

4

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO. 115/08.2008-2008  
R.A./CP/NO.....2015  
E.P./M.P./NO.....2015

MP 76/2010

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SECTION OFFICER (JUDL.)

*16/8/15*

*com  
10.8.2015*

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

1. Original Application No. 115/08
2. Mise Petition No. \_\_\_\_\_
3. Contempt Petition No. \_\_\_\_\_
4. Review Application No. \_\_\_\_\_

Applicant(s).... BomKesh Dutta.....vs Union Of India & Ors

Advocate for the Applicant(s): M. Chanda, S. Nath, Mrs. U. Dutta

Advocate for the Respondant(s): CGSC

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed C.V. for Rs. 50/- deposited via IPO/BB No. 390344292 Dated, 10.6.08	27.06.2008	<p>Heard Mrs. U.Dutta, learned counsel appearing for the Applicant.</p> <p>Admit. Issue notice to the Respondents requiring them to file their reply by 19.08.2008.</p> <p>Call this matter on 19.08.2008.</p>
Petitioners epis for issue notices are received with envelops. Copy served. Excess Rs. 5/- has been deposited by cash.	19.08.2008	<p>(M.R. Mohanty) Vice-Chairman</p> <p>No written statement has yet been filed by the Respondents in this case.</p> <p>Call this matter on 19.09.2008 awaiting written statement from the Respondents.</p> <p>Send copies of this order to the Respondents in the address given in the O.A; who should file written statement by the next date.</p>
26/6/08 26/6/08		<p>(K. Hushiram) Member (A)</p>
21.27.6.08 Pls issue Notices to the Respondents 30/6/08		<p>(M.R. Mohanty) Vice-Chairman</p>
Notice & Order sent to D/Section/bb/ for issuing to Respondents by regd. A/D post		
D/No 2997 to 3002, D/ = 1/7/08.		

Dt. 18.8.08

MOA filed by  
Mrs. M. Das, Addl.  
Counsel on behalf  
of U.I. to  
dt. 8.1.08.

W/S not filed

① Service report  
awaited.

28/8/08

Dt. 19.8.08  
Pl. send copies of this  
order to the respondents via the address  
given in OA.

lm

W/S not filed

Copies of order  
Dt. 19/8/08 sent to  
D/Sec. for same is  
issuing to respondents  
by post.

D/No.

cas 28/8/08

Dt.

W/S not filed.

28/8/08

Dt. 30.10.08

Pl. send copies of this order  
to the respondents.

W/S not filed

Copies of order  
dated 30/10/08 sent  
to D/Sec. for issuing  
to respondents by  
post.

lm

D/No-4882 to 4382

10/11/08. Dt. 14-11-08

W/S not filed

28/11/08

O.A. 115 of 08

O.A. 115 of 08

30.10.2008

19.09.2008

Mrs. U.Dutta, learned counsel appearing for the Applicant is present. No written statement has yet been filed by the Respondents in this case. Mrs. M. Das, learned Standing Respondents.

Counsel appearing for the Union of India is

present and she is not in a position to say by what time the written statement can be filed. Respondents.

22  
(Khushiram)  
Member(A)

Y  
(M.R. Mohanty)

However, time till 28<sup>th</sup> November 2008 is hereby granted to the Respondents to file their written statement.

Send copies of this order to the

30.10.2008  
Mrs. U.Dutta, learned counsel appearing for the Applicant is present. No written statement has yet been filed by the Respondents in this case. Mrs. M. Das, learned Standing Counsel appearing for the Union of India is present and she is not in a position to say by what time the written statement can be filed. However, time till 28<sup>th</sup> November 2008 is hereby granted to the Respondents to file their written statement.

Send copies of this order to the Respondents and call this matter on 28<sup>th</sup> November 2008.

28/10/08  
(S.N. Shukla)  
Member(A)

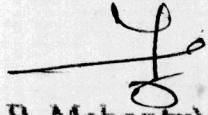
28/10/08  
(M.R. Mohanty)  
Vice-Chairman

28.11.2008 It is stated that written statement has already been filed in this case on 26.11.2008. A copy of thereof has already been served on the learned Counsel for the Applicant. However, a copy of the written statement is not available in the record.

Registry to verify and do the needful in the matter.

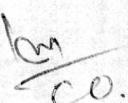
Mr. M. Chanda, learned Counsel appearing for the Applicant, seeks an adjournment to file rejoinder. Prayer is allowed.

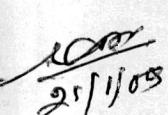
Call this matter on 19.01.2009 awaiting rejoinder from the Applicant.

  
(M.R. Mohanty)  
Vice-Chairman

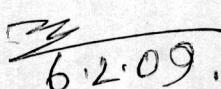
nkm

19.1.09 Bench is not available.  
List on 9.2.09.

  
C.O.

Notice duly served  
on R-2  
  
1000  
25/11/08

Rejoinder not  
filed.

  
6.2.09.

09.02.2009 Mrs. U. Dutta, learned Counsel appearing for the Applicant, prays for three weeks more time to file Rejoinder.

Call this matter on 05.03.2009 awaiting Rejoinder.

  
(M.R. Mohanty)  
Vice-Chairman

nkm

- 5 -

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

O.A. No.115 of 2008

Shri Bomkesh Dutta

Applicant

Versus

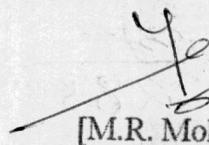
Union of India & others

Respondents

Order dated 25.02.2009

Call this matter on 24.03.09 awaiting rejoinder from the Applicant.

Send copies of this order to the Applicant and the Respondents.

  
[M.R. Mohanty]  
Vice-Chairman

cm

24.03.2009

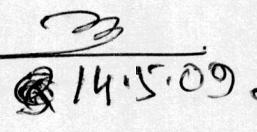
In this case, a counter has already been filed by the Respondents.

Subject to legal pleas to be examined at the final hearing, this case is admitted.

Call this matter on 15.05.2009 awaiting rejoinder from the Applicant.

Send copies of this order to the Applicant and to the Respondents in the address given in the O.A.

  
(M.R. Mohanty)  
Vice-Chairman

14.5.09  
  
/bb/

15.05.09

Rejoinder is undertaken to be

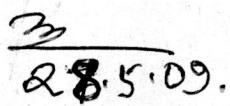
filed on behalf of the Applicant in course of the day.

Mrs M. Das, learned Addl. Standing counsel for the Respondents seeks some more time to file obtain instruction from the Respondents.

Call this matter on 29.05.2009 for hearing.

  
(M.R. Mohanty)  
Vice-Chairman

The case is ready  
for hearing.

  
28.5.09.

pg

29.05.2009 Mr. M. Chanda, learned

counsel for the Applicant is present.

Mrs. M. Das, learned Addl. Standing Counsel for the Respondents is absent.

Call this Single Judge matter on 17.06.2009.

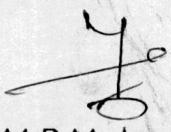
  
N.D. Dayal  
Member(A)

lm

  
(M.R. Mohanty)  
Vice-Chairman

17.06.2009

On the prayer of learned counsel  
for both the sides, call this matter on  
26.06.2009 for hearing.

  
(M.R.Mohanty)  
Vice-Chairman

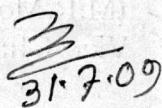
The case is ready  
for hearing.

/bb/

26.06.2009

Call this matter on 03.08.2009 for

hearing.

  
31.7.09

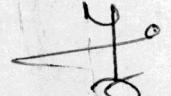
  
(M.R.Mohanty)  
Vice-Chairman

/bb/

03.08.2009

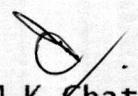
On the prayer of the learned counsel for  
both the parties, call this matter on 10.08.2009  
for hearing.

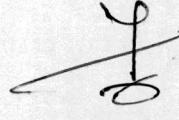
  
(M.K.Chaturvedi)  
Member (A)

  
(M.R.Mohanty)  
Vice-Chairman

/bb/

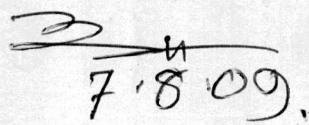
10.08.2009 On the prayer of, learned  
counsel appearing for the Applicant,  
call this matter on 01.10.2009 for  
hearing.

  
(M.K.Chaturvedi)  
Member(A)

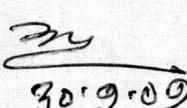
  
(M.R.Mohanty)  
Vice-Chairman

/lm/

The case is ready  
for hearing.

  
7.8.09.

The case is ready  
for hearing.

  
30.9.09

01.10.2009

Heard Mr. M. Chanda, learned  
counsel appearing for the Applicant and  
Mrs. M. Das, learned Addl. Standing  
counsel representing the Respondent  
organisation and perused the materials  
placed on record.

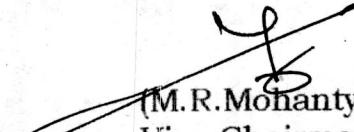
Hearing concluded. Order reserved.

  
(M.R. Mohanty)  
Vice-Chairman

pg

16.10.2009

Judgment pronounced in open  
Court. Kept in separate sheets.  
Application is dismissed. No costs.

  
(M.R. Mohanty)  
Vice-Chairman

/lm/

Copy of Judgment

Order dtd 16/10/2009

has been prepared and  
Send to the D/section  
for issuing to the  
Applicant & Resps.  
by Regd. post.

Free copies of both  
side standing counsel  
by hand.

D/No 12429 to 12435 21/10/09  
Dtd. 10.11.09

22

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI  
O.A.No.115/2008**

Dated 16.10.2009

Shri Bomkesh Dutta ..

Applicant

By Advocate Mr. M. Chanda

Versus

Union of India & others

Respondents

By Advocate Mrs. Manjula Das, Addl. C.G.S.C.

Present: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman

1. Whether reporters of local newspapers may be allowed to see the Judgment?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be forwarded to other Benches?

Yes/No

Yes/No

Yes/No

Yes/No

Vice-Chairman  
16/10/09

2

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

O.A. No. 115 of 2008

This the 16th day of October 2009

Present: The Hon'ble Shri Manoranjan Mohanty, Vice-Chairman

Shri Bomkesh Dutta,  
MES 228324,  
Ex Fitter Pipe (SK),  
Vill-Sibachal, P.O. Banglaghat,  
Dist- Cachar (Assam)

Applicant

By Advocate Mr. M. Chanda

Versus

1. The Union of India  
Represented by the Secretary to the  
Government of India,  
Ministry of Defence, South Block,  
New Delhi-110 001
2. The Engineer-in-Chief,  
Army Headquarters, Kashmir House,  
DHQ P.O.: New Delhi-110 011.
3. The Chief Engineer,  
Headquarter, Eastern Command,  
Fort William, Kolkata-700 021
4. The Chief Engineer,  
Shillong Zone, S.E. Falls,  
Shillong- 793 011, Meghalaya
5. Garrison Engineer, Silchar,  
Military Engineer Services,  
PIN 900 380, C/o 99 APO
6. The Controller of Defence Accounts  
“Udayan Vihar”, Narangi, Guwahati-781 171.

Respondents

By Advocate Mrs. Manjula Das, Addl. C.G.S.C.

O.A.No. 115 of 2008  
ORDER

Manoranjan Mohanty, Vice-Chairman:-

Applicant; who was a Casual Worker under the Respondent  
Organisation, prior to his regular engagement as a Valveman on

J  
S

01.06.1968; was promoted as Pipe-Fitter. His date of birth was recorded as 26.12.1945 in his service book; that was opened on his regular appointment as Valveman on 01.06.1968. Accordingly, he was to face retirement on 31.12.2005. During 2001, with reference to the certificate (stated to have been issued by his School during 1966) an order was issued for correction of his date of birth to be 06.07.1948. Accordingly, it was declared that the Applicant shall face superannuation/retirement from service on 31.07.2008. By an order dated 14.03.2008, the Applicant was, however, placed under superannuation with immediate effect. Relevant portion of the order dated 14.03.2008 reads ad under:-

“ORDER

1. Of late it was noticed during audit of service book for working out qualifying service for superannuation benefit that your date of birth has been amended from 26 Dec 1945 to 06 Jul 1948 based on copy of School Certificate issued by Dr.BC Roy Memorial Academy Silchar produced by yourself in the year 2001.
2. Amendment to date of birth after 33 years of service has been objected in audit and the same is not agreed to.
3. In view of the above you are placed under superannuation with immediate effect as the original date of superannuation ie 31 Dec 2005 has already lapsed.
4. Please ack.”

Being aggrieved, the Applicant preferred Appeals on 15.03.2998 and, again, on 30.04.2008 to the authorities and approached this Tribunal with the present Original Application filed (under Section 19 of the Administrative Tribunals Act, 1985) on 26.06.2008; wherein he has prayed as under;

- “8.1 That the Hon’ble Tribunal be pleased to set aside and quash the impugned order bearing No.1076/P/BKD/02/EIR dated 14.03.2008 (Annexure-4).
- 8.2. That the Hon’ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation with effect from 06.07.2008 i.e. from 31.07.2008 with all consequential service benefit including monetary benefit.
- 8.3 That the Hon’ble Tribunal be pleased to declare that respondents are not entitled to make any recovery of pay and allowances on the ground of alleged excess payment of pay and allowances from the period from 31.12.2005 to 14.03.2008.
- 8.4 Costs of application.
- 8.5 Any other relief (s) to which the applicant is entitled as the Hon’ble Tribunal may deem fit and proper.”

2. By way of filing a Written Statement, the Respondents pointed out as under;—

- “3.1 That, the applicant was appointed as Valveman on 01.06.68 under the Garrison Engineer, MES Department, Silchar Division and his date of birth was recorded in the Service Book as 26.12.1945 and was authenticated the said date of birth by putting his signature in the Service Book.
- 3.2 That in the year 2001 while the applicant was serving in Garrison Engineer, Silchar Division his date of birth was amended vide Part Two Order dated 04.06.01 by placing the date of birth as 06.07.48 in place of 26.12.45. The said amendment was done without observing any procedure of law and that too collusion with the then Garrison Engineer on the basis of a School Certificate dated 06.09.66 issued prior to the initial appointment. The same is appeared to have been entered in Service Book of the of the applicant for changing the date of retirement of the applicant from December 2005 to July 2008 for getting undue benefit.
- 3.3 That the Headquarter Chief Engineer Eastern Command, Kolkata (Respondent no.3) circulated an advance

list vide letter dated 09.01.07 of the Civilian Subordinates who are due to retire from service on attaining the age of superannuation during the year 2008 (01.01.08-31.12.08).

3.4 That during scrutiny of the Service Book by Local Audit Officer( A), Silchar the entry of change in date of birth was observed and accordingly Local Audit Officer (A), Silchar returned the Service Book to G.E., Silchar Div. by asking clarification vide letter dated 31.07.07.

3.5 That the Local Audit Officer's office referred the matter of the changing of date of birth to Controller of Defence Accounts and the Controller of Defence Accounts, Guwahati vide its letter dated 05.03.08 opined that the date of birth is found to have been amended to 01/06/48 vide PTO no. 23/20/2001 after a period of about 33 years which is time barred and therefore, such alteration of date of birth is not acceptable in Audit and also is violation of the provisions of O.M. dated 17. 11.1962 under no.MHA. OM no. F/9/1/61-Esst.(A).

3.6 The date of birth of the applicant found to have been amended to 06.07.48 vide order dated 04.6.01 after a period of long 33 years which is not for correction of wrong entry but for irregular change of date of birth that too on the basis of a so-called certificate dated 06.09.66. Further the applicant although having been in custody of School Certificate in the year of 1966 the why he has not produced the same at the time of initial appointment or why he was waited for long 33 years. Even assuming, but not admitting the said certificate as authenticated one, then also in that case the rights of the applicant will not be entertained as much as the amendment is time-barred and which is not a clerical mistake and cannot be amended as per instruction of the Govt. of India. Hence such alteration of date of birth is not acceptable in audit and also in violation of the provision contained in Government of India's MHA O.M. No.F/9/1/61-Est(A) dated 17.11.62.

3.7 That the applicant was retained in service beyond his original date of retirement due to wrong publication of Part Two Order by the then Garrison Engineer, Silchar. However, subsequently, after detection of error/mistake the applicant was placed under superannuation w.e.f. 31.12.05 vide order dated 14.03.08.”

3. Applicant has also filed a Rejoinder in this case to support his case.
4. Heard Mr. M. Chanda, learned Counsel for the Applicant and Mrs. Manjula Das, learned Addl. Standing Counsel appearing for the Respondents and perused the materials placed on record.
5. It is the positive stand of the Applicant that ‘at the time of his regular appointment, he submitted School Certificate dated 06.07.1966 issued by Headmaster of Dr. B.C. Roy Memorial Academy at Silchar, wherein his date of birth was shown as 06.07.1948’ and that “the said School Certificate dated 06.09.1966, in fact, was verified by the authority at the time of his regular appointment as Valveman”. In reply to this positive assertion of the Applicant, the Respondents disclosed (in their Written Statement) that in the service record, 26.12.1945 was recorded as his date of birth and the said statement was authenticated by the Applicant himself by putting/endorsing his signature on the same sheet of the service book/record. The stand that has been taken by the Applicant in his Original Application that at the time of his regular appointment he produced his School Certificate (showing his date of birth as 06.07.1948) which was verified by the authority is not acceptable; for he took a contrary stand in his Appeals dated 15.03.2008 and 30.04.2008. In the said Appeals he took a stand that while opening the Service Book (on joining in the GE Estt./Silchar) his School Certificate was not verified.

6. If service book was opened disclosing his date of birth to be 26.12.1945 and the Applicant signed the same by keeping his eyes open; then he must suffer vice; if any. It is his case that his School Leaving Certificate (stated to have been issued to him in 1966) was at that time (1968) in his possession. If that was so, then he should have only signed after his claimed date was correctly entered.

7. Law is well settled, by now, that no entry of date of birth should be corrected at fag end of service. Same principle is equally applicable to the authorities. They could not have corrected the same after 33 years of service of the Applicant; especially on the face of GoI/OM/Dated 17.11.1962 of Ministry of Home Affairs.

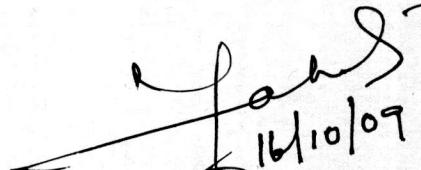
8. A perusal of the copy of the School Certificate goes to show that during 1966 (when the certificate was issued) the age of the Applicant was 18 (Eighteen) years 2(two) months and that he read in the same School up to Class VI only. His case is that prior to his engagement on regular basis, in 1968, he was gainfully engaged on casual basis. A question comes to mind as to whether he was a minor? That apart, the question of the genuineness of the Certificate comes to light by noting (from the rubber stamp mark on the Certificate) that the School in question was established during 1963. If that is so, then the Applicant was a Class VI Student before establishment of the School. This serious aspect of the matter having not been examined/looked in to by the authority (who allowed the correction of date of birth) there were certainly miscarriage of justice in taking a decision to correct the date of birth. Thus, the correction was bad.

9. Again, the Govt. India (MoHA) Executive Instruction of 17.11.1962 (in absence of Rules to the contrary) was statutory in character under

Article 73 of Constitution of India. That could not have been violated in granting correction of the date of birth.

10. Thus, the Applicant was only to face retirement from service on 31.12.2005 by treating his date of birth to be 26.12.1945. This case is accordingly dismissed. No costs.

11. But he (Applicant) was wrongly allowed to continue in service up to March 2008. In the premises discussed in the foregoing paragraphs, the Applicant be treated to have faced retirement on 31.12.2005; but since he discharged duties and drawn full salary up to March 2008, he may notionally be granted monthly pensions for the period between 01.01.2006 till he was allowed to discharge duties in March 2008 and be paid regular monthly pension thereafter. He, however, would not be entitled to get the period (beyond 31.12.2005) calculated for pension. There should not be any recovery of salaries already paid.



16/10/09

(Manoranjan Mohanty)  
Vice-Chairman

cm

26 JUN 2008

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

O. A. No. 115/2008

Shri Bomkesh Dutta.

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 01.06.1968- Applicant was initially appointed as Valveman under the Garrison Engineer (for short G.E), MES, Silchar.  
Thereafter applicant was promoted as Fitter Pipe (SK) under GE, Silchar.
- 06.09.1966- Head Master, Dr. B.C. Roy Memorial Academy, Silchar issued School certificate to the applicant, wherein date of birth of the applicant is shown as on 06.07.1948. Applicant will attain age of 60 years as on 06.07.2008. (Annexure- 1)
- 2001- Respondents asked the applicant to produce his original School certificate for verification of age. Applicant submitted his School certificate issued on 06.09.66 by the Headmaster Dr. B.C. Roy Memorial Academy.  
Applicant on the basis of his school certificate made a declaration before the competent authority that his date of birth is as on 06.07.1948 said declaration was countersigned by the G.E. Silchar. (Annexure- 1A)
- 04.06.2001- Part- II Order issued by the G.E. Silchar, wherein amendment has been carried out showing correct date of birth of the applicant as on 06.07.1948 instead of 26.12.1945. (Annexure- 2)  
Applicant will attain 60 years as on 06.07.08 in terms of the Part-II Order dated 04.06.01, as such he is entitled to retire on superannuation w.e.f. 06.07.2008 i.e. on 31.07.2008.
- 30.05.2007- G.E. Silchar published a list of individuals who are due for superannuation from service on attaining the age of 60 years. Applicant is placed at Sl. No. 16 and his date of retirement on superannuation is shown as on 31.07.2008.  
Letter dated 30.05.07 issued by the G.E. Silchar on the basis of the Chief Engineer, HQ Eastern Command letter dated 09.01.2007. (Annexure- 3)
- 14.03.2008- G.E. Silchar issued impugned order dated 14.03.08, stating that amendment to date of birth after 33 years of service has been objected in audit and the same is not agreed to. In view of that applicant is placed under superannuation with immediate effect the original date of superannuation i.e. 31<sup>st</sup> Dec 2005 has already lapsed. (Annexure- 4)
- Amended  
G.E. Silchar  
26.06.08  
S.C. Chakraborty*

26 JUN 2008

गवाहाद्वारा नामांकित  
It is stated that impugned order dated 14.03.08 has been issued without canceling the PTO dated 04.06.01 and letter dated 30.05.07 and also without any show cause or notice to the applicant in gross violation of principle of natural justice.

It is stated that authority is always entitled to correct a bonafide clerical mistake in the event of wrong entry in the service book. In the instant case bonafide clerical mistake rectified by the respondents of their own vide PTO dated 04.06.01. Therefore audit objection is not sustainable when a bonafide clerical mistake is rectified by way of amendment in the service book that too after lapse of about 7 (seven) years of issuance of PTO dated 04.06.2001.

15.03.2008- Applicant submitted representation addressed to the respondent No. 4, praying inter alia to allow him to retire on superannuation with effect from 31.07.2008 in terms of his date of birth. But to no result. (Annexure- 5)

30.04.2008- Applicant submitted appeal addressed to the respondent No. 2 praying to cancel the order dated 14.03.08 and to allow him to retire on superannuation w.e.f. 31.07.08. But to no result. (Annexure- 6) Hence this O.A before this Hon'ble Tribunal.

#### P R A Y E R S

1. That the Hon'ble Tribunal be pleased to set aside and quashed the impugned order bearing No. 1076/P/BKD/02/E1R dated 14.03.2008 (Annexure- 4).
2. That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation with effect from 06.07.2008 i.e. from 31.07.2008 with all consequential service benefit including monetary benefit.
3. That the Hon'ble Tribunal be pleased to declare that respondents are not entitled to make any recovery of pay and allowances on the ground of alleged excess payment of pay and allowances from the period from 31.12.2005 to 14.03.2008.
4. Costs of the application.
5. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

#### Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar to the respondents for providing the relief as prayed for.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

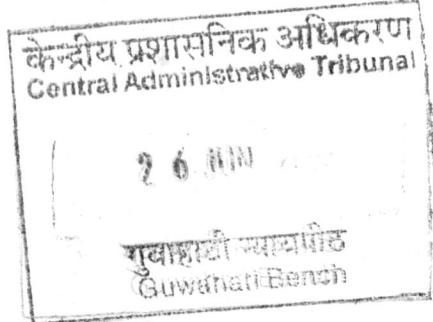
(An application under Section 19 of the Administrative Tribunals Act, 1985)

**Title of the case** : O.A. No. 115 /2008

Shri Bomkesh Dutta. : Applicant.

-Versus-

Union of India & Ors. : Respondents.



INDEX

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4.	1 A	Copy of the declaration of the applicant regarding his date of birth.	- 13 -
5.	2	An extract of the PTO NO. 23 DT 04.06.2001	- 14 -
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8.	5	Copy of the representation dated 15.03.2008	17 - 19 ,
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Filed By: -  
The Petitioner  
Through: -

(Sd/-) Bomkesh Dutta  
Advocate

Date: 26.06.08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

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

O.A. No. 115 /2008

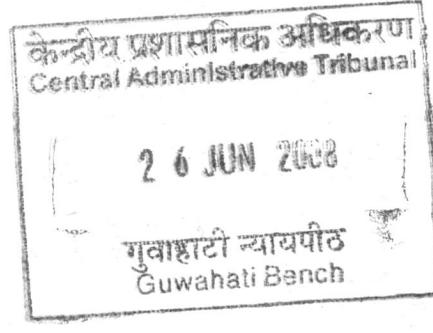
BETWEEN:

Shri Bomkesh Dutta,  
MES 223324,  
Ex Fitter Pipe (SK),  
Vill-Sibachal, P.O- Banglaghat,  
Dist- Cachar (Assam).

Applicant.

-AND-

1. The Union of India  
Represented by the Secretary to the  
Government of India,  
Ministry of Defence, South Block,  
New Delhi- 110001.
2. The Engineer-in-chief,  
Army Headquarters, Kashmir House,  
DHQ P.O : New Delhi- 110011.
3. The Chief Engineer,  
Headquarter, Eastern Command,  
Fort William, Kolkata- 700021.
4. The Chief Engineer,  
Shillong Zone, S.E. Falls,  
Shillong- 793011, Meghalaya.
5. Garrison Engineer, Silchar,  
Military Engineer Services,  
PIN 900380, C/o 99 APO.
6. The Controller of Defence Accounts  
"Udayan Vihar", Narangi, Guwahati- 781171.



..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

This application is made against the impugned order bearing letter No. 1076/P/BKD/02/E1R dated 14.03.2008 (Annexure- 4), whereby applicant is made to retire retrospectively w.e.f. 31.12.2005 without any prior notice, on

Filed by:- U. Dutta  
Through:- U. Dutta

Advocate on 26.06.08

the alleged ground of audit objection to the amended date of birth 06.07.1948 issued under PTO No. 23 DT dated 04.06.2001 and also praying for a direction upon the respondents to treat the date of birth of the applicant as on 06.07.1948 instead of 26.12.1945 in terms of part-II order dated 04.06.2001 and also be pleased to declare that the applicant is entitled to retire on superannuation w.e.f 31.07.2008 with all consequential service benefit.

**2. Jurisdiction of the Tribunal:**

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

**3. Limitation:**

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

**4. Facts of the case:**

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That the applicant was initially appointed as Valveman on 01.06.1968. Thereafter he was promoted as Pipe Fitter. It is relevant to mention here that prior to his regular appointment as Valveman, the applicant had also worked as Casual worker.
- 4.3 That your applicant at the time of his regular appointment as, he has submitted school certificate dated 06.09.1966 issued by Head Master, Dr. B.C. Roy Memorial Academy, Silchar, wherein date of birth of the applicant is shown as 06.07.1948. The said school certificate dated 06.09.1966 in fact verified by the authority at the time of his regular appointment as Valveman.

(A copy of the school certificate dated 06.09.1966 is enclosed as Annexure-1).

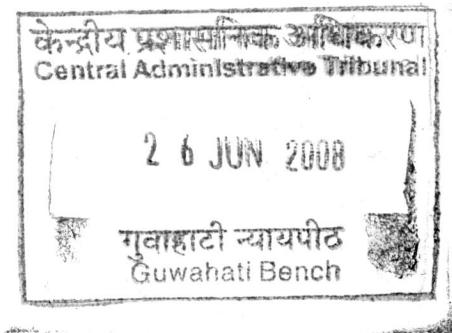
*Bromesh Datta*

4.4 That it is stated that during the year 2001 the authority asked the applicant to produce his original school certificate for verification. The applicant accordingly submitted his original school certificate for verification of his age. It is relevant to mention here that the applicant after being satisfied in regard to the correctness of the date of birth in the service book as on 06.07.1948 made a declaration before the competent authority that his date of birth is 06.07.1948 and the said declaration was countersigned by the Garrison Engineer, Silchar. The authority after being satisfied regarding the genuineness of the school certificate produced by him, made necessary correction in the service book of the applicant in terms of the Part-II Order No. 23 dated 04.06.2001 issued by the Garrison Engineer, Silchar. By the Part-II order dated 04.06.2001, amendment has been carried out showing correct date of birth of the applicant as on 06.07.1948 instead of 26.12.1945. It is also relevant to mention here that the authority also verified the school certificate produced by the applicant from the school authority in order to ascertain the genuineness of the school certificate where date of birth is recorded as 06.07.1948.

(Copy of declaration of date of birth of the applicant and an extract of the PTO NO. 23 DT 04.06.2001 are enclosed as Annexure- 1 A and 2 respectively).

4.5 That your applicant further begs to say that in terms of the amended date of birth, the applicant is entitled to retire on superannuation with effect from 06.07.2008 i.e. w.e.f 31.07.2008. Part-II order dated 04.06.2001 has been circulated to all the higher authorities.

- (1) HQ CE EC Kolkata-21.
- (2) HQ CE SZ Shillong-11.
- (3) HQ 137 Works Engrs.
- (4) CDA Guwahati.
- (5) AAO Shillong.
- (6) DAO (A) Silchar.
- (7) AAO CE Silchar.
- (8) All Sub-Divn.



4.6 That the G.E. Silchar vide his letter bearing No. 1618/A/176/E1PEN dated 30.05.2007, published a list of individuals who are due for superannuation from service on attaining the age of 60 years. Accordingly, they were advised

*Ranjesh Deutty*

26 JUN 2008

গুৱাহাটী ন্যায়পীঠ  
Guwahati Bench

4

to submit documents like passport size photographs and bank account number with full address of the bankers through which individual desires to draw payment. In the letter dated 30.05.07 name of the applicant is placed at Sl. No. 16 and his date of retirement on superannuation is shown as on 31.07.2008. It is stated that letter dated 30.05.2007 issued by the G.E. Silchar on the basis of the Chief Engineer, HQ Eastern Command letter dated 09.01.2007. It is evident from the letter dated 30.05.07 that after amendment of date of birth of the applicant vide PTO dated 04.06.01, the competent authority like Chief Engineer, Eastern Command and G.E. Silchar have accepted the date of retirement on superannuation of the applicant as on 31.07.2008. As such when date of retirement of the applicant as on 31.07.2008 is declared by the competent authority like the G.E. Silchar vide letter dated 30.05.2007 on the basis of the Chief Engineer Eastern Commands' letter dated 09.01.07, the said date of retirement of the applicant as on 31.07.08 cannot be altered without canceling the letter dated 30.05.07 issued by the G.E. Silchar.

Copy of the letter dated 30.05.2007 is enclosed herewith  
and marked as Annexure- 3.

- 4.7 That most surprisingly the GE, Silchar vide impugned letter No. 1076/P/BKD/02/EIR dated 14.03.2008 has issued order placing the applicant under superannuation w.e.f. 31.12.2005. In the impugned order dated 14.03.2008, it has been stated that the amendment to the date of birth after 33 years of service has been objected in audit and the audit authority did not agree with such amendment. It is relevant to mention here that the amendment as regard to date of birth of the applicant has been carried out Seven years back i.e. on 04.06.2001. In the meanwhile annual statutory audit as well as internal audit has been conducted by the Govt. authority and no objection has been raised by the authority for the last 7 years. But surprisingly at the fag end of his service career, the impugned order dated 14.03.2008 has been issued without any show cause or notice in total violation of principle of natural justice and also in violation of PTO dated 04.06.2001, whereby amendment has been made following the order of the competent authority i.e. by the G.E. Silchar. The said amended date of birth

Bomkesh Dutt

is still in force, as such the impugned order dated 14.03.2008 is not sustainable in the eye of law and as such the same is liable to be set aside and quashed.

(A copy of the impugned order dated 14.03.2008 is enclosed herewith and marked as Annexure- 4).

- 4.8 That it is stated that the date of birth of the applicant has been corrected by the respondent after detail verification of service record of the applicant as well as the school certificate submitted by the applicant, the respondents after being satisfied of their own that the earlier date of birth recorded in the service book is not factually correct, as such the authority of its own rectified the date of birth by way of amendment making correct entry as 06.07.1948 instead of 26.12.1945 in conformity with school certificate dated 06.09.1966, which was issued by the Headmaster, Dr. B.C. Roy, Memorial Academy, Silchar.

Since the date of birth of the applicant has been rectified by the respondents on verification of service record as well as on verification of school certificate, as such respondents are not entitled to issue the impugned order dated 14.03.2008, whereby applicant has been retired pre-maturely with retrospective effect i.e. with effect from 31<sup>st</sup> December, 2005 following the order dated 14.03.2008, simply on the ground that the audit has objected such amendment after a lapse of 33 years. It is relevant to mention here that at the time of initial entry, the applicant submitted the same school certificate dated 06.09.1966 but surprisingly the date of birth of the applicant has been recorded as 26.12.1945 for the reasons best known to the authority. However the said wrong entry of the date of birth came to the notice of the authority and as such correction is made by the competent authority itself. Therefore applicant has acquired a valuable and legal right to continue in service till the matter is decided by the learned Tribunal. In the facts and circumstances stated above the impugned letter dated 14.03.2008 is liable to be set aside and quashed.

- 4.9 That it is stated that after passing the impugned order dated 14.03.2008 the applicant repeatedly approached to the authority and also submitted representation on 15.03.2008 and 30.04.2008, praying inter alia to allow him

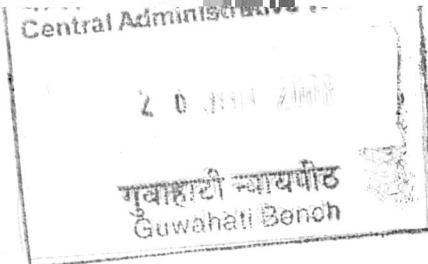
Prakash Dutt

to retire on superannuation with effect from 31.07.2008 in terms of his date of birth. It is also pertinent to mention here that as per his actual date of birth i.e. on 06.07.1948, the applicant would attain 60 years of age on 06.07.2007 as such the applicant is entitled to retire on superannuation on 31.07.2008. It is further submitted that the authority is always entitled to correct a bonafide clerical mistake in the event of making wrong entry in the service book which may also occurred due to wrong arithmetical calculation. Therefore audit objection is not sustainable when a bonafide clerical mistake is rectified in the service book by way of amendment by the authority in respect of entry of date of birth of Government Employee like the applicant. It is categorically submitted that it is not a case of change of date of birth but it is a case of correction of wrong entry made in the service book of the applicant due to wrong calculation as such the impugned order dated 14.03.2008 is not sustainable which is issued on the alleged ground of audit objection.

(Copy of the representation dated 15.03.08 and 30.04.08 are enclosed as Annexure- 5 and 6 respectively).

- 4.10 That your applicant further begs to say that wrong entry of date of birth in service book has been rectified way back in 2001, the statutory annual audit never objected such rectification for long 7 (seven) years, as such without canceling the said amendment order i.e. PTO dated 04.06.2001 and also without providing any opportunity to the applicant the impugned order dated 14.03.2008 has been issued in gross violation of principle of natural justice, therefore, the impugned order dated 14.03.2008 is not sustainable in the eye of law and the same is liable to be set aside and quashed.
- 4.11 That your applicant further begs to say that after passing of the impugned order dated 14.03.2008 the respondent did not take any action on his representations dated 15.03.2008 and 30.04.2008. As a result applicant is not getting any sort of payment from the respondents and as such facing acute financial hardship and now in the stage of starvation with his dependent family members the applicant is also apprehending that respondents may also affect recovery of the pay and allowances paid to him after 31<sup>st</sup> December 2005 till 14.03.2008. In this connection it may be stated that since the respondents have utilized the service of the applicant till 14<sup>th</sup> March,

Bomdak Dutt



2008 as such they are not entitled to make any recovery of the pay and allowances paid to the applicant up to 14<sup>th</sup> March, 2008 rather applicant is entitled to arrear pay and allowances till he attains the age of retirement of superannuation i.e. up to 31<sup>st</sup> July, 2008. Moreover, applicant is also entitled to all retirement benefits taking his date of retirement on superannuation as on 31.07.2008. Therefore, the Hon'ble Tribunal be pleased to set aside and quashed the impugned order dated 14.03.2008 and further be pleased to declare that the applicant is entitled to retire on superannuation with effect from 06.07.2008 i.e. from 31.07.2008 with all consequential service benefit including monetary benefit and the respondents are not entitled to make any recovery of pay and allowances on the ground of alleged excess payment of pay and allowances from the period from 31.12.2005 to 14.03.2008.

- 4.12 That the applicant submitted representations praying for justice but with no effect. As such he has no other efficacious and alternative remedy than to approach before this Hon'ble Tribunal and the relief's sought for in this Original application, if granted, will be just, adequate and complete.
- 4.13 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

- 5.1 For that, the respondents Union of India of its' own rectified the wrong entry of date of birth of the applicant which was earlier recorded in the service book by way of amendment vide PTO dated 04.06.2001 after verification of the service record and school certificate of the applicant.
- 5.2 For that, the correction of date of birth, which is occurred in service record of the applicant due to bonafide clerical mistake has been rectified by way of amendment by the respondent way back in June 2001 as such respondents are not entitled to ignore the said correction after a lapse of about 7 (seven) years that to without providing any opportunity to the applicant.
- 5.3 For that, rectification of a bonafide arithmetical error is a curable defect and the respondents are always entitled to cure the administrative error by way

*Bomlesh Dutt*

High Court of  
Guwahati Bench

of amendment. As such audit objection is not sustainable as alleged in the impugned order dated 14.03.2008.

- 5.4 For that, the PTO No. 23 dated 04.06.2001 issued by the G.E. Silchar whereby wrong entry of date of birth which was rectified by making correct entry as 06.07.1948 instead of 26.12.1945 as date of birth of the applicant is still valid and the said amendment is still in force, as such impugned order dated 14.03.2008, whereby, applicant is sought to be retired with effect from 31.12.2005 is not sustainable in the eye of law.
- 5.5 For that, after correction of the recorded date of birth of the applicant by PTO dated 04.06.2001 on the basis of school certificate submitted by the applicant and also after verification of service records which was never objected by the annual statutory audit for last 6 (six) years, as such respondents are barred by law of estoppel to entertain any such objection at this belated stage at the verge of retirement of the applicant.
- 5.6 For that, the PTO dated 04.06.2001 is still in force as such the date of birth of the applicant is liable to be treated as 06.07.1948 instead of 26.12.1945 and on that score alone the impugned order dated 14.03.2008 is liable to be set aside and quashed.
- 5.7 For that the impugned order dated 14.03.2008 has been issued in total violation of principle of natural justice as such impugned order dated 14.03.2008 is liable to be set aside and quashed.
- 5.8 For that impugned order dated 14.03.2008 retiring the applicant with retrospective effect i.e. on 31.12.2005 is not sustainable in the eye of law.
- 5.9 For that in terms of letter dated 30.05.2007 issued by the G.E. Silchar on the basis of the Chief Engineer, HQ Eastern Command letter dated 09.01.2007, the date of retirement of the applicant on superannuation is on 31.07.2008, as such without canceling the letter dated 30.05.07 issuance of the impugned order dated 14.03.08 is not sustainable in the eye of law.

Bomdebah Dutt

गुवाहाटी न्यायालय  
Guwahati Bench

- 5.10 For that respondents are not entitled to make any recovery of pay and allowances paid to the applicant after 31.12.2005 till 14.03.2008 since the services of the applicant has been utilized by the respondents.
- 5.11 For that in terms of PTO No. 23 dated 04.06.2001 and letter dated 30.05.2007 the applicant is entitled to retire on superannuation with effect from 06.07.2008 i.e. w.e.f 31.07.2008 with all consequential service benefit including the arrear monetary benefit.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quashed the impugned order bearing No. 1076/P/BKD/02/E1R dated 14.03.2008 (Annexure- 4).
- 8.2 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to retire on superannuation with effect from 06.07.2008 i.e. from 31.07.2008 with all consequential service benefit including monetary benefit.

*Boromesh Dutt*

- 8.3 That the Hon'ble Tribunal be pleased to declare that respondents are not entitled to make any recovery of pay and allowances on the ground of alleged excess payment of pay and allowances from the period from 31.12.2005 to 14.03.2008.
- 8.4 Costs of the application.
- 8.5 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

**9. Interim order prayed for:**

During pendency of the application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar to the respondents for providing the relief as prayed for.

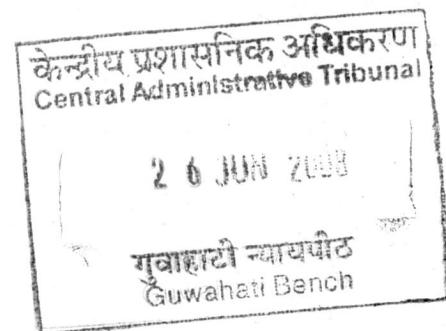
10. ....

**11. Particulars of the I.P.O**

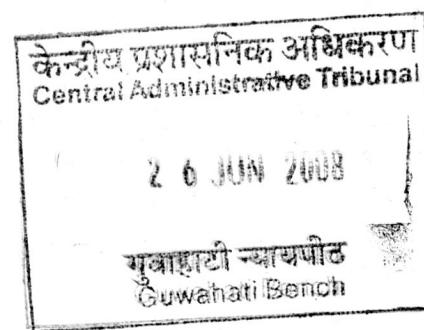
- i) I.P.O No. : 39 G 344292 .  
 ii) Date of issue : 10. 06. 08.  
 iii) Issued from : G. P. O. Guwahati .  
 iv) Payable at : G. P. O. Guwahati .

**12. List of enclosures:**

As given in the index.



Promod S. Dutt

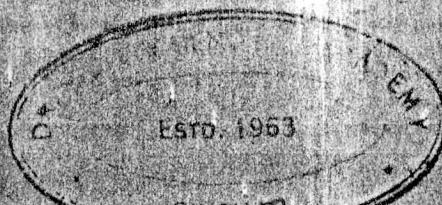


VERIFICATION

I Shri Bomkesh Dutta, MES/228324, aged about 60 years, resident of Shibachal, P.O- Banglaghat, Dist- Cachar, Assam, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 21st day of June 2008.

*Bomkesh Dutta*



Certified that Sri Jayomoksh Dutta, 870  
Sri Baroda Chandra Dutta of Malegram, Silchar  
has been a student of Class VI of my  
Academy. His age, according to the  
Admission Record is 18 (Eighteen) yrs  
2 (Two) months to-day.

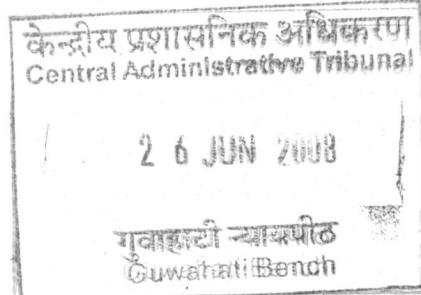
So far as my knowledge  
goes he bears a good moral  
character.

Thamalendu Bhattacharya

Headmaster  
Dr. D.C. Roy Memorial Academy  
SILCHAR

DT of Birth - 6. 7. 1948

Attested  
Dutta  
SSN



DECLARATION OF DATE OF BIRTH

Annexure-1A

L gone

I declare that I have been through my Service Book and I am satisfied in regard to the correctness of the date of birth entered there in.

I also declare that my date of birth is 06 JUL 1948

Signature of two witnesses which should be of equivalent or higher status as a compared to the person

1. Asitnath Muzumdar  
(Ashutosh Muzumdar)  
VDC

2. R. K. Deb  
(R. K. Deb, Draftsman)  
MLS/228184

B. Dutta  
(MES/228324 SHRI BOMKESH DUTTA)

(Signature of the individual)  
Designation P/Engine (SK)

COUNTERSIGNED

For Garrison Engineer  
Suchar Cantt.



Attested  
Dutta  
Deb

graduation under ACP scheme  
in the pay scale of Rs.  
4000-100-6000.

ANNEXURE 2

40

GE SILCHAR PTO NO 23 DT 04 JUN 2001

Authy :- H. 137 Works Engrs letter  
No. 1248/4/SP/46/EIC (2) of  
15 Mar' 2001.

## DECLARATION OF C. STE

9. MES/243331 Shri Elect  
Mihir Kanti Barman (SK)

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

Authy :- Certificate Sl No 238 dated  
17-04-82 issued by Deputy  
Commissioner Cachar (Assam)

10. MES/228324 Shri F/Pipe  
Bomkesh Dutta (SK)

Belongs to (Barman)  
Schedule Tribe

26 JUN 2003

गुवाहाटी न्यायालय  
Guwahati Bench

reference PTO No 29-10-68

The following amendment is  
hereby made :-

Date of birth "For ,

For " 26-12-1945

Reed " 06-07-1948

\*

Part IV (a) ends with Sl No 20

Part IV (b)

## rement

1. MES/225475 Shri FGM  
Maia (SK) 01-05-01-Earned annual increment  
Rs.75/- pm wef 01-05-01  
in the grade of FGM (SK)  
raising pay from Rs.3875/-  
from Rs.3950/- pm in the  
scale of Rs.3050-75-3050-  
80-4500/- wef same date.

Part IV (b) ends with Sl No 21

I.S.L  
for G.S Silchar

## ISTRIBUTION :

- 1. H. GE DC Kolkata-21
- 2. H. GE S. Shillong-11
- 3. H. 137 Works Engrs
- 4. CLA. Gauhati
- LAO Shillong
- 6. LAO (A) Silchar
- LAO GE Silchar
- 8. 111 Sub-Divn
- Internal :- ELE, EIP & Adm Sec.

Attested  
Bomkesh Dutta  
Adm Sec.

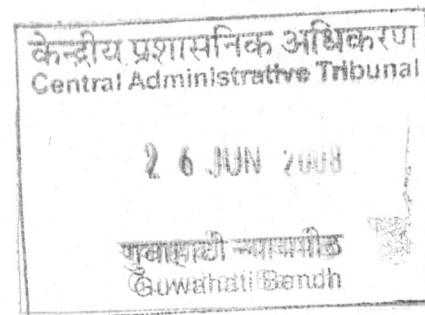
1616/A 176 /E1PEN

30 Mar 07

ANNEXURE 73

Shri Ramkesh Dutta F/Pipe  
AGE B/R Silchar

(Subdivision/Individual concerned through respective sub divn)

SUPERANNUATION

1. The following Officer/individuals of your sub divn is/are due for superannuation from service as per the date shown against each on attaining the age of 60 years. The individual may please be advised to submit the following documents in 10 - 12 months advance.

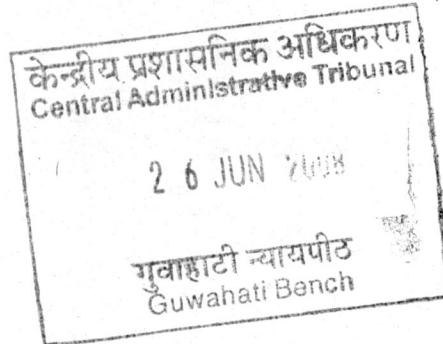
- (a) 06 Copies of Passport size Joint Colour Photograph with NOK
- (b) Bank account No and full address of the bankers through which the individual desires to draw payment (Bank should be public sector Nationalised bank only)

Ser No	MES No, Name & Design	Date of retirement	Sub divn	Remarks
01	MES/233111 Shri DK Basu, AGE E/M	31 Mar 08		
02	MES/228505 Shri DC Nath, Mate	31 Mar 08		
03	MES/229026 Shri PC Das, FGM	31 Mar 08		
04	MES/228782, Shri NB Das, Machinist HS	31 Mar 08		
05	MES/228540 Shri CR Roy, FGM	31 May 08		
06	MES/234085 Shri KN Roy, FGM	31 May 08		
07	MES/228300 Shri IA Laskar, F/Pipe	31 May 08		
08	MES/228824 (MES) Shri SU Barbhuiya, V/Man	31 May 08		
09	MES/228763 Shri SU Barbhuiya, C/Man	31 Oct 08		
10	MES/228343 Shri KU Barbhuiya, FGM	28 Feb 08		
11	MES/220325 BK Singh, Elect	28 Feb 08		
12	MES/233585 JM Nath, Refg/Mech	31 Mar 08		
13	MES/228709 Shri K Bhakat, Mason	31 Jul 08		
14	MES/220483 Shri BB Paul, Mate	31 Mar 08		
15	MES/228487 Shri SC Paul, Mason	30 Jun 08		
16	MES/228324 Shri Bomkesh Dutta, F/Pipe	31 Jul 08		
17	MES/228921 Shri AR Laskar, Mate	30 Sep 08		
18	MES/237922 Shri KK Roy, C/Man	30 Sep 08	BSO Silchar	

Auth: Chief Engineer, HQ Eastern Comd letter No 131970/1A/2007/72/Engrs/  
E1R (D) dt 09 Jan 2007.

*N. Kishore Kumar*  
(N Kishore Kumar)  
AE (CIV)  
AGE 'T'  
for Offr Garrison Engineer

*Attested  
Dutta  
Adv*



Tele Mili: 2500

Garrison Engineer Silchar  
Military Engineer Services  
Pin 960350  
C/O 99 APG

1076/PB/CD/62/EIR

Mar 2008

MES/228324  
Shri Bumikesh Datta  
TTEPA HSC ✓

## ORDER

1. Of late it was noticed during audit of service book for working out qualifying service for superannuation benefit that your date of birth has been amended from 26 Dec 1945 to 06 Jul 1948 based on copy of School Certificate issued by Dr BC Roy Memorial Academy Silchar produced by yourself in the year 2001.
2. Amendment to date of birth after 33 years of service has been objected in audit and the same is not agreed to.
3. In view of the above you are placed under superannuation with immediate effect as the original date of superannuation ie 31 Dec 2005 has already lapsed.
3. Please ack.

( Prabhakar Minai )  
EE (SG) -  
Garrison Engineer.

Copy to :-

AGE B/R Silchar  
AAO GE Silchar  
LAO (A) Silchar  
CDA Guwahati ]

- For info and necessary action.
- For info.
- For info wrt CDA Guwahati letter No Pay  
DWW/SII Vol-XI dt 05 Mar 08 received on 12 Mar 08.

Attested  
Maitta  
Adv

ANNEXURE-4

(Typed true copy)

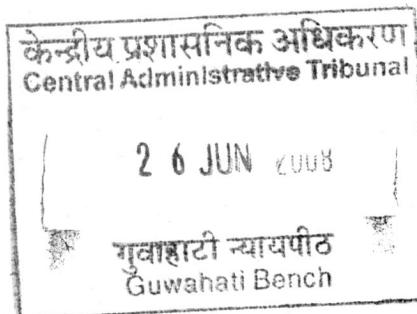
Tele Mly : 2500

1076/P/BKD/02/E1R

MES/228324

Shri Bomkesh Dutta

F/Pipe HS



Garrison Engineer Silchar  
Military Engineer Services  
Pin 900380  
C/O 99 APO

14 Mar 2008

ORDER

1. Of late it was noticed during audit of service book for working out qualifying service for superannuation benefit that your date of birth has been amended from 26 Dec 1945 to 06 Jul 1948 based on copy of School Certificate issued by Dr BC Roy Memorial Academy Silchar produced by yourself in the year 2001.
2. Amendment to date of birth after 33 years of service has been objected in audit and the same is not agreed to.
3. In view of the above you are placed under superannuation with immediate effect as the original date of superannuation i.e. 31 Dec 2005 has already lapsed.
4. Please ack.

Sd/-  
(Prabhakar Mittal)  
EE (SC)  
Garrison Engineer

Copy to :-

ACE B/R Silchar  
AAO GE Silchar  
LAO (A) Silchar  
CDA Guwahati

- For info and necessary action  
- For info  
- For info wrt CDA Guwahati letter No. Pay/  
Bill/SH/ Vol-XI dt 05 Mar 08 received on 12 Mar 08.

Attested  
Bomkesh  
Dutta

To

The Chief Engineer,  
Shillong Zone, S.E. Falls,  
Shillong - 11, Meghalaya.

केन्द्रीय प्रशासनिक अधिकारी पा  
Central Administrative Tribunal

26 JUN 2008

गुवाहाटी न्यायपीठ  
Guwahati Bench

Sub :- Appeal against order passed vide No. 1076/p/  
BKD/02/EIR, dt. 14-03-08 by Garrison Engineer  
Silchar, superannuating me on 14-03-08 against  
my date of birth mentioned in my school certi-  
ficate & Service Book.

Sir,

With due respect and humble submission I beg  
to lay before your kindself the following facts for  
your kind consideration and favourable order :-

1. That, I initially joined in service in June 1968 as V. man under G.E.MES Silchar and I was allotted No. MES 228324.
2. That being satisfied with my honesty, sincerity with and devotion to duty, I was promoted time to time and at present ~~as~~ I am holding the post of F/Pipe (SK) under G E Silchar.
3. That while joining service under G E Silchar my service book was opened without verification of my school certificate as a result subsequently I was asked to submit school certificate regarding verification of my age. Accordingly I submitted my school certificate dated 06.09.1963 and as per said school certificate my date of Birth is 06th July, 1948. Accordingly my date of birth was recorded correctly in my service book and for confirmation of the date of birth recorded in the respective service book of the staffs serving under G E Silchar. The G E Silchar issued Part II order serial No. 23 dt. 04 June 2001 page 7 and the copy of the same was sent to your kindself and H.Q., CE EC Kolkata 21, H.Q. 137 works Engineer CDA Gauhati and concerned officials and my date of birth was finally confirmed as 06-07-48. The Xerox copy of the said order is annexed herewith as annexure 1 for your kind perusal.
4. That on the basis of Annexure 1 and in compliance with the order of the Chief Engineer H.Q. Eastern Command letter No. 131970/1A/2007/72/Engrs/ E1R(D), dt. 09-01-07, G E Silchar division MES issued

Contd ... P/2

W.H.S.  
P.D.  
S.W.

= 2 =

Part II order No. 11/15 dated 12th March/07 informed all concerned for the date of my superannuation as on 31st July, 2008. The photocopy of the said PTO is annexed herewith as annexure 2 for your kind perusal. I complied the directions contained in annexure 2 with expectation that my date of retirement is on 31st July, 2008. But suddenly on 14.03.08 the G E Silchar Divn. MES issued his order vide No. 1076/P/BKD/02/E1R, dt. 14-03-08 placing me under super-annuation with immediate effect ignoring my actual date of birth mentioned in my school certificate. The xerox copy of the said order issued vide No. 1076/P/BKD/02/E1R dt. 14.03.08 by G E Silchar in annexed herewith as annexure 3 for your kind perusal.

केन्द्रीय प्रशासनिक अधीक्षण  
Central Administrative

26 JUN 20

गुवाहाटी न्यायपीठ  
Guwahati Beni

Being highly aggrieved and dis-satisfied with the said order dt. 14.03.08 I beg to prefer this appeal for getting justice on my date of birth as per School certificate is 06-07-1948 as such I would attain 60 years of age i.e. age of superannuation on 06-07-08 and as such as per rules and Annexure 1 and 2 was issued fixing my date of superannuation on 31.07.08. But I have been subjected to serious injustice by superannuating me suddenly on 14.03.08 i.e. in the middle of a March against documentary proof of school certificate as such I pray for issuance of order for setting aside the order dt. 14.03.08 of the G.E. Silchar division allowing me to continue my service under G E Silchar till 31st July, 2008, on the basis of my school certificate and Annexure = 1 and 2 and kindly stay the operation/implementation of the order dt. 14.03.08 issued by G E Silchar Division till final disposal of this appeal.

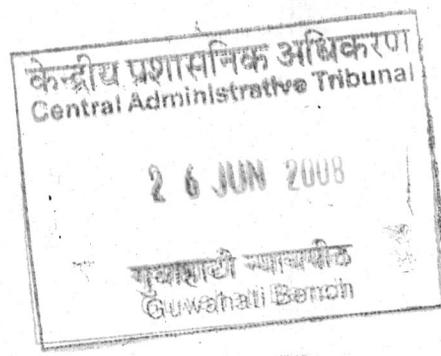
And for this act of kindness I shall remain ever grateful to your kindself.

yours faithfully,

Dated : 15th day of  
March/2008.

Bomkesh Dutta  
(MES/228324 Sri Bomkesh Dutta )  
F/Pipe (SK) Vill. Shibachal,  
P.O. Banglaghat,  
Dist. Cachar (Assam).

Contd ...P/3



= 3 =

Copy forwarded to :

1. G E Silchar Divn. MES, P.O. Arunachal, Pin - 900380 C/O. 99 APO for information with prayer to allow me to continue my service till disposal of my appeal preferred before the Hon'ble Chief Engineer, Shillong.
2. The Chief Engineer, Headquarters Eastern Command, Fort William, Kolkata - 21--- as an advance information
3. The Commander, Headquarters, 137 Works Engineers, C/O 99 APO ..... for action as deemed fit.

Bomkesh Dutta

( MES/228324 Sri Bomkesh Dutta)  
F/Pipe (SK) Vill. Shibachal,  
P.O. Banglachar,  
Dist. Cachar (Assam).

Received  
18/3/08

Bomkesh  
GE Silchar

\*\*\*\*

From:

MES 228324  
Bomkesh Dutta  
Fitter Pipe (SK)  
Vill: Sibachal  
P.O.: Banglaghat.  
District: Cachar. (Assam)

To

Engineer-In-Charge  
Army Headquarters  
DHQ P.O.: New Delhi-11.

(Through GE Silchar)

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal

26 JUN 2008

गुवाहाटी न्यायपीठ  
Guwahati Bench

**STATUTORY APPEAL AGAINST ORDER ISSUED BY GE SILCHAR VIDE  
1076/P/BKD/02/EIR OF 14 MARCH 2008, SUPERANNUATING ME ON 14  
MARCH 2008 INSTEAD 31 JULY 2008 (AN)**

Sir,

With due respect and humble submission I beg to lay before your kindself the following facts for your kind consideration and favourable order please.

1. That, I initially joined in service in June 1968 as Valveman under GE MES Silchar and I was allotted No MES 228324.
2. That being satisfied with my honesty, sincerity and devotion to duty, I was promoted time to time and at present I am holding the post of F/Pipe (SK) under GE Silchar.
3. That while joining service under GE Silchar my service book was opened without verification of my school certificate as a result subsequently I was asked to submit school certificate regarding verification of my age. Accordingly I submitted my school certificate dated 06-09-1968 and as per said school certificate my date of birth is 06 July 1945. Accordingly my date of birth was recorded correctly in my service book

Contd...P/2

Attested  
Bomkesh Dutta  
Advocate

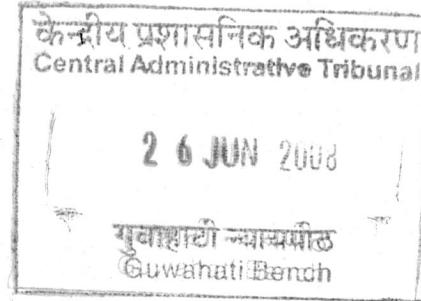
-2-

and for the confirmation of the date of birth recorded in the respective service book of the staffs serving under GE Silchar, the GE Silchar issued Part II order serial No 23 Dt 04 June 2001 page 7 and the copy of the same was sent to all concerned including HQ, CE Shillong Zone, HQ CE EC Kolkata 21, H.Q. 137 works Engineer, CDA Guwahati and my date of birth was finally confirmed as 06-07-1948. The Xerox copy of the same order is annexed herewith as annexure 1 for your kind perusal.

4. That on the basis of Annexure 1 and in compliance with the order of the Chief Engineer HQ Eastern Command letter No. 131970/ 1A/ 2007/ 72/ Engrs/ E1R(D) dt 09-01-2007, GE Silchar issued part II order No. 11/ 15 dated 12 March 07 informed all concerns for the date of my superannuation as on 31 July 2008. The photocopy of the said PTO is annexed herewith as Annexure 2 for your kind perusal. I complied the directions contained in Annexure 2 with expectation that my date of retirement is on 31 July, 2008. But suddenly on 14-03-2008 the GE Silchar issued his order vide No 1067/ P/ BKD/ 02/ E1R dt 14-03-08 placing me under superannuation with immediate effect ignoring my actual date of birth mentioned in my school certificate. The Xerox copy of the said order issued vide No 1076/ P/ BKD/ 02/ E1R dt 14-03-2008 by GE Silchar is annexed herewith as Annexure 3 for your kind perusal.

Being highly aggrieved and dis-satisfied with the said order dt 14-03-08 I beg to prefer this appeal for getting justice on my date of birth as per school certificate is 06-07-1948 as such I would attain 60 years of age i.e. age of superannuation on 06-07-2008 and as such as per rules and Annexure 1 and 2 was issued fixing my date of superannuation on 31-07-08. But I have been subjected to serious injustice by

Contd... P/3



-3-

superannuating me suddenly on 14-03-08 i.e. in the middle of the month against documentary proof of school certificate as such I pray for issuance of order for setting aside the order dt. 14-03-08 of the GE Silchar and allowing me to continue my service under GE Silchar till 31 July 2008, on the basis of my school certificate and Annexure 1 and 2 and kindly stay the operation/ implementation of the order dt. 14-03-08 issued by GE Silchar till final disposal of this appeal.

And for this act of kindness I shall remain ever grateful to your kind self.

Yours Faithfully

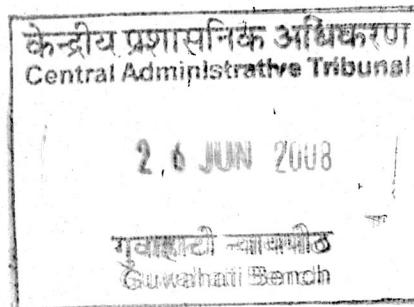
Dated: 30<sup>th</sup> April 2008.

*Bomkesh Dutta*

(MES/ 228324 Sri Bomkesh Dutta)

F/ pipe (SK)

Vill. Shibachal,  
P.O. Banglaghat,  
Dist. Cachar (Assam)



Contd... P/4

Copy to:-

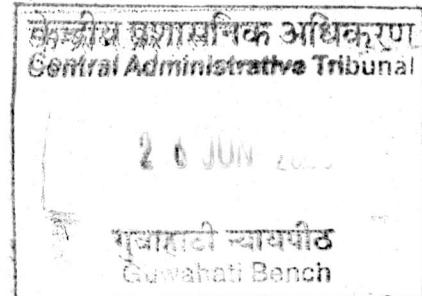
Chief Engineer  
Headquarters  
Eastern Command  
Kolkata-700021

Chief Engineer  
Headquarters  
Shillong Zone  
SE Falls Camp  
Shillong-11.

Commander  
Headquarters  
137 works Engineers  
C/O 99 APO.

Secretary  
All Assam MES Employees Union  
Silchar Branch.

-4-



For information along with  
Copies of all Annextures.

26 NOV 2008

IAL,  
जाहाटी न्यायपीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No 115 /08

Sri Bomkesh Dutta  
...Applicant.

-Vs-

Union of India and ors.  
...Respondents

INDEX

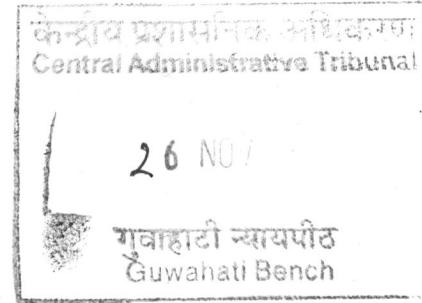
Sl. No.	Annexure	Particulars	Page no
1.	.....	Written Statement	1 - 7
2.	.....	Verification	8
3.	A	Copy of the Bio-Data sheet in entries in the Services Book of the applicant	9
4.	B	Clarification letter dated 31.07.07	10 - 11
5.	C	Copy of Pt.II order dtd. 04.06.01 whereby amendment of date of birth is made by inserting 06.07.48 in place of 26.12.45.	12
6.	D	Letter dtd 02.08.07 issued by the GE to LAO.	13
7.	E	Letter dtd 4.9.07 issued by LAO asking GE (R.5) to furnish reasons for the alteration of date of birth.	14 - 15
8.	F	Vide letter dtd 12.11.07 the GE resubmitted the Service Book of the applicant and requested to verify the qualifying service.	16
9.	G	Letter dtd 5.3.08 issued by AO holding that the amendment of date of birth after 33 yrs. Is time-barred and violation of OM dtd. 17.11.62	17
10.	H	Order dtd 14.03.08 whereby the applicant is placed under superannuation on 31.12.05.	18

Received  
Dutta  
17-11-08

Filed by:

*[Signature]* 17/11/08

Mrs. Manjula Das,  
Senior Panel Counsel, UOI  
CAT, Guwahati bench,  
Guwahati.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
GUWAHATI BENCH.

F.I.C. by:-  
The Respondents  
Through  
Mangmohan Das  
S/o Panel Counsel  
N.I.O.T.  
CAT  
Guwahati Bench  
17/11/08

In the matter of:-

O.A no.115/08  
Sri Bomkesh Dutta  
...Applicant  
-Vs-  
Union of India and ors.  
...Respondents

-AND-

In the matter of:

Written statement on behalf of  
respondents.

(WRITTEN STATEMENT ON BEHALF OF RESPONDENTS.)

I, Sri Prabhakar Mittal ... s/o Sri Deoki Nandan Mittal

Presently working as Garrison Engineer, Military Engineering Services, Mashimpur, Silchar Division, Pin-900380, C/o 99APO, do hereby solemnly affirm and state as follows:-

1. That, I am the Garrison Engineer, Military Engineering Services, Silchar. I have been impleaded as Respondent no. 5 in the instant case. I have gone through the original application and am conversant with the facts and circumstances of the case and have understood the contents thereof. I have been authorized to file this written statement on behalf of other Respondents.
2. That, I do not admit any of the statements save and except which are specifically admitted hereinafter and the same are deemed as denied.
3. That before traversing various paragraphs of the present original application, the answering respondent would like to place the brief facts of the case.

Received  
Dutta  
17.11.08

Prabhakar Mittal

26 NOV 2008

गुवाहाटी न्यायालय  
Guwahati Bench

**BRIEF FACTS:**

- 3.1 That, the applicant was appointed as Valveman on 01.06.68 under Garrison Engineer, MES Department, Silchar Division and his date of birth was recorded in the Service Book as 26.12.1945 and was authenticated the said date of birth by putting his signature in the Service Book.
- 3.2 That in the year 2001 while the applicant was serving in Garrison Engineer, Silchar Division his date of birth was amended vide Part Two Order dated 04.06.01 by placing the date of birth as 06.07.48 in place of 26.12.45. The said amendment was done without observing any procedure of law and that too collusion with the then Garrison Engineer on the basis of a School Certificate dated 06.09.66 issued prior to the initial appointment. The same is appeared to have been entered in Service Book of the applicant for changing the date of retirement of the applicant from December 2005 to July 2008 for getting undue benefit.
- 3.3 That the Headquarter Chief Engineer Eastern Command, Kolkata (Respondent no.3) circulated an advance list vide letter dated 09.01.07 of the Civilian Subordinates who are due to retire from service on attaining the age of superannuation during the year 2008 (01.01.08-31.12.08).
- 3.4 That during scrutiny of the Service Book by Local Audit Officer(A), Silchar the entry of change in date of birth was observed and accordingly Local Audit Officer (A), Silchar returned the Service Book to G.E , Silchar Div. by asking clarification vide letter dated 31.07.07.
- 3.5 That the Local Audit Officer's office referred the matter of the changing of date of birth to Controller of Defence Accounts and the Controller of Defence Accounts, Guwahati vide its letter dated 05.03.08 opined that the date of birth is found to have been amended to 01/06/48 vide PTO no. 23/20/ 2001 after a period of about 33 years which is time barred and therefore ,such alteration of date of birth is not acceptable in Audit and also is violation of the provisions of O.M. dated 17.11.1962 under no. MHA. OM no. F/9/1/61-Esst.(A) .
- 3.6 The date of birth of the applicant found to have been amended to 06.07.48 vide order dated 04.06.01 after a period of long 33 years which is

(Bhushan Kumar Mitra)

গুৱাহাটী অধিবক্তৃতা  
Guwahati Administrative Tribunal

26 NOV 2008

গুৱাহাটী ন্যায়পৌঁছ  
Guwahati Bench

not for correction of wrong entry but for irregular change of date of birth that too on the basis of a so-called certificate dated 06.09.66. Further the applicant although having been in custody of School Certificate in the year of 1966 then why he has not produced the same at the time of initial appointment or why he was waited for long 33 years. Even assuming, but not admitting the said certificate as authenticated one, then also in that case the rights of the applicant will not be entertained as much as the amendment is time-barred and which is not a clerical mistake and cannot be amended as per instruction of the Govt. of India. Hence such alteration of date of birth is not acceptable in audit and also is violation of the provision contained in Government. of India's . MHA O.M. No. F/9/1/61-Est (A) dated 17.11.62.

3.7 That the applicant was retained in service beyond his original date of retirement due to wrong publication of Part Two Order by the then Garrison Engineer, Silchar. However, subsequently, after detection of error/mistake the applicant was placed under superannuation w.e.f. 31.12.05 vide order dated 14.03.08

#### 4. Reply to the facts of the case:-

4.1. That with regard to the statements made in paragraph 4.1 of the Original Application; the humble answering respondent has nothing to make comment on it.

4.2. That with regard to the statements made in paragraphs 4.2 of the Original Application; the humble answering respondent has nothing to make comment on it. He, however, does not admit any statements which are contrary to records.

4.3. That with regard to the statements made in paragraphs 4.3 of the Original Application; the humble answering respondent begs to state that the applicant contended that he had submitted a School Certificate dated 06.09.66 in reference to his regular appointment where the date of birth was shown as 06.07.48. But evidently in the service record as maintained the date of birth was originally recorded as 26.12.45 and the applicant without any protest or remark put his signature in the entries in Service Book. Therefore the date of birth in the Service Book was authenticated by the applicant's signature.

(Babulchandra Mital)

26 Nov

Guwahati  
Guwahati Bench

A copy of the Bio-Data sheet in entries in the Service Book is annexed herewith and marked as Annexure A.

4.4. That with regard to the statements made in paragraphs 4.4 and 4.5 of the application, the humble answering respondent begs to state that it is not correct that the authority had asked the applicant to produce the Original School Certificate for verification in the year 2001 but on its own instance he produced the same in the year 2001 and was carried by the then Garrison Engineer, Silchar and amended the date of birth as 06.07.48 in place 26.12.05 vide order dated 04.06.2001. However, the same was procedurally incorrect and was detected during qualifying service verification for the purpose superannuation on benefit.

4.5 That with regard to the statements made in paragraphs 4.6 of the application, the humble answering respondent begs to state that though service book is supposed to be audited on regular basis by Regional Audit Officer/Local Audit Officer attached to the Head Quarter, Chief Engineer, Eastern Commands, Kolkata / HQ 137. But the change of date of birth in service record based on Garrison Engineer., Silchar was not detected earlier and the applicant continued to serve beyond original date of superannuation. Consequently, the Respondent no. 3 circulated advance list of personnel due for retirement showing the applicant retirement on July 2008 vide letter dated 09.01.07.

Further it is stated that the wrong and irregular amendment to the date of birth of the applicant and not detection of the same by officials and being old case the action for initiation and finalization of pension paper was initiated by Respondent 3 and 5 as per regular practice.

Further it is stated that during scrutiny of Service Book by Local Audit Officer (A) Silchar entry of change in date of birth was observed and Local Audit Officer (A) Silchar returned the Service book and asked for clarification vide letter dated 31.07.07

A copy of the said letter dated 31.07.07 is annexed herewith and marked as Annexure-B.

4.6. That with regard to the statements made in paragraphs 4.7 and 4.8 of the application, the humble answering respondent begs to state that date of birth i.e. 26.12.45 was correctly entered in Service records of the

Chubekar (Mitali)

26 NOV

গুৱাহাটী ন্যায়পুর  
Guwahati Bench

applicant at the time of appointment authenticated by the applicant in the bio-data sheet forming part of Service Book as annexed Annexure-A to the Written Statement which is the basic documents. Further in various occasion in Service, records were also noted time to time by the applicant without any object in respect to the entry of date of birth.

It is to be stated here that the applicant was appointed on 01.07.68 and the so-called School certificate said to have been issued on 06.09.66 prior to his appointment but the same was produced in the year of 2001 i.e. after long 33 years of his service but not at the time of appointment. Bare perusing the entry of Service Book, the date of birth of the applicant appears as 26.12.45 wherein the applicant himself authenticated by putting his signature.

However to get the undue benefit after thought and the said so-called School certificate was produced and amended his date of birth on 04.06.2001 by putting the date of birth as 06.07.48 in place of 26.12.45. The amendment infact was not detected earlier in audit due to oversight.

A copy of the said amendment made on 04.06.01 is annexed herewith and marked as Annexure-C

4.7. That with regard to the statements made in paragraphs 4.9 and 4.10 of the application, the humble answering respondent begs to state that in pursuance of letter dated 31.07.07 Annexure-B to this Written Statement the Garrison Engineer Silchar Respondent no. 5 wrote a letter dated 02.08.07 to the Local Audit Officer ,Silchar informing that as regards amendment of date of birth, service documents of the individual has been centralized with HQ Chief Engineer, Eastern Command, Kolkatta are being maintained in every casualty occurred prior to decentralization of Service Book at Commanding Works Engineer Level for Industrial Staff. Hence the Garrison Engineer requested to drop the observation at the belated stage being pension case and request to verify the details of qualifying service at earliest.

Thereafter the Local Audit Officer Silchar vide letter dated 04.09.07 wrote a letter to the respondent no.5 and requested to furnish the reasons for the alteration of date of birth as to whether this was due to clerical mistake or not. In reference to the letter dated 04.09.07 of the Local Audit Officer the respondent no. 5 issued a letter dated 12.11.07 replying the same as in the letter dated 02.08.07 by requesting to verify the qualifying service of

26 NOV 2008

গুৱাহাটী রায়পুর  
Guwahati Bench

the applicant and the Service Book was re-submitted to Local Audit Officer. Thereafter the matter was referred to Controller of Defence Accounts (Respondent 6) by the Local Audit Officer Silchar for final opinion on the subject.

Further it is stated that the Accounts Office (Pay) of the Office of the Controller of Defence Accounts forwarded a letter dated 05.03.08 addressed to Respondent no.5 on the subject of amendment of date of birth in reference to the letter dated 15.12.07 of Local Audit Officer (A) by holding that,

"The date of birth is found to have been amended to 01.06.48 vide Part Two Order no.23/2/2001 after a period of 33 years which is time barred and therefore such alteration of the date of birth is not acceptable in audit and is also violation of the provisions contained in Office Memorandum issued by the Government of India, Ministry of Home Affairs No. F/9/1/61- esst.(A) dated 17.11.1962"

Further hold,

"Retention in Government service beyond the date of superannuation that is 01.01.06 is irregular"

Accordingly directed to regularize under the order of the Government of India.

That the date of birth by way of amendment after long 33 years is not a correction of wrong entry made in the Service Book but it is an irregular change of date of birth which is not permissible under the law which was done by the applicant with the then Garrison Engineer by way of amendment only to get undue benefit by producing a School certificate dated 06.09.66 after serving long 33 years in service and that to, not submitted or mentioned in the initial appointment or thereafter although same having been issued on 06.09.66 prior to the initial appointment.

Further it appears that the date of birth of the applicant vide amendment dated 04.06.01 amending as 06.07.48 in place of 26.12.45 was not authenticated by the applicant by putting his signature. Earlier in his entry of Service Book and other documents he authenticated his date of birth as 26.12.45. The said amendment was infact was at the instance of the applicant based on School Certificate on 06.07.66 which was done on 2001 is an irregular and illegal and not as per extent of rules as well as time-barred. Hence the applicant is not entitled for extended service period. The impugned

26 NOV

order dated 14.03.08 issued by the Garrison Engineer (Respondent no. 5) is in order to protect the Government's interest.

Copies of the letter dated 02.08.07, 04.09.07; 12.11.07 and 05.03.08 are annexed herewith and marked as Annexure – D, E, F and G respectively.

That as per Office Memorandum dated 17.11.62 issued by the Government of India, Ministry of Home Affairs.

"That requests from Govt. Servants for alteration of the date of birth should not be entertained after the preparation of their Service Book and in any event not later than the completion of the probation period or declaration or quasi-permanency, whichever is earlier. The date of birth of a Govt. Servant may, however, be altered at a late stage by the Department of the Central Government and Administrator or a Head of Department, if he is satisfied that a bona fide clerical mistake has been committed and that it should be rectified. Efforts should, however, be made to settle the matter within the period stated above."

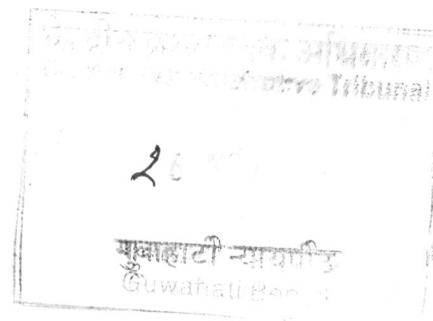
4.8 That with regard to the statements made in paragraphs 4.11 of the application, the humble answering respondent begs to state that after proper verification and exploration of the Service records and as per the opinion rendered by the Controller of Defence Accounts and with due provisions of the law, the order dated 14.03.08 under no. MES/2234 was issued by the Respondent no. 5 placing the applicant under superannuation with immediate effect as the original date of superannuation dated 31.12.05

Further it is stated that the representation dated 30.04.08 was duly forwarded to the Respondent no. 2.

5. That it is submitted that the retention of the applicant beyond the date of superannuation, i.e., 01.01.06 is irregular and illegal

6. That it is submitted that the original application has no merit at all and is liable to be dismissed.

(Rakeshwar Mitra)



VERIFICATION

I, Prabhakar Mittal...son of Sm Deoki Nandan Mittal...presently working as Garrison Engineer, Military Engineering Services, Mashimpur, Silchar Division, Pin-900380, C/o 99APO, aged about 42 Years, do hereby verify that the statements made in paragraphs 1,2,4.1,4.2,4.4,4.5...are true to my knowledge and belief, those made in paragraphs 3,3.2,3.7,4.3,4.5,4.8...being matters of records of the case are true to my information derived therefrom and rests are my humble submission before the Hon'ble Tribunal. I have not suppressed any material fact before the Hon'ble Tribunal,

And I sign this verification on the 05 Nov day of August 2008 at Guwahati.

  
SIGNATURE



# ANNEXURE - B

164 - 10

Na. LA/SIL/41-P/50

Office of the C.I.O.(A) Silchar

P.O. Arunachal

Distr: Cachar, Assam

Pin: 788025

3.4

50

DR. C.E

Date: 31.7.2007

26 NOV 2007

Silchar Division

File

गुवाहाटी न्यायपाल  
Guwahati Bench

Subject: Verification of Qualifying Service  
in respect of industrial personnel

Reference: - Your letter No. 1076/P/653/EIR dt. 5.7.07 & No.  
1076/P/658/EIR dt. 23.7.07

Service Books in respect of the following named  
individuals are returned herewith duly qualifying service  
verified.

S.No. Name. Rank MES No.

1. MES-2283167 Shri S C Paul, Mason
2. MES-243424 " M A Laskar, Elect
3. MES-228709 " K Bhalakar, Mason

Service Book in respect of MES-228324

Shri Borkesh Datta, P/Pipe is returned herewith  
unmentioned as the leave account of the individual  
has not been found in the S/B. Further, it is  
seen that, the above named individual has been appointed  
as V/mann on 1.6.1968 and his DOB entered in  
the Service Book as 26.12.1945. DOB of the individual  
is mentioned in PTO No. 23/20/2001 on the basis of  
school certificate dt. 6.9.1966. As per extant rule only  
clerical ~~arrangement~~ ~~arrangement~~ corrected mistake can  
be countered/ corrected respecting any change of DOB  
in the S/B. Please examine and decide.

Encld: 4 (four) Service Book  
as above.

BR

TA

653

667

656

1076/P/658/EIR

or

33/07

Sub. 26

C.I.O.(A) Silchar.

PRABHAKAR MITTAL, 10SE

Executive Engineer (SG)

Assistant Engineer, Silchar

26 NOV 2007

ANNEXURE - B.

No. LA / SIL / 41-B / 5B  
Office of the LAO (A) Silchar

P.O. Arunachal.

Dist: Cachar, Assam.

Pin: 788025

To,  
The G.E,  
Silchar Division.

Subject: Verification of qualifying service in respect of industrial personnel.

Reference: Your letter No. 1076/P/653/EIR dtd. 05.07.07 & No. 1076/P/653/EIR dtd. 23.07.07.

Service Book in respect of the following named individuals are returned herewith only qualifying service verified.

<u>Sl. No.</u>	<u>Name, Rank, MES No.</u>
1.	MES. - 228467 Shri. S.C. Paul, Mason.
2.	MES. - 243424 Shri. M.A. Laskar, Elect.
3.	MES. - 228709 Shri. K.Bhakat, Mason.

Service Book in respect of MES-228324, Shri Bomkesh Dutta, F/Pipe is returned herewith unactioned as the leave account of the individual has not been found in the S/B. Further, it is seek that, the above named individual has been appointed as V/man on 01.06.1968 and his DOB entered in the Service Book as 26.12.1945. DOB of the individual amended vide PTO. No. 23/20/2001 on the basis of School Certificate dtd. 06.09.1966. As per extent rule only clerical mistake can be amended / corrected repecting any change of DOB in the S/B. please examine and elucidate.

Enclo: 4 (Four) Service Book as above.

Sd/

LAO (A), Silchar.

# ANNEXURE - C

72-  
312

PT : CR. SILECHAR PART II ORDER SL NO. 23 DATED 04 JUN 2001 PAGE 3-7

3

4

5

6

MES/243587 Shri  
Ashim Biswas

EGM  
(SK)

09-08-99-Granted 1st financial up-  
gradation under ACP scheme  
in the pay scale of Rs. Administrative Tribunal  
4000-100-6000.

Opted pay fixation strategy  
way under FR 22.1. a (i)  
wef 09-08-99.

गुवाहाटी न्यायपीठ

Opted ACP scheme and Guwahati Bench  
rendered unqualified under  
taking for accepting regular  
promotion on occurrence  
of vacancy subsequently.

The individual is not  
involved in any disciplinary case and placed under  
suspension during the  
period.

Belongs to (Barman)  
Schedule Tribe

## DECLARATION OF CASTE

19. MES/243531 Shri Elect  
Mihir Kanti Barman (SK)

Authy :- Certificate Sl. No. 238 dated  
17-04-82 issued by Deputy  
Commissioner Cacher (Assam)

20. MES/228324 Shri F/Pipe  
Bomkesh Dutta (SK)

\* as per Dr B.C Roy Memorial  
Academy School Certificate at  
06 Sep 1966.

reference PTO No. 29-10-68

The following amendment is  
hereby made :-

Date of birth "Ref

For " 25-12-1945

Read " 06-07-1948"

\*

Part IV (a) ends with Sl No 20

Part IV (b)

rement

1. MES/225475 Shri EGM  
Majha (SK)

01-05-01-Earned annual increment  
@ Rs.75/- pm wef 01-05-01  
in the grade of EGM (SK)  
raising pay from Rs.3875/-  
from Rs.3950/- pm in the  
scale of Rs.3050-75-3350-  
80-4500/- wef same date.

Concurred by :  
36/56/21

Part IV (b) ends with Sl No 21

REF  
for CR Silchar

## DISTRIBUTION :

1. Hq CR EC Kolkata-21
2. Hq CR S2 Shillong-11
3. Hq 137 Works Engrs
4. CDA Gauhati
5. LAO Shillong
6. LAO (A) Silchar
7. LAO GE Silchar
8. All Sub-Divn
- Internal :- ELE, EIP & EIC Sec.

PRABHAKAR MITTAL (DSE)

Executive Engineer (SG)

Garrison Engineer, Silchar

# ANNEXURE-D

13

Tala Billy, 2500

Garrison Engineer Silchar  
Military Engineer Service  
Pin 900369  
C/O 29 APO Central Administrative Tribunal

Aug 67

1076/P/ 664/612.

IAO (A) Silchar

REWD OF DETAILS OF QUALIFYING SERVICE ALONGWITH SERVICE BOOKS : INDUSTRIAL STAFF

26 NOV 2008

Guwahati Bench

1. Reference your letter No IA/Sil/41-a/8 on 31 Jul 2007.

2. Service book in Part I to VIII alongwith details of qualifying service in respect of MS/228324 Shri Birendra Datta, F/Pipe received back vide your letter under ref is re-submitted herewith duly attached leave account.

3. As regards amendment of date of birth, service documents of the individual has been centralised with HQ CEEC Kolkata and being maintained in every causality occurred prior to decentralisation of service book at CWB level for Industrial Staff.

4. It is therefore requested to drop the observation at this belated stage being pension case and request to verify the details of qualifying service at your earliest.

J  
( Prabhakar Mittal IDSE )  
EE (SG)  
Garrison Engineer

Enclos : As above.

BR

FR

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NCB

2

C7C

2

PRABHAKAR MITTAL 103E  
Executive Engineer (SG)  
Garrison Engineer, Silchar

# ANNEXURE - E

-14- R - VIII

67/8

No. 1A/667/11-E/SIS

AO (AO) (A)

Salutation

Central Administrative Institute

P.O. Assam Adm.

Dist: Cachar, Assam

26 NOV 2003

Encl Cat

Silchar Division

Pin: 783025

Date: 4.9.2005 Guwahati Bench

Subject: Service Book in respect of MES-228324

Shri Bankeshwar Datta, F/ Pipe: Return thereof

Reference: Your letter No. 1076/P/667/EIR dt. 21.8.07

—X—

Service Book in re/o the above named

individual is returned herewith unactioned as reply  
furnished via your letter No. 1076/P/667/EIR dt. 21.8.07

have not been found convincing. The reasons for  
alteration of Date of Birth of the individual at

the initial stage since his appointment is  
not permissible as per existing Rule. Therefore

please furnish the reasons for alteration of  
Date of Birth clearly stating as to whether  
this was due to clerical mistake or not.

Encl: As above

AO (AO) Silchar

67C

21

PRABHAKAR MITTAL (DSE)

Executive Engineer (SG)

arrison Engineer, Silchar

BR

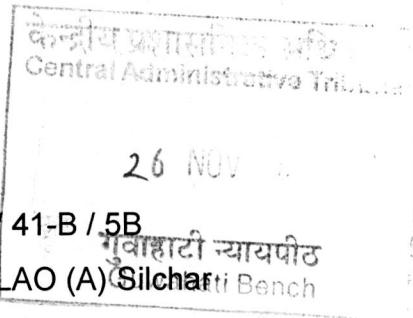
FR

667

6.7.8

67/8/8/BR  
2

ANNEXURE - E.



To,

The G.E,  
Silchar Division.

No. LA / SIL / 41-B / 5B  
गुवाहाटी न्यायपाल  
Office of the LAO (A) Silchar Bench  
P.O. Arunachal.

Dist: Cachar, Assam.

Pin: 788025

Date: 04.09.2007

Subject: Service Book in respect of MES-228324  
Shri Bomkesh Dutta, F/Pipe: Return thereof.

Reference: Your letter No. 1076/P/667/ EIR dt. 21.08.07.

Service Book in r/o the above named individual is returned herewith unactioned as reply furnished vide your letter No. 1076/P/667/EIR dt. 21.08.07 have not been found convincing. The reason for alteration of Date of Birth of the individual at the belated stage since his appointment is not permissible as per existing Rule. Therefore, please furnish the reasons for alteration of Date of Birth clearly stating as to whether this was due to clerical mistake or not.

Enclo: As above.

Sd/

LAO (A), Silchar.

# ANNEXURE -F

16

TO: MILY 1 2500

1976/P/

1/26  
P/IR

Garrison Engineer Silchar  
Military Engineer Services  
Pin 900360

C/O 99 Army

Central Armed Service Tribunal

Nov 07

26 NOV 2008

LAO (A) Silchar

SERVICE BOOK IN RESPECT OF MES/228324 SHRI BOMRIBH  
DUTTA, P/FILE, RETURN THERE OF

1. Reference your letter No LA/811/41-B/SR dt 04 Sep 07.

2. It is once again submitted that the date of birth of the individual is recorded in service book is correct. The service book was centralised with CEEC Kolkata prior to decentralisation with CWB level. All occurrence of casualty has also been audited by RME (MES) Kolkata prior to decentralisation.

3. In view of the above, you are requested not to insist upon the observation at this belated stage and arrange to verify the qualifying service at your earliest.

4. As such the service book and details of qualifying service in respect of the above named individual is re-submitted herewith for your necessary action please.

( Prabhakar Mittal, IDSB )  
EE (SG)  
Garrison Engineer

Enclos 2 As above.

BR

PR

669

682

070

PRABHAKAR MITAL (ME)  
Executive Engineer (SG)  
Garrison Engineer, Silchar

# ANNEXURE - G

170

240  
10  
SPEED- POST.  
FAX/SPEED- POST.  
No. Pay/Bill/Civ/Vch XL  
O/O the CDA G u w a h a t i,  
Udayan Vihar, Narengi,  
Guwahati-781171.  
Dated: 05/02/2008.

To:

The GE Silchar Division  
P.O. Arunachal  
Dist: Cachar, Assam.  
Pin'- 788025.

26 NOV  
गुवाहाटी न्यायपीठ  
Guwahati Bench

Sub: Acceptance of amendment of Birth in no MES/228324  
Shri B Dutta F/Pipe

Ref: LAO (A) Silchar letter No.LA/SIL/41-B/SB dated 13-12-08 addressed to GE  
Silchar  
Division and copy to this office along with Service Book of the individual.

The case regarding alteration of date of Birth in respect of  
Shri B. Dutta, F/Pipe MES No.228324 serving in GE Silchar has been  
examined w.r.t. documents placed and the following remarks are given.

1. Sri. B. Dutta F/Pipe was appointed as a V/Man on 1-06-68 and his date  
of Birth was originally recorded as 01-12-1945.
2. The date of Birth is found to have been amended to 01-06-48 vide PTO  
NO 23/20/2001 (copy of the PTO not found enclosed with the Service  
Book) after a period of about 33 years which is time barred and  
therefore, such alteration of date of birth is not acceptable in audit and  
also is violation of the provisions contained in Govt of India  
MHA OM No.F/9/1/61-Esst (A) of dated 17-11-1962.
3. Retention in Govt service beyond the date of Superannuation i.e.  
01-01-2006 is irregular.

The case may therefore please be regularized under the orders of  
the Govt. of India.

*N. Gohain*

(N.GOHAIN)

Accounts Officer (Pay).

For information and necessary action  
W.r.t. above please, also Service Book of  
Shri. B. Dutta, F/Pipe, MES No 228324 is  
returned herewith for necessary action.

*Sd*

(N.GOHAIN)

Accounts Officer (Pay).

*PRABHAKAR MITTAL*  
Executive Engineer (SG)  
Project Engineer Silchar

# ANNEXURE - H.

Ann - 18

Date Mdy : 2008

Garrison Engineer Silchar  
Military Engineer Services.  
Pin 900380  
C/O 99 APO

1070/P/BKD/02 BIR

MEB/226324

John Bonikesh Datta  
D/PAGE 110

**ORDER**

Mar 2008

26 Nov

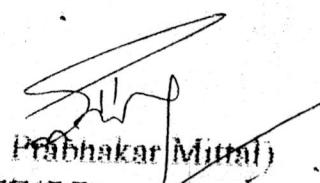
गुवाहाटी न्यायपालिङ्ग  
Guwahati Bench

1. It has been noticed during audit of service book for working out qualifying service for superannuation benefit that your date of birth has been amended from 26 Dec 1945 to 06 Jul 1948 based on copy of birth certificate issued by Dr BC Roy Memorial Academy Silchar produced by yourself in the year 2001.

2. Amendment to date of birth after 33 years of service has been objected in audit and the same is not agreed to.

3. In view of the above you are placed under superannuation with immediate effect as the original date of superannuation ie 31 Dec 2005 has already lapsed.

Please ack

  
( Prabhakar Mittal )  
EE(SG)  
Garrison Engineer.

Copy to :-

AGB B/R Silchar  
AAOC GE Silchar  
LAC (A) Silchar  
CDA Guwahati  
NOC

HQ CEEC Kolkata

HQ CESZ Shillong  
HQ 137 Wks Engrs  
Pin 914 137  
C/O 99 APO

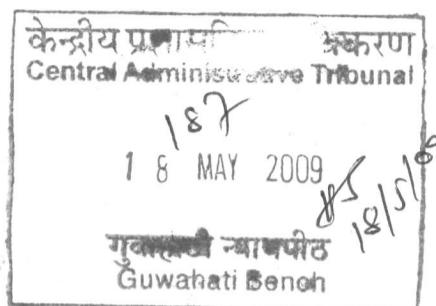
  
PRABHAKAR MITTAL (SG)  
Executive Engineer (SG)  
Garrison Engineer, Silchar

- For info and necessary action.
- For info.
- For info wrt CDA Guwahati letter No Pay/Bill/Sil/Vol-XI dt 05 Mar 08 received on 12 Mar 08.
- For info wrt HQ letter No 131970/IA/2007/72/Engrs/EIR (D) dt 09 Jan 2007 wrt Sl No 24 on page 18.
- 1. For info ref to your HQ letter No 1600/Sil/226/EID dt 24 Jan 2008 alongwith copy of CDA Guwahati letter No Pay/Bill/Sil/Vol/XI dt 05 Mar 2008.
- 2. Case for regularization of individual employment beyond 31 Dec 2005 is being sent separately.

File in Court on 15/05/09  
Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI



In the matter of :-

O.A. No. 115/2008

Shri Bomkesh Dutta.

... Applicant

-Versus-

Union of India and Others.

... Respondents.

-And-

In the matter of :-

Rejoinder submitted by the applicant  
against the written statement submitted  
by the respondents.

The applicant most humbly and respectfully beg to state as under:-

1. That the applicant categorically denies the statements made in para 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 of the written statement and begs to state that at the time of his initial appointment as Valveman on 01.08.1968, the applicant submitted his School certificate dated 06.09.1966 which was verified by the respondents and the date of birth was very much recorded from the said certificate only. But while recording the date of birth in the Service Book, it was wrongly recorded as 26.12.1945 in place of 06.07.1948 although the DOB was clearly written as 06.07.48 in the School certificate. It is therefore a false statement that the applicant did not produce the said School certificate dated 06.09.66 at the time of initial appointment and that he submitted same after 33 years. Had it not been submitted then it is not understood as to how a date (wrongly recorded albeit) could be incorporated in the service book and why in that event the applicant was not asked to produce a document in proof of his age, which is the requirement under normal

File by the applicant  
through U. Dutta, advocate  
on 15/05/09

Bomkesh Dutta

18 MAY 2009

2

Guwahati Bench

procedure. The fact remains that the respondents recorded the DOB only from the school certificate dated 06.09.66 produced by the applicant but by mistake the date was recorded as 26.12.45 in place of 06.07.48. The mistake so committed, escaped the notice of the respondents as well as the applicant and the applicant did put his signature in the service book on good faith that the entries were made without any error since the same were done by competent persons. The applicant was not aware of that such a fatal mistake has been committed by the respondents in recording his DOB in the service book. However, the respondents themselves could detect their mistaken entry of DOB in the service book after 33 years and asked the applicant to produce his original certificate dated 06.09.66 to verify their records. The applicant accordingly submitted the original certificate dated 06.09.66. The respondents verified the certificate and having been satisfied, made necessary corrections in the service book and recorded the DOB of the applicant as 06.07.48 as shown in the school certificate. A declaration to that effect was also got signed by the applicant wherein the applicant declared that he was satisfied with the correction of his DOB in the service book and the said declaration was further signed by two witnesses and countersigned by the Garrison Engineer, Silchar Cantt. The amended DOB of the applicant was then notified by the respondent department vide one Part - II order bearing No. 23 dated 04.06.2001. As such the respondents having corrected/amended the DOB of the applicant after undertaking an elaborate exercise to their satisfaction, do not have any right to retract their own action simply on the ground of an audit objection raised at such a belated stage. The statement of the respondents that the amendment was done without observing any procedure of law and that too collusion with the then Garrison Engineer and that it has been entered in the Service Book for changing the date of retirement of the applicant is an illusory statement, hatched up by their stretch of imagination only, which only reflects their casual and irresponsible attitude. Further the said amendment of DOB was not a change of DOB as contended by the respondents but it was only the correction of a bonafide clerical mistake which is in complete conformity with the instructions contained in the Govt. of India's MHA O.M No. F/9/1/61-Est (A) dated 17.11.62 as referred to by the respondents. As such

Parasit Dutt

18 MAY 2009

3

Guwahati Bench

the contentions of the respondents are unsustainable and not tenable either in fact or in law.

2. That the applicant categorically denies the statements made in para 4.3, 4.4 and 4.6 of the written statement and begs to submit that the applicant submitted his School certificate dated 06.09.66 at the time of his initial appointment on 01.06.68 and not submitted in 2001 as stated by the respondents, but in 2001, the applicant submitted the original copy of the certificate only for verification and that too was done as instructed by the respondents. It is a false statement that the applicant produced the said certificate in 2001 on his own instance but the fact remains that he did so as desired and directed by the respondents. The statement that the amendment of DOB of the applicant in the Service book was procedurally incorrect, is not sustainable since there has been no defined procedure for correction of bona fide clerical mistake which is curable under law and when such amendment has been done by the competent authority and that too on the basis of a valid school certificate, the respondents are debarred from denying the same by principle of estoppel.

Further, the DOB of the applicant was clearly written as 06.07.48 in the School certificate but while recording the same from the certificate in the service book at the time of initial appointment, the respondents made a clerical mistake and wrongly recorded the DOB as 26.12.45 in place of 06.07.48 which escaped the notice of the respondents as well as the applicant. The applicant did put his signature in the service book only on good faith with the impression that all the entries therein were correctly written since the same were written by competent person and neither the applicant nor the respondents were aware of the such a fatal mistake has been made in recording. The respondents could detect their mistake by themselves after 33 years and accordingly the same was corrected in the service book. As such it is unfair for the respondents to hide and cover up their own lapses now on a technical pleas that the mistaken record was authenticated by the applicant by his signature which the applicant did on good faith only, more so when the authentication of DOB is a matter of record and the mistake if any, is curable on the basis of a valid document (which is the School certificate in the instant case) and the respondents

Bomolash Datta

18 MAY 2009

4

गुवाहाटी न्यायपाठी  
Guwahati Bench

rightly cured their mistakes by correcting the entries of DOB in the service book of the applicant on the basis of the School certificate. As such the contentions otherwise of the respondents now, are their afterthoughts and are liable to be ignored and set aside.

3. That the applicant emphatically denies the statements made in para 4.5, 4.7 and 4.8 of the written statement and further begs to state that the amendment of DOB in the service book of the applicant as said above, was done as a correction of bona fide clerical mistake and it was not a change of DOB as contended by the respondents. Such correction is permissible under the normal office procedure and is also in conformity with the principle laid down in the MHA's O.M No. F/9/1/61-Ests. (A) dated 17.11.1962, referred to by the respondents. There is no time bar for correction of a bona fide clerical mistake which can be made only when it is detected and not before. As such the contention that the correction of DOB in the instant case cannot be accepted since it has been done after 33 years, is not tenable. The mistake was done by the respondents after an inordinate delay of 33 years, and the delay is not attributable to the applicant. The respondents were also satisfied with their bona fide mistake and hence cured the same by amending the DOB with necessary correction in the service book and notifying the same vide Part- II Order dated 04.06.2001. The correction was done after verification of records and that too by the competent authority after undertaking an elaborate exercise to his full satisfaction. As such the respondents do not have any right to deny the corrected DOB (06.07.48) of the applicant on the mere plea of an objection raised by the local accounts, more so when the Part - II order dated 04.06.2001 is still in force and it has not been revoked/cancelled.

Further, the correction of the DOB in the service book of the applicant was effected in 2001 and the local audit officer raised an objection in 2007. During the period between 2001 and 2007, several audits have been undertaken in succession but none of the audit officers has raised any objection against the said correction of DOB which implies that the correction was made bona fide and as per law. As such, the objection made by the Audit officer in 2007 after a lapse of 7 (seven) years is time barred

*RamRahul Dutt*

18 MAY 2009

5

गुवाहाटी बाबपाठ  
Guwahati Bench

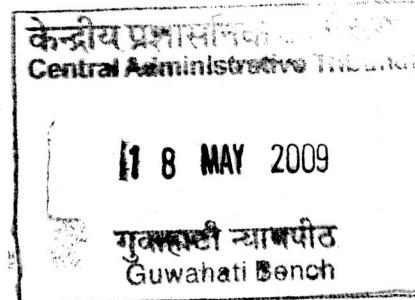
which is malafide, unfair, arbitrary and against the procedure established by law.

Further, the contention of the respondents that the amendment of DOB of the applicant and recording the DOB as 06.07.48 in place of 26.12.45 was not signed and authenticated by the applicant is not sustainable inasmuch as that following the said amendment, the applicant signed one declaration (Annexure- 1-A to this O.A) to that effect in presence of two witnesses which was countersigned by the Garrison Engineer, Silchar Cantt. and as such it was duly authenticated.

As such, the contentions of the respondents as made in para 4.5, 4.7 and 4.8 of the written statement are not sustainable either in fact or in law and hence liable to be ignored.

4. That the applicant categorically denies the statements made in para 5 and 6 of the written statement and begs to state that the applicant rendered his services bonafide till 2008 and he is deemed to have retired on 31.07.08 i.e. on his actual date of superannuation as per records. The impugned letter bearing No. 1076/P/BKD/102/EIR dated 14.03.08 (Annexure- 4 to the O.A) issued just before his retirement of the applicant retrospectively on 31.12.2005 after extracting services of the applicant till 2008, and that too without serving any notice or providing reasonable opportunity of being heard is malafide, arbitrary, unfair, violative of the procedure established by law and opposed to the principles of natural justice and as such the said letter dated 14.03.2008 is liable to be set aside and quashed.
5. That under the facts and circumstances as stated above, it is most respectfully prayed that the O.A is full of merit and the reliefs sought for in the application deserves to be allowed with costs.





### VERIFICATION

I, Shri Bomkesh Dutta, MES/228324, aged about 60 years, resident of Shibachal, P.O- Banglaghat, Dist- Cachar, Assam, applicant in the instant original application, do hereby verify that the statements made in Paragraph 1 to 5 of the rejoinder are true to my knowledge, and I have not suppressed any material fact.

And I sign this verification on this the 18/5 day of May 2009.

*Bomkesh Dutta*