

I, Shri/ Smti. Joginder Kaur do swear/ solemnly affirm that I will be faithful and bear true allegiance to India and to the constitution of India as by law established and that I will carry out the duties of my office loyally, honestly and with impartiality. SO HELP ME GOD.

Read in front of the officer.

Signature of the candidate :-

Carried over
Jame Copy
Bogori
Adv.

ANNEXURE-2

*फोटोग्राफ
Photograph

1. पूरा नाम (साफ अक्षरों में)
Name in full (in block letters)

श्री/श्रीमती/कुमारी
Shri/Shrimati/Kumari

JOGINDER KAUR

2. पिता का नाम (साफ अक्षरों में)
Father's name (in block letters)

Late BASWA SINGH

पति का नाम (साफ अक्षरों में)
Husband's name (in block letters)

Shri CHADAN SINGH

राष्ट्रियता (यदि भारत का नागरिक नहीं है तो पात्रता प्रमाण-पत्र की संख्या तथा तारीख)
Nationality (if not a citizen of India, number and date of eligibility certificate)

Indian

बया अनुसूचित जाति/जन जाति का है ?
Whether a member of Scheduled Caste/Tribe ?

sc

3. ईसावी सन और जहां कहीं संभव हो शक संवत् में भी जन्म की तारीख (शब्दों और अंकों दोनों में)
Date of birth by Christian Era and wherever possible also in Saka Era (both in words and figures)

20-12-41 13.48

(First of March Nineteen Forty Eight)
9.7.0.A.R. Shillong

7. शैक्षिक योग्यता :
Educational qualifications :

(क) पहली नियुक्ति के समय
(a) at the time of first appointment

(ख) बाद में प्राप्त की गई
(b) subsequently acquired

ऐसी व्यवसायिक तथा तकनीकी योग्यताएं जिनका उल्लेख उक्त 7 में न किया गया हो
Professional and technical qualifications not covered by 7

9. नाप के अनुसार वास्तविक कद (बिना जूतों के)
Exact height by measurement (without shoes)

5 feet 1 1/2 inches

10. पहचान का वैयक्तिक चिह्न
Personal mark of identification

A mole just on the neck

11. स्थायी घर का पता
Permanent home address

vill. Muscarara
Punjab Sahar
Punjab

12. सरकारी कर्मचारी के हस्ताक्षर अथवा बाएं हाथ के अंगूठे का निशान (तारीख सहित)
Signature or left hand thumb impression of the Government servant (with date)

J. KOUR

13. साक्ष्यांकन अधिकारी के हस्ताक्षर तथा पदनाम (तारीख सहित)
Signature and designation of attesting officer (with date)

Income Tax Officer (H.A. Q. No. 1)
North Eastern Region
Shillong

*चिपकाने से पहले कार्यालय-अध्यक्ष द्वारा साक्ष्यांकित किया जाना है।
To be attested by the Head of Office before pasting.

*टिप्पणी—सरकारी कर्मचारी की 10 वर्ष की सेवा के बाद प्रत्येक फोटोग्राफ लगाया जाए।
Note—Photograph should be renewed after 10 years of service of Government servant.

स्था. आ. पु. (त)-27 (संशोधित)
M. S. O (T)-27 (Revised)

आयकर सहायक (मुख्यालय)
Asst. Commissioner of Income Tax (Hqrs.)
Shillong

Certified to be
true G.P.
Rogon
Adv.

ANNEXURE-3

- 10 -

VERIFICATION

I, Smti Joginder Kaur, wife of Shri Charan Singh,
aged about 60 years, resident of Income Tax Complex,
M.G. Road, Police Bazar, Shillong, East Khasi Hills
District, Meghalaya, do hereby solemnly affirm and verify
that the contents from _____ to _____
are true to the best of my knowledge and that I have not
suppressed any materials before this Hon'ble Tribunal and
I sign this verification on this 24th day of February
2006, at Shillong.

JK
Humble Applicant

Certified to be
true copy
Bogoi
Adv.

Affidavit.

JK

carry out the duties of my office loyally, honestly and with impartiality.
SO HELP ME GOD.

Read in front of the officer.

Signature of the
candidate :-

AFFIDAVIT

I, Smti Joginder Kaur, wife of Shri Charan Singh,
 aged about 60 years, resident of Income Tax Complex,
 M. G. Road, Police Bazar, Shillong, East Khasi Hills
 District, Meghalaya, do hereby solemnly affirm and declare
 on oath as under :-

- 1) That I am the applicant in this Petition.
- 2) That I am fully conversant with the facts and
 circumstances of the Case.
3. That the statements made herein above in the
 paragraphs from

of the application are true to the
 best of my knowledge, belief and information as the
 same are matters of records and the rest are my
 humble submission which I believe to be true and I
 sign this Affidavit on this 24 day of February
 2006 at Shillong.

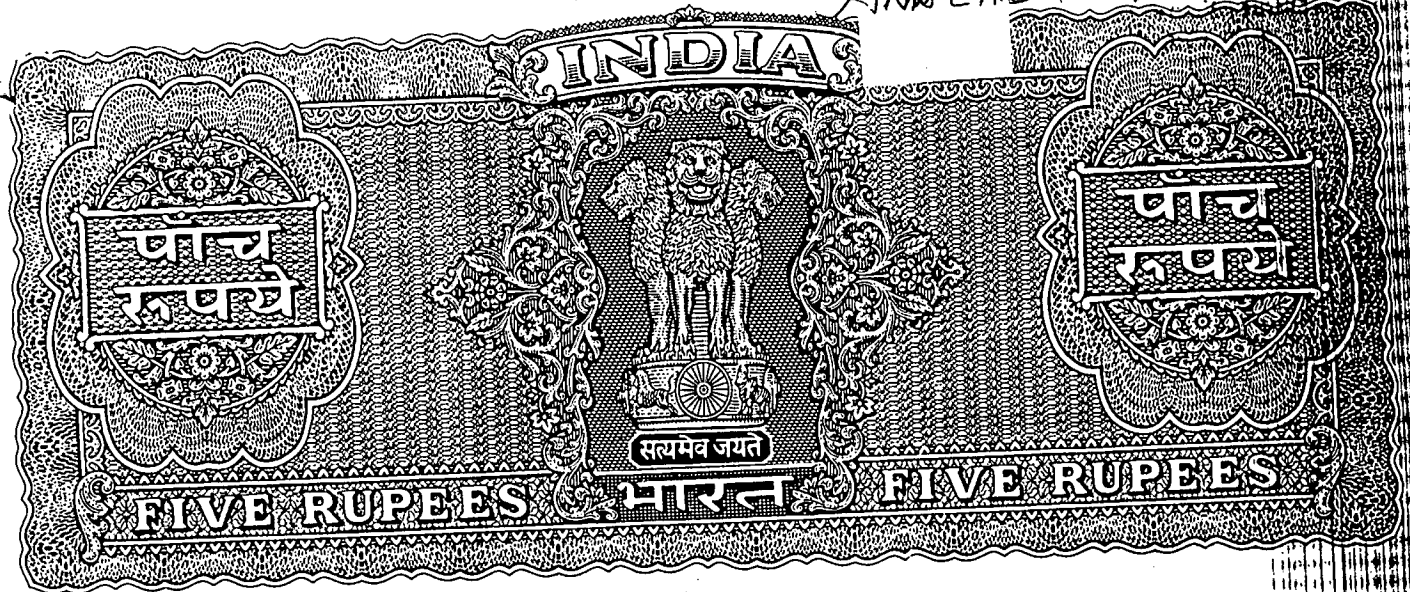
Identified by :

Jyodan

Advocate, Shillong.

- JK
 X Deponent

*Certified to be
 true copy
 Rogan
 Adv.*



BEFORE THE MAGISTRATE FIRST CLASS AT SHILLONG.

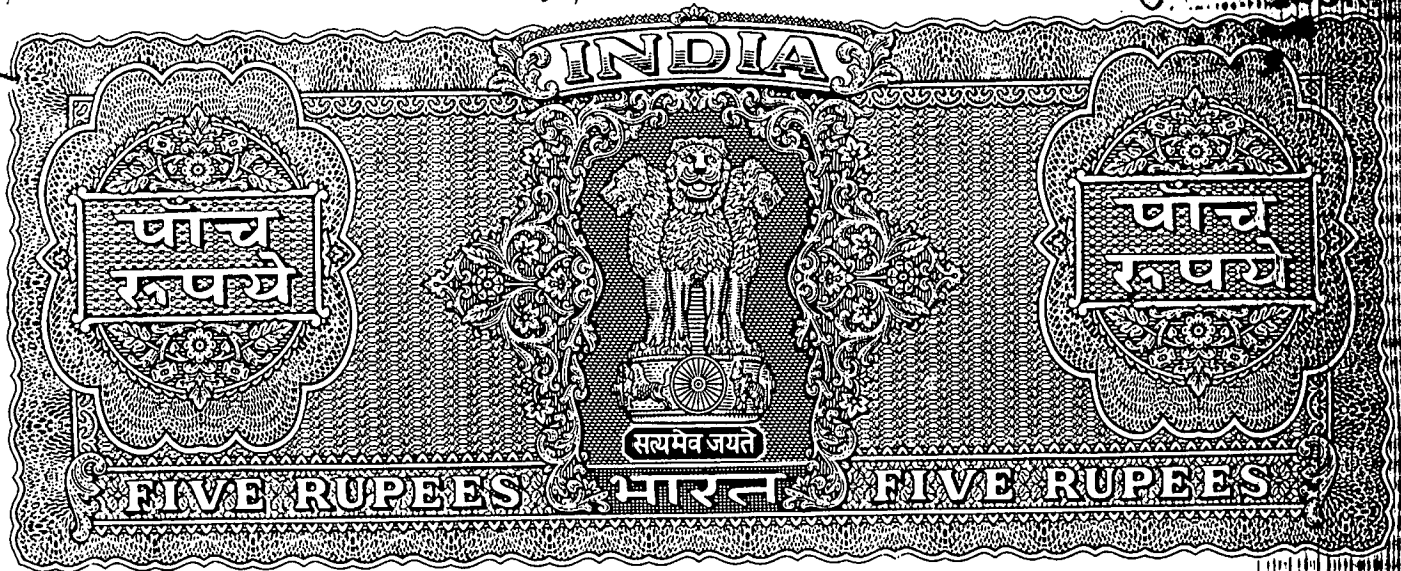
AFFIDAVIT

I, Smti Joginder Kaur, W/o Shri Charan Singh, aged about 57 years, by occupation - Sweeper, employed at Income Tax Office, resident of Income Tax Building Quarter at Keating Road, Shillong, East Khasi Hills District, Meghalaya, do hereby solemnly affirm and declare on oath as follows :-

- 5/12/05
1. That I am an Indian National presently residing at Income Tax Building Quarter, Keating Road, Shillong, East Khasi Hills District, Meghalaya,
 2. That I was born on 20.12.1948 and there is no documentary evidence regarding my place and date of birth.
 3. That I am illiterate person and I do not possessed any educational certificates and or testimonial to prove or in support of my date and place of birth.
 4. That in my service record, my date of birth is recorded as above mentioned i.e. 20.12.1948.
 5. That this affidavit is sworn-in, in the matter of declaration of my date of birth and for all purposes and intents whatsoever that my date of birth is as recorded in my Service Record.

....2/-

Certified to be true copy
Rogor
A.W.



- 2 -

That the statements made herein above are true
to the best of my knowledge, belief and information.

J. K.

DEPONENT.

Solemnly affirmed and declared before me
by the Deponent abovenamed who is identified
by Shri Rajiv Nath, Advocate, on this the
7th day of December, 2005 at Shillong.

Identified by :-

Rajiv Nath
Advocate, Shillong.

Rajiv Nath
MAGISTRATE FIRST CLASS
SHILLONG

15
ANNEXURE 5
F.No. Per/J-123/CIT/SHG/01-02/ 5743
OFFICE OF THE COMMISSIONER OF INCOME TAX
AAYAKAR BHAWAN, POST BOX NO.:20
SHILLONG

Dated Shillong the 7th February, 2006

To
Smti. Joginder Kaur,
C/o Raju Singh,
O/o The Addl. Commissioner of Income tax,
Shillong Range,
Shillong.

Sub: Submission of Pension papers- Regarding.

Madam,

Kindly refer to the above subject.

As directed, you are requested to submit the pension papers viz., Form-5, Specimen signature-duly attested, Descriptive Roll, Nomination of Arrears of pension, Form-3 duly filled in, Form-IA, Nomination for payment of commuted value of pension (if you commute the same), Nomination for Retirement Gratuity etc., to this office, so that the same could be processed at an early date for smooth functioning of this office.

Yours faithfully,

(A. Majumder)

Asstt. Commissioner of Income tax(Hqrs)
for Commissioner of Income tax,
Shillong.

*Certified to be
copy
8/08/06 Adv.*

NOTICE

From - Mr. G. Baishya
Sr. LGSC, CAT

To, Smt. P. Yadav
Advocate, GHL

O.A. No. 50 of 2006

Smt. Joginder Kaur
Applicant

- vs -

Union of India & Ors
Respondents

Please find herewith a copy of written statement with annexures which is going to be filed on behalf of the respondents abovenamed in connection with the abovesated case.

Kindly acknowledge the receipt thereof.

Thanking you.

Yours faithfully

Rishi Goel
Advocate

Received copy

Advocate