

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (JUDL.)

27.7.2015

P.D. 28/7/2015

(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDERSHEET

1. Original Application No: 33/2009

2. Misc Petition No 18/eq

3. Contempt Petition No /

4. Review Application No /

Applicant(s) Swapam Choudhury

Respondent(s) M.C.T. Tors

Advocate for the Applicant(s): Bikram Choudhury

Advocate for the Respondent(s): Railways advocate
Mr. B. Veri

Notes of the Registry	Date	Order of the Tribunal
Original Application No. 33/2009 Date of Birth of the Applicant is 22nd February, 1972 Dated 7.2.09 By <u>Mr. B. Veri</u> <u>3/3/09</u>	08/04/2009	Heard Mr. B. Choudhury, learned counsel appearing for the Applicant and Dr. J.L. Sarkar learned Standing Counsel for the Railways and perused the materials placed on record. Copy of the Original Application and the connected M.P.No.18 of 2009 has already been supplied to Dr. J. L. Sarkar, learned Standing Counsel for the Railways. Issue notice to the Respondents requiring them to file their written statement by 5th June, 2009. Pendency of this case shall not stand on the way of the Respondents to reconsider the case of the Applicant, in view of counter signature given by Inspector of School, on the School Certificate showing the Date of Birth of the Applicant to be 22 nd February, 1972.

Contd/-

(13/4/09)
Copies of notices along with order dt. 8/4/09 send to D/Sec. for issuing to resp. by regd. A/D post. Free copies of order issuing to counsel for both the parties.

Issued
Vide M.N.O. 2041 to 2043
O.A. 33 of 09

17-4-2009

Notice copies duly
Served on R.No. 1

18/5/09

Contd/-

08.04.2009

Send copies of this order to
Respondents along with notices and
copies of this order be supplied to the learned
counsel appearing for both the parties.

(M.R. Mohanty)
Vice-Chairman

lm

O.A. 33 of 09

Contd/-

08.04.2009

Send copies of this order to the
Respondents along with notices and free
copies of this order be supplied to the learned
counsel appearing for both the parties.

(M.R. Mohanty)
Vice-Chairman

lm

05.06.2009

Mrs.Bharati Devi files vakalatnama through
her junior Ms.J.R.John and she, on behalf of the
official Respondents, prays for more time to file written statement.

Mr.B.Malakar, Advocate undertakes to
appear before the Respondent No.3 and prays for
more time to file written statement.

In the aforesaid premises, call this matter on
27.07.2009 awaiting written statement from the
Respondents.

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

Copies of order
dated 5/6/2009
Send to D/See
for issuing to
respondents by
post. D/No-3135 to 3137

For 11/6/09. Dt. 12.6.09
No. 275 filed, /bb/
22/6/09

(M.R.Mohanty)
Vice-Chairman

27.07.2009 Mr. B. Choudhury, learned counsel appearing for the Applicant is present. On the prayer of learned counsel representing the Respondents, call this matter on 20.08.2009 awaiting written statement from the Respondents.

19.8.09
no OJS filed.
/an/

~~(M.K.Chaturvedi)~~ ~~(M.R.Mohanty)~~
Member(A) Vice-Chairman

20.8.09
WTS has been
filed by the Respondents
through their L/Adv.
Adv. B. Devi with
undertaking to
serve a copy to
the Advocate for
the Applicant.
16/08/09

/lm/

20.08.2009 In this case written statement has already been filed. Mr.B.Choudhury, learned counsel for the Applicant prays for time to file rejoinder.

Call this matter on 19.10.2009.

No rejoinder filed.

/bb/

~~(M.K.Chaturvedi)~~
Member(A)

~~(M.R.Mohanty)~~
Vice-Chairman

16.10.09

19.10.2009

Mr.B.Choudhury, learned counsel appearing for the Applicant, seeks and allowed two weeks time to file rejoinder.

No rejoinder filed.

9.11.09

Learned counsel for the Applicant seeks and allowed to correct the number of days for which condonation is sought in the prayer clause.

List on 10.11.2009.

/bb/

~~(M.K.Chaturvedi)~~
Member (A)

~~(M.K.Gupta)~~
Member (J)

O.A. 33 of 2009

10.11.2009

Rejoinder has been filed by the applicant. Pleadings are complete. List for hearing on 14th December, 2009 along with the M.P. No. 18 of 2009 for seeking condonation, which is sought in the prayer clause. 



(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/

11.11.09

~~Rejoinder has
been filed by the
Applicant in the
Court on 10.11.09.
Copy served.~~

11.11.09

10.12.09

Ready for hearing.

The case is ready
for hearing.

27.1.2010

14.12.2009 Mrs. U.Dutta, learned proxy counsel states that learned counsel for the Applicant is unwell.

Accordingly, case is adjourned to 28.01.2010.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/lm/

28.01.2010

Learned proxy counsel for Respondents prays for adjournment. None appears for Applicant.

List on 24.02.2010.


(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

23.2.2010

/bb/

Memorandum filed on 24.02.2010.

Subject to final and final adjournment, filed on 24.02.2010.

Learned proxy counsel for both sides pray for adjournment.

List on 25.2.2010.


(Madan Kr. Chaturvedi)
Member (A)


(Mukesh Kr. Gupta)
Member (J)

pg

25.2.2010

Precise issue raised in present case is determination of age. On earlier occasion namely, vide order dated 4.8.06 in O.A.92/05, the respondents were required to verify applicant's school and medical certificates to determine his actual age.

The respondents, along with their reply, have produced communication dated 6.7.07 emanating from Dr R.K.Roy, Chief Medical Superintendent, Lumding, which reads thus :

"To

DPO/IC/LMG

Sub-Age determination of Sri Swapan Chaudhury S/Asstt/NER ECCS/BPB.

The Medical board, consisting of Dr R.K.Roy CMS/LMG, Dr T.Daimari, Sr.DMO/Surg, Dr.B.Basumatary DMO/Phy, after examining the above named and going through the X-rays and its report by Dr D.K.Das, Sr.DMO/Radiology/LMG. have come to the conclusion that the age of Sri Swapan Chaudhury is between 25 year and 40 year.

This is for information and necessary action please.

Sd/-

(DR R.K.ROY)

Chief Medical Supdt.

Lumding"

(emphasis supplied)

Ex facie the report submitted by the Medical authorities that on examination of the actual x-ray reports, the medical team headed by Dr R.K.Roy has come to the conclusion that applicant is "**between 25 year and 40 year**", is not correct. In our determined conclusion there cannot be variation of 15 years in determining the age. Medical authorities have sufficient expertise to determine if not very

O.A. 33/09

25.2.2010

The case is ready
for hearing.

3
9.3.2010

accurate then at least nearby age group which may vary between a period of 2 to 4 years, but not 15 years.

In the circumstances we are convinced that the extraneous materials and consideration led to this kind of conclusion. *Prima facie* this is clear case of dereliction of duty on the part of Medical Officers. Before taking some harsh action against the Medical Officers who opined in such matter, we require learned counsel for the respondents to produce Dr R.K.Roy, Chief Medical Superintendent, Lumding. Even if he is placed and posted to any other place for the time being, respondents should make appropriate efforts to ensure his presence and to substantiate his conclusion before this Tribunal. It is made clear that if the Chief Medical Superintendent is not produced, serious consequence will follow.

List on 10.3.2010.

Copy of this order be made available to learned counsel for the respondents for compliance.

(Madan Kr. Chaturvedi)
Member (A)

(Mukesh Kr. Gupta)
Member (J)

O.A.33/2009

10.03.2010

Shri P.K.Roy, Chief Medical Superintendent, N.F.Railway, Lumding appears in person pursuant to order dated 25.2.2010 and states that the basic test which is required to be conducted and undertaken for determining age of any person is "x-ray and no other test". He is directed to file an affidavit to the said effect so that we can examine the medical expert on this aspect as to what tests are basically required to be conducted for determining this aspect, particularly when the official prescribed the age of the person vary from 25-40 years. He is granted two weeks time to do so.

List on 30.3.2010. He is directed to be present on the next date of hearing.


(Mukesh Kr. Gupta)
Member (J)

30.03.2010 Shri P.K. Roy, Chief Medical Superintendent, N.F. Railway, Lumding has neither appeared in person nor filed an affidavit as directed vide order dated 10.03.2010. Mrs. B. Devi, learned counsel for Railway states that the said official is under some personal difficulties and therefore could not carry out the aforesaid order. Granting another opportunity, case is adjourned to 05th April 2010.


(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)


(Mukesh Kr. Gupta)
Member (J)

/pb/

05.04.2010

Mr. Rama Kanta Roy, Chief Medical Superintendent, New Jalpaiguri Railway Hospital, N.F. Railway has filed an affidavit pursuant to orders passed on 10th March 2010. Said official is present in person.

Mrs. B. Devi, learned counsel for Railway is directed to suggest the name of Senior Radiologist of repute, whose opinion can be taken on said subject as an expert witness.

Learned counsel seeks some time to take appropriate instruction.

List on 8th April 2010.

Said official need not appear on next date, but at the same time is directed to appear as and when required to examine/cross examination.

✓
(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

Ms. B.Devi, learned counsel for the respondents is not available. Vide order dated 5.4.2010 direction was issued to respondents to suggest the name of Senior Radiologist of repute, whose opinion could be taken on said subject as an expert witness.

In the circumstances adjourned to 19.4.2010.

✓
(Madan Kr. Chaturvedi)
Member (A)

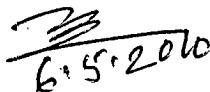
✓
(Mukesh Kr. Gupta)
Member (J)

19.04.2010 None for the parties despite second call. In the circumstances, case is adjourned to 07.05.2010.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

The case is ready
for hearing.


6.5.2010

intern

07.05.2010

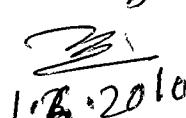
Ms. B.Devi, learned counsel appearing for respondents, states that Dr.B.K.Duara, Professor and Head of the Department, Department of Radiology, Gauhati Medical College & Hospital, Govt. of Assam will be witness on whom they will rely. Accordingly, respondents are directed to file an affidavit of said doctor so that in case of necessity he can be examined later on. This should be done within a period of three weeks. Adjourned to 02.06.2010.

Copy of this order be made available to Ms.B.Devi, learned counsel for necessary compliance.


(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/bb/

The case is ready
for hearing.


1.6.2010

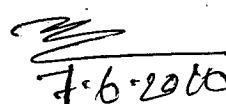
02.06.2010

On the request of proxy counsel for Respondents, case is adjourned to 8th June 2010.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

The case is ready /lm/
for hearing.


7.6.2010

Learned proxy counsel for the respondents states that affidavit in terms of order dated 07.05.2010 has been filed today. In the circumstances we summoned the affidavit so filed on perusal of which we notice that affidavit has been filed by Shri Ambeswar Saikia, Senior Divisional Personnel Officer, N.E. Railway, Lumding and not by Dr B.K. Duarah Professor and Head of Department, Department of Radiology, Gauhati Medical College and Hospital, Government of Assam as was noticed and stated to be vide order dated 07.05.2010.

Ex facie, directions contained vide order dated 07.05.2010 has not been complied. We notice that a very casual approach has been

- 10 -

08.06.2010 Learned proxy counsel for the respondents states that affidavit in terms of order dated 07.05.2010 has been filed today. In the circumstances we summoned the affidavit so filed, on perusal we notice that affidavit has been filed by Shri Ambeswar Saikia, Senior Divisional Personnel Officer, N.F. Railway, Lumding and notably Dr B.K. Duarah Professor and Head of Department, Department of Radiology, Gauhati Medical College and Hospital, Government of Assam as was noticed and stated to be vide order dated 07.05.2010.

Ex facie, directions contained vide order dated 07.05.2010 has not been complied. We notice that a very casual approach has been shown by the respondents in this case and the matter has been dragged on unnecessarily without justification. In the interest of justice one more opportunity is granted to the respondents to do the needful.

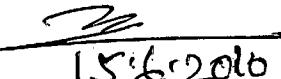
List on 16.06.2010.

 (Madan Kumar Chaturvedi)
Member (A)

 (Mukesh Kumar Gupta)
Member (J)

nkm

The case is ready
for hearing.


15/6/2010

8.6.2010
An Affidavit
has been filed
by the Rly. Adv.
Copy not served.
15/6/2010

17.6.2010

Copy of the order
Dtd 16.6.2010 handed
over to Ms. B. Devi,
Rly. counsel.
17/6/2010

16.06.2010 Vide order dated 07.05.2010,

respondents were directed to file an affidavit of the Doctor, ^{whom} they have chosen to be an expert witness on their behalf, within three weeks. Said order has not been complied, despite reiteration made on said aspect vide order dated

08.06.2010

Mrs B. Devi, learned counsel for the respondents, submits that they require approval of the Central Government before the Doctor or expert witness could file such an affidavit. In other words Court order could be overruled by the executive and has no sanctity.

The case is ready
for hearing.

25
25/6/2010

We deprecate this tendency on the part of the officer concerned. In the circumstances, we require DRM (P), N.E. Railway to appear in person on 28.06.2010.

List on 28.06.2010.

rkm

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

28.06.2010 An affidavit has been filed by the respondents' counsel stating that order by this Tribunal on earlier date 16.06.2010 was not in accordance with the submissions. It is unfortunate that an oral order dictated in open court is sought to be controverted by stating that the same was not in accordance with the submissions made. If there was any doubt in the mind of the counsel, she ought to have pointed out when it was being dictated and not later on. Vide said order dated 16.06.2010 we had noted whatever submissions were made by

--- Contd/-

learned counsel. In this background we do not find any justification in the affidavit filed by learned counsel for the respondents.

Re/ DR/ 14/2/2010

Ms Papri Roy, Assistant Personnel Officer, N.F. Railway appears stating that she is appearing on behalf of DRM (P), N.F. Railway. Vide order dated 16.06.2010, noticing that present case has been dealt with in most casual manner by the respondents, we required DRM (P) to appear inperson today. No reasons have been assigned by learned counsel for the respondents not to comply with said directions. No application has either been made seeking exemption of personal appearance of said officer. The manner in which the case is being handled by the respondents is in itself a mystery for the reason that competent medical authority had examined the applicant for determining his age. On examination of medical records and the applicant in person, he was certified "between 25 year and 40 year" vide medical certificate dated 06.07.2007, placed on record by the respondents. As said age range was quite unusual noticing the severe discrepancy, we had passed detailed order order on 26.02.2010, as reiterated subsequently.

Since the respondents have shown least concern to prosecute present O.A. in a proper perspective and hardly rendered any assistance expected from a State, and further the fact that DRM (P), N.F. Railways had deliberately flouted the order passed by this Tribunal, we are compelled to require General Manager (P), N.F Railways to appear in person on 06.07.2010.

copy of order

dt. 26.6.2010 has been
prepared & sent to the
of section for issuing to
the G.M. (P) N.F.Rly. Ghy. by
by S.A. messenger

Memo No.

copy of
01.7.2010

List it on 03.07.2010.

Copy of this order be sent, by special messenger, to the General Manager (P), N.F. Railways to comply with the directions:

 (Madan Kumar Chaturvedi)
Member (A)

 (Mukesh Kumar Gupta)
Member (B)

nkr:

06.07.2010 M.A. No.119/2010 has been filed by respondents and verified by Mr.Ajoy Mohanty, Chief Personnel Officer, N.F.Railways. He appears in person in pursuance of order dated 28.06.2010 and makes the following statements:-

"After receipt of this Tribunals' orders, we contacted Head of Department, Radiology, GMCH Prof. B.K.Duara and he explained that he cannot appear in such type of matters unless so permitted by the Secretary and Commissioner, Govt. of Assam, Health and Family Welfare Department. We have another CPO (Administration) Mr.C.Saikia, who vide his letter dated 15.06.2010 requested the Commissioner & Secretary, Health & Family Welfare (B) Assam Secretariat for permitting Prof. Duara for conducting radiological test. Ultimately, Govt. of Assam on 30.06.2010 allowed said Dr.Duara to conduct the test, who will conduct the necessary tests. I will be on leave upto 15.08.2010."

We have recorded the statement and we have noticed this aspect. In the facts and circumstances, we are not willing to adjourn the proceedings that long for the simple

Contd...

145
O.A.33/2009

Contd.

06.07.2010

reason that the matter, which ought to have been disposed of at their end as early as on 25.02.2010 when we required Mr.R.K.Roy, Chief Medical Superintendent, Lumding to be present in person. In the facts it appears that no reasonable step has been taken as yet to solve the issue highlighted by the Bench. The approach of the respondents is palpably erroneous and give enough room to draw a conclusion that instead of taking expeditious steps, the matter has been dragged on for reasons best known to them.

Shri Mohanty on our query: "whether he has read the various detailed orders passed from time to time?" replied that he has read some of the orders as the case is being dealt with by Lumding Division. He says, "I do not agree with medical report submitted on 06.07.2007 showing the wide gap of age of 15 years namely, between 25 years and 40 years." Immediately, thereafter Shri Mohanty stated that the department be allowed to conduct radiological and other tests of the said person (applicant) to determine his actual age. On our further query that what action has been initiated against those who constituted the Medical Board for submitting such report on 06.07.2007 he said, "report does not reflect the true and correct picture." We direct Shri Mohanty to file an affidavit within 10 days on this aspect either by self or through authorised person. The concerned officer would be at liberty to consult with appropriate authority on the subject. In the meantime, Chief Personnel Officer is authorised to have second medical test of the person, namely the applicant, for his appropriate age determination by an independent medical authority outside N.F.Railways.

contd.

copy of this order
dt: 6-7-2010 has been
Prepared & Sent to
District for issuing
to Lt. Counsel by
Duly
2010, Memo No. 1451-1452
2010, DT: 7-7-2010

14-7-2010

15

Affidavit filed by
Mr. J.L. Sarkar
for Rly. courses

O.A.33/2009

Contd.

06.07.20010

List on 27.07.2010. Copy of this order
be made available to learned counsel for
the respondents for compliance.

/bb/

Affidavit filed
on behalf of
the respondents,
with undertake to
copy serve to the
applicant.

27.07.2010

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)





Heard Mr. B. Choudhury, learned
counsel for the applicant and Dr J.L. Sarkar,
learned Railway standing counsel for the
respondents.

Hearing concluded. Order reserved.

(Madan Kumar Chaturvedi)
Administrative Member

Advt. Affidavit filed
on behalf of the
respondents.

pg
30.07.2010

For the reasons recorded separately,

this O.A. is disposed of.

(Madan Kumar Chaturvedi)
Member (A)

copy received on
behalf of Ms. B. Devi,
R/A for respondents.

pb

R. R. Borah

03/08/10

4-8-2010
Judgement, final order.
Send to Mr. B/L S. issuing
for recd. D + 1843 to 1840 5-8-2010
1846

Received
Choudhury, Adv.
for applicant.
5/8/10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 33 of 2009 with

M.A. Nos. 18 of 2009 and 119 of 2010

DATE OF DECISION: 30.07.2010

Sri Swapan Choudhury Applicant/s

Mr. B. Choudhury Advocate for the
..... Applicant/s

- Versus -

U.O.I & Others Respondent/s

Dr. J.L. Sarkar, Standing counsel for Railways Advocate for the
..... Respondents

CORAM

THE HON'BLE MR. MADAN KUMAR CHATURVEDI, MEMBER (A)

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

Judgment delivered by

Madan Kumar Chaturvedi
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 33 of 2009 with
Misc. Application Nos. 18 of 2009 and 119 of 2010

Date of Decision: This, the 30th day of July, 2010.

HON'BLE SHRI MADAN KUMAR CHATURVEDI, ADMINISTRATIVE MEMBER

Sri Swapna Choudhury
Son of Late Judisthir Ranjan Choudhury
Resident of Budhha Colony
P.O: Badarpur, District: Karimganj
Assam.

...Applicants

By Advocate: Mr.B.Choudhury.

-Versus-

1. The Union of India
Represented by General Manager
N.F.Railway, Maligaon, Guwahati-11.
2. Divisional Railway Manager (P)
N.F.Railway, Lumding
District: Nagaon, Assam
PIN: 782 447.
4. N.F.Railway Employee's Co-operative Society Ltd.
P.O: Badarpur, Dist: Karimganj, PIN: 788 806
Represented by its Secretary

... Respondents

By Advocate: Dr.J.L.Sarkar, Standing counsel for Railways.

ORDER

MADAN KUMAR CHATURVEDI, MEMBER (A):

On the basis of medical report apropos the date of birth of the applicant, it was found that applicant is not eligible for Group D post in N.F.Railway. This decision was communicated vide letter dated

27.08.2007. Applicant is aggrieved against this communication and makes a prayer to issue direction to respondent no.2 to recall the impugned communication and absorb him in Group D post.

2. Applicant was originally appointed as Salesman-cum-Peon under the respondent no.3, N.F.Railway Employee's Co-operative Society Ltd.; and was promoted to officiate as Assistant-cum-Accounts Clerk vide order dated 05.07.1987. He filed application for absorption in Group D post in Railways. He was asked by respondent no.2 vide letter dated 03.11.2001 to report to the office on or before 23.11.2001 with the required testimonials. In the service record, as maintained by respondent no.3, date of birth of applicant was recorded as 02.01.1959. Applicant claimed that his correct date of birth is 22.02.1972; as per school certificate. The General Manager (P), Maligaon wrote to respondent no.2 to verify the relevant school certificates and other documents and arrange to offer appointment to applicant as per procedure. Respondent no.2 advised the applicant to submit documents in respect of his date of birth. Applicant wrote a letter on 28.12.2001 to respondent no.2 informing that he has already submitted the school certificate indicating his date of birth. Respondent no.2 informed the applicant that since there exist discrepancy in date of birth, and no evidence could be adduced to prove the correct date of birth, the appointment in Group D could not be considered. Being aggrieved, applicant preferred writ petition before the Hon'ble Gauhati High Court assailing the action of the respondents in denying his rights for consideration for absorption in Group D post. Hon'ble High Court after hearing the case, disposed of the same with liberty to

applicant to approach this Tribunal. Ex-consequenti, vide O.A. No.92/2005, applicant approached this Tribunal. The matter was heard and decided as under:-

"8. In the circumstances, we are of the view that the order dated 19.04.2002 (annexure-VIII) issued by the Divisional Railway Manager (P) is to be set aside and, accordingly, we set aside the same. We direct the Respondents that after verification of the documents produced by the Applicant and if the Respondents convinced that the Applicant is eligible for the offer of appointment, the Respondents are directed to proceed further on the basis of the verified school certificate and medical certificate in offering the employment to the Applicant."

3. In conformity with the above, impugned order was passed on 27.08.2007, which is reproduced hereunder:-

"To

Sri Swapan Chowdhury
Sale Asstt., NFRECCS/Badarpur
C/O Secretary, N.F.Railway
Emp Co-Opt Consumers Society Ltd.
P.O: Badarpur, Dist: Karimganj
PIN: 788 806.

Sub: Hon'ble CAT GHY's order dtd 04-08-06 passed in OA No.92/05.

The Hon'ble CAT GHY's order dtd 04-08-06 passed in O.A. No.92/05 inter alia directed you to obtain the counter signature on the school certificate by the Inspector of Schools to prove the genuineness of the said certificate. But you have not complied the Hon'ble CAT GHY's above order.

In addition to this, you were advised to submit the same for verification of document vide this office's letter of even no dtd 18-07-07 and 23-05-07. Despite this you have not responded.

As such in the given circumstances, the Railway respondents could not be able to verify the genuineness of the document submitted by you.

The Railway administration in compliance with the Hon'ble CAT GHY's order took necessary step within the stipulated time for the medical test as to determination of your age. Considering the medical report regarding the date of birth and also the records available at this office, the Railway is convinced that you are not eligible for appointment.

This is in compliance of Hon'ble CAT's order mentioned above.

Sd/- Illegible
(K.P.Singh)
DPO/IC/LMG
for DRM (P) LMG"

Against the aforesaid order, present O.A. is filed. There was a delay of 41 days in filing the O.A. Vide M.A.18/2009, applicant prayed for condonation for delay. After hearing both sides, delay is condoned.

4. Precise issue in the present case is regarding determination of age of applicant. On earlier occasion, namely, vide order dated 04.08.2006 in O.A.92/2005, respondents were required to verify applicant's school and medical certificate to determine his actual age.

5. Respondents along with their reply have filed communication dated 06.07.2007 emanating from Dr.R.K.Roy, Chief Medical Superintendent, Lumding, which reads as under:

"To,
DRM/IC/LMG,

Sub- Age determination of Sri Swapan Chaudhury
S/Asstt/NFR ECCS/BPB.

The, Medical Board, consisting of Dr.R.K.Roy CMS/LMG,
Dr.T.Daimari Sr.DMO/Surg, Dr.B.Basumatary DMO/Phy, after

examining the above named and going through the X-rays and its report by Dr.D.K.Das Sr.DMO/Radiology/LMG, have come to the conclusion that the age of Sri Swapan Chaudhury is between 25 year and 40 year.

This is for information and necessary action please.

Sd/-Illegible
(DR.R.K.ROY)
Chief Medical Supdt.
Lumding"

Ex-facie, report submitted by medical authority on examining the applicant and going through the X-rays and its report by Dr.D.K.Das states that the applicant is "between 25 year and 40 year." This is not convincing. There cannot be variation of 15 years in determination of age. Medical authorities have sufficient expertise to determine the age accurately.

6. On 06.07.2010, Mr.Ajoy Mohanty, Chief Personnel Officer, N.F.Railway appeared in person and stated that medical report dated 06.07.2007 showing wide gap of 15 years, namely, "between 25 year and 40 year" is not correct. He prayed that department be allowed to conduct radiological and other tests of the applicant to determine his actual age. He was directed to file affidavit in that regard, either by self or through authorized person, and in the meantime he was also authorised to conduct second medical test of applicant by independent medical authority. In conformity with the aforesaid direction, the Chief Personnel Officer, N.F.Railway, Maligaon filed affidavits dated 19.07.2010 and 26.07.2010 along with report of Dr.Subhasish Das, Sr.DMO/SAG/Radiology, B.R.Singh Hospital, Eastern Railway, Kolkata at CH/Maligaon dated

21.07.2010 on determination of age by radiological examination of bones.

The conclusion of said report reads as under:-

"Radiological bone age determined is between 40-50 yrs., more likely to be between 45-50 yrs. And nearer to 50 yrs."

7. I have heard the rival submissions so advanced by Mr.B.Choudhury, learned counsel for the applicant and Dr.J.L.Sarkar, learned Standing counsel for the Railways in the light of materials placed on record and pleadings made before this Tribunal. The solitary question raised in this present O.A. is in regard to determination of age of the applicant. There was a discrepancy, which was rather wide since the year of birth, according to certificate, was 22.02.1972 and according to record of respondent no.3 (N.F.Railway Employee's Co-operative Society Ltd.), date of birth of applicant was 02.01.1959: In view of considerable discrepancy, N.F.Railway appointed its Medical Board to fix the age of the applicant. On examination of medical record and the applicant in person, he was certified to be "between 25 year and 40 year". Again there was a wide gap. As such, Chief Personnel Officer, N.F.Railway was called up by this Tribunal. After discussion, it was found fit to constitute a fresh Medical Board for determination of correct age of the applicant. Respondents referred the matter to Dr.Subhasish Das, Sr.DMO/SAG/Radiology, B.R.Singh Hospital, Eastern Railway, Kolkata at Central Hospital, Maligaon. The matter was examined and report was prepared, which concluded that the age of applicant as on 21.07.2010 is nearer to 50 years. Both parties agreed that there is no reason to ignore the scientific fixation of age when other records are flagrantly conflicting.

It was agreed by both sides that age of the applicant be determined on the basis of report of Medical Board dated 21.07.2010. In order accordingly.

8. O.A. stands disposed of. No costs. In view of disposal of present O.A., M.P. No.119/2010 so filed by the Respondents also stands disposed of.

Chaturvedi
(MADAN KUMAR CHATURVEDI)
MEMBER (A)

/BB/

777
28 JUN 2010

Guwahati Bench

গুৱাহাটী ন্যায়পৌঁত

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: GUWAHATI

O.A. NO. 33 of 2009
(Sri Swapan Choudhury- vs- UOI & Ors.

AFFIDAVIT

I, Smti Bharati Devi, Advocate, Guwahati, R/A, N.F. Rly
having its Head Quarter at Maligaon, Guwahati do here by solemnly declare
as follows :-

1. That I am an appointed lawyer, N.F. Rly and I have been conducting the aforesaid case on behalf of the respondents/N.F. Rly and as such I am well acquainted with all the facts and circumstances of case.
2. That in pursuant to the order of this Hon'ble Tribunal dated 07.05.2010 in OA No. 33/09 regarding assessment of age of the applicant, the official respondent approached Dr. B. K. Duara, Prof. and Head of the Department of Radiology, GMCH, Guwahati by an office letter dated 10.6.2010 to procure an affidavit to make himself available to attend the Tribunal for expert opinion in the aforesaid subject in case of necessity. Although the said Doctor is willful to co-operate as desired by the Hon'ble Tribunal but for leaving his office for the said purpose he needs permission from the Govt. of Assam, Department of Health.
3. That thereafter the respondent /authority intimated the Commissioner & Secretary to the Govt. of Assam, Department of health through office letter dated 15.6.2010 vide No. E/170/LC/NS/1171/2009.
4. That on 16.6.2010 when the matter was taken up by this Hon'ble Tribunal my respectful submission before the Hon'ble Tribunal was that "they are incapable of coming unless there is an specific order from this Hon'ble Court". But this Hon'ble Tribunal recorded my submission as "they require approval of the Central Government before the Doctor or expert witness could file such an affidavit" which is not in accordance with my submission.
5. That the statements made in this affidavit and in paragraphs 1 to 4 are true to my knowledge and belief. And I sign this affidavit on this 28th day of June, 2010 at Guwahati.

Bharati Devi
Deponent 28/6/10

33
FILED 4
Bharati Devi
R/A, N.F. Rly
Guwahati 28/6/10

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH AT GUWAHATI.

O.A. No. 33 of 2009

Sri Swaoan Choudhury Applicant
-Vs-
Union of India & others
..... Respondents.

Names of Faculty Members : Department of Radiology :
Gauhati Medical College & Hospital : : Govt. of Assam.

1. Dr. B.K.Duara	- Prof. & Head of the Department ,
2. Dr. G.Goswami	- Professor,
3. Dr. P.Dutta	- Associate Professor,
4. Dr. R.Talukdar	- -do-
5. Dr. D.Bhuyan	- Asstt. Professor,
6. Dr. M.Hazarika	- -do-
7. Dr. N. Deka	- -do-

Filed by

Bherali Jan
R/A, N.F.Rly, 874/10
Guwahati.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:
GUWAHATI

(An Application Under Section 19 of Administrative Tribunal Act, 1985)

O.A. 33 of 2009

Sri Swapan Choudhury.

.....Applicant

-Vs-

Union of India and others.

.....Respondents.

LIST OF DATES/SYNOPSIS.

The applicant due to adverse financial condition could prosecute his studies only upto Class-X and thereafter he had to look out for avenues to earn a living for his family. The school authority has issued a certificate in this regard, wherein his date of birth has been recorded as 22.02.72.

Annexure-1, Page 17

22.03.1981: Applicant was engaged as Scaleman-cum-peon under the Respondent no 3. A certificate dt: 20.11.2001 was issued by the Respondent no 3 to this effect.

05.07.1987: Respondent no 3 issued office order no ECCS/87 whereby the applicant was promoted to officiate as Sales Assistant-cum-Accounts Clerk of Respondent no 3 Society in a resultant vacancy.

Annexure-3, Page 19

14.09.2001: In reference to N.F. Railway, Lumding Division requisition, the applicant applied for absorption in Group D post and application dt: 14.9.2001 was duly forwarded by the Respondent no 3.

Annexure-4, Page 20

03.11.2001: Applicant was asked by Respondent no 2 by his letter dt: 03.11.2001 to report to the office on or before 23.11.2001 with the requisite testimonials.

Annexure-5, Page 22

27.11.2001: Somehow, in his service record with the respondent no 3, his date of birth was recorded as 02.01.59. In view of such anomaly the General Manager (P) Maligaon, Guwahati-11 wrote letter no EE/41/5 (C) Pt. V-UA to the Respondent no 2 requesting him to

(ii)

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गुवाहाटी न्यायपीठ
Guwahati Bench

verify the relevant school certificates and other documents and arrange to offer appointment to the applicant.

Annexure-6, Page 24

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

Annexure-7, Page 25

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

Annexure-8, Page 27

13.02.2002: As the applicant did not receive any response, he filed a representation before the respondent no 2 stating the entire facts of his case and requested to make necessary arrangement for his appointment.

Annexure-9, Page 28

11.03.2002: Having come to know that a number of candidates were appointed to Group- D posts, the applicant submitted another representation vide registered post with A/D before the Respondent no 2 reiterating the facts stated in his representation dt: 13.02.02.

Annexure-10, Page 29

19.04.2002: The Respondent no 2 issued letter no E/227/Misc/LM/Rectt (QAD) informing the applicant that since he could not produce any document to prove his date of birth as 02.01.59, his appointment/absorption to Group D post could not be considered.

Annexure-11, Page 30

22.02.2005: On wrong advise the applicant filed W.P.(C) no 3563/2002 before the Hon'ble Gauhati High Court challenging the action of the respondent authorities in denying his right to be considered for absorption in Group D post. However, it was disposed of as withdrawn with liberty to approach the appropriate forum.

Accordingly, the applicant filed O.A. no 92/05 before this Hon'ble Tribunal.

04.08.2006: This Hon'ble Tribunal, by order dt: 04.08.06 disposed of O.A. 92/05 by setting aside order dt: 19.04.02 and further directing the applicant to obtain the countersignature of the Inspector of Schools in the School Leaving Certificate and the

(iii)

24 FEB 2009

State Bank
Gujarat Bank

respondent authorities shall permit him to take medical examination in the Railway Hospital to ascertain the actual age; thereafter the respondent authorities shall proceed further based on the verified school certificate and medical report.

Annexure-12, Page 31

30.11.2006: Pursuant to the order dt: 04.08.06, the respondent no 2 wrote letter to the applicant advising him to submit documents in support of his date of birth for further action.

Annexure-13, Page 38

Accordingly, the applicant submitted the documents without the medical report.

28.12.2006: After much persuasion, the respondent no 2 issued letter E/227/Misc/LM/Recrt (QAD) advising him to appear before the Chief Medical Superintendent, Railway Hospital Lumding for assessing his actual age through medical examination.

Annexure-14, Page 40

29.12.2006: Accordingly, he appeared and after examination the CMS, handed a letter to him to hand it over to Respondent no 2. On being asked, the CMS informed the applicant that his age was below 40 years.

24.02.2007: On receiving no response, the applicant submitted before the Respondent no 2 requesting him to communicate the decision.

Annexure-15, Page 41.

16.03.2007: Received letter dt: 09.03.2007 from Respondent no 2 asking him again to submit 4 passport size photos.

?

In the meantime, on March 2007 he submitted an application before his school authorities for countersigning his school-leaving certificate by the Inspector of Schools, Karimganj, as directed by this Hon'ble Tribunal in O.A. 92/05.

03.05.2007: The applicant submitted a reminder representation before the Respondent no 2.

Annexure-16, Page 42

23.05.2007: Received this letter from Respondent no 2, whereby he was asked to submit the countersigned school certificate and further informed that as regard the medical examination the same is under process at appropriate level.

Annexure-17, Page 43

25.05.2007: The applicant received this letter from Respondent no 2 asking him to appear again for medical examination.

Annexure-18, Page 44

18.07.2007: Received this letter from respondent asking him to submit the countersigned school certificate within 31.07.2007.

Annexure-19, Page 45

On making inquiry in the school, he came to know that the school authorities have misplaced the application submitted earlier by him.

27.07.2007: On advice, he again submitted another application for obtaining the countersignature of the Inspector of Schools, as directed by this Hon'ble Tribunal in O.A. no 92/05.

Annexure-20, Page 46.

27.08.2007: The Respondent no 2 issued the impugned letter No E/227/Misc/LM/Rectt.(QAO)/Docket to the applicant informing him that since he could not submit the school certificate duly countersigned by the Inspector of Schools, as directed by this hon'ble tribunal and considering the medical report, the authorities were convinced that he was not eligible for appointment.

Annexure-21, Page 47

05.12.2007: On receiving the school certificate duly countersigned by the Inspector of Schools on 04.12.2007, the applicant submitted an application before the Respondent no 2 explaining the delay and prayed for review of letter/order dt: 27.08.2007 (Annexure-21).

Annexure-22, Page 48

Annexure-23, Page 49

14.01.2008: Applicant received impugned letter E/ 227/Misc/ LM/Rectt. (QAO)/Docket dt: 08.01.08 from Respondent no 2 rejecting his application dt: 05.12.2007.

Annexure-24, Page 50

FILED BY

Sikhamoni Choudhury

ADVOCATE.

24 FEB 2009

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Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH ::
GUWAHATI

O. A. NO. 33 /2009.

Sri Swapan Choudhury

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

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Filed by

Sri Swapan Choudhury
Advocate

24/2/09

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गुवाहाटी न्यायपीठ
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH GUWAHATI

(An Application Under Section 19 of Administrative Tribunal Act, 1985)

O.A. 33 of 2009

Sri Swapan Choudhury.
Son of Sri Judisthir Ranjan Choudhury,
Resident of Budhha Colony,
P.O. Badarpur, District: Karimganj, Assam.

...Applicant.

-VERSUS-

1. Union of India

Represented by the General Manager,
N.F. Railway, Maligaon, Guwahati-11.

2. Divisional Railway Manager (P),

N.F. Railway, Lumding,
District: Nagaon, Assam

PIN - 782447

3. N.F. Railway Employee's Co-operative Society Ltd.,
P.O. Badarpur, Dist: Karimganj. Pin-788806

Represented by its Secretary.

PIN - 788806

.... Respondents.

1. PARTICULAR OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE:

(i) Letter no E/227/Misc/LM/Rectt. (QAO) Docket dt: 27.08.2007 issued from the office of Respondent no 2, whereby the applicant's entitlement to offer of appointment/absorption in Group D post was rejected in an illegal and arbitrary manner that to in complete violation of the order dt: 4.8.06 passed in O.A. no 92/05 by this Hon'ble Tribunal.

Swapan Choudhury
Filed by the applicant
through Bilem Choudhury
Advocate
24-2-05

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Guwahati Bench

(ii) Letter no E/227/MISC/LM/Recrt (QAO) Docket dt: 8.1.08 issued from the office of Respondent no 2 which was received by the applicant on 14.1.08, wherein it was mentioned that the applicant's application dt: 5.12.07 for condoning the delay which was beyond his control in countersigning the School Leaving Certificate by the Inspector of Schools as directed by this Hon'ble Tribunal in order dt: 4.8.06 of O.A.no 92/05 has been rejected.

(iii) Arbitrary and whimsical action of the respondent authorities particularly respondent no 2 in not considering the applicant's right to offer of appointment/absorption to Group D post as per communication dt: 27.11.2001.

(iv) Action of the respondent authorities not in conformity/violation of the directions given by this Hon'ble Tribunal in order dt: 4.8.06 in O.A. no 92/05.

2. JURISDICTION OF THE TRIBUNAL:

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

3. LIMITATION:

The applicant declares that in filing the application there has been a delay of 38 days and the applicant as per section 21(3) of the Administrative Tribunal, Act 1985, has filed a separate application for condonation of the delay.

4. FACT OF THE CASE:

1. That the applicant is a permanent resident of the district of Karimganj and a citizen of India. The present application is being filed against the arbitrary and unreasonable action on the part of the authorities of the N.F. Railway in denying the applicant the right to be considered for appointment/ absorption in Group- D post in the office of the respondent no 2, inspite of being found eligible by the Screening

Swyambhu Choudhury

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Guwahati Bench

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Committee and clear directions by this Hon'ble Tribunal in O.A. 92/05 .

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

Copies of the certificate issued by the School Authority and Employment Exchange are annexed herewith and marked as ANNEXURE- 1 & 2 respectively.

3. That, the applicant states that even while prosecuting his studies he tried to support his family by earning a livelihood and on 22.3.81, the applicant was engaged as a Scaleman-cum-peon under the respondent no 3. In this regard the Secretary of the respondent no 3 has issued a certificate dated 20.11.01.

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

A copy of the order dated 5.7.87 is annexed herewith and marked as ANNEXURE-3.

5. That, the applicant states that applications were called for by the N. F. Railway absorption of quasi-administrative office's workers in Group-D posts. In pursuance thereof, the applicant filed an application, which

Swapan Choudhury

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Guwahati Municipal Corporation

was duly forwarded by the Secretary of the Respondent no 3 as his existing employer. In the said application, the date of birth of the applicant was stated as 22.2.72.

Thereafter, the Respondent no 2 informed the applicant vide letter no E/227/MISC/LM/RECTT/ (QAO) dt: 03.11.2001, whereby the applicant was asked to report to the office on or before 23.11.2001 with the requisite testimonials as given in the letter. Accordingly, he duly reported to the office of the Respondent no 2 and submitted all the requisite testimonials including School Leaving Certificate in support of his date of birth, which is 22.2.72.

Copies of the said application and letter dt: 03.11.01 are annexed herewith and marked as ANNEXURE- 4& 5 respectively.

6. That, the applicant begs to state that somehow in his service record with the respondent no 3, his date of birth was wrongly recorded as 02.01.59. In view of such anomaly the Office of the General Manager (P) Maligaon, Guwahati-11 wrote a letter no EE/41/5 (c) Pt.V-UA dated 27.11.2001 to the respondent no 2 requesting him to verify the relevant school certificates and other documents and arrange to offer appointment to the applicant as per procedure. It was further written that by some mistake the date of birth was earlier shown as 02.01.59, which has been rectified by the Committee and accepted as 22.02.72. Thus, the letter indicates that the Screening Committee after assessing the suitability found the applicant fit for absorption/appointment.

A copy of the letter dated 27.11.2001 is annexed herewith and marked as ANNEXURE-6.

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

A copy of the letter dated 18.12.2001 is annexed and marked as ANNEXURE-7.

Surjya Dev Choudhury

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8. That, the applicant states that immediately on receipt of the aforesaid letter, your applicant wrote a letter dated 28.12.2001 to the respondent no 2 informing that the applicant had already submitted the school certificate, which indicates his date of birth. Further, there was no basis as to how the Respondent no 3 Society submitted the date of birth as 02.01.59. However, the applicant again submitted the attested copy of the school certificate along with the said letter.

A copy of the letter dated 28.12.2001 is annexed herewith and marked as ANNEXURE- 8.

9. That the applicant states that inspite of submitting an attested copy of the school certificate with the date of birth as 22.2.72 afresh; there was no response from the respondent authorities for which the applicant suffered grave prejudice. Having no other option, your applicant filed a representation dated 13.2.2002 before the respondent no 2 wherein the entire facts and circumstances were stated and it was requested that necessary arrangement may be made for appointment and save him from further distress.

The applicant in the meantime could learn that a number of candidates were appointed in the Group D post and only your applicant was left out without any grounds or reasons. Therefore, the applicant sent another representation dated 11.03.2002 by Registered post with A/D to the Respondent no 2 praying for making arrangements for his early appointment so that he can mitigate the hardships. It was specially stated that the applicant had fulfilled all the eligibility criteria for appointment in Group-D and did not suffer from any disqualification.

Copies of the letter dated 13.02.02 and 11.03.02 are annexed herewith and marked as ANNEXURE- 9 & 10 respectively.

10. That to the shock and surprise of the applicant a letter no E/227/MISC/LM/Rectt (QAO) dated 19. 04. 2002 has been issued by the respondent no 2 to your applicant informing that as your applicant could not purportedly produce any document to prove his date of birth as 2.1.59, his appointment in Group-D post could not be

Swayam Choudhury

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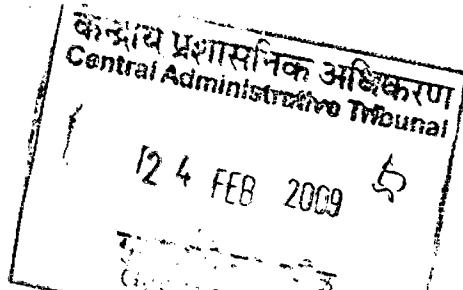
considered as communicated by letter no E/41/5(c) Pt.V QA dated 12.4.2002 of the GM (P)/ Mlg. i.e. General Manager (P), N.F. Railway, Maligaon. It may be mentioned that copy of the said letter dated 12.4.02 has not been addressed to the applicant and as such, he is not aware of its contents.

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

A copy of the letter dated 19.4.02 is annexed herewith and marked as **ANNEXURE- 11.**

11. That, thereafter on being wrongly advised the applicant filed a writ petition before the Hon'ble Gauhati High Court challenging the action of the respondent authorities in denying the applicant the right for absorption to the post of Group-D in the office of respondent no 2 and also order dt: 19.4.02 (Annexure-11) and the same was registered and numbered as W.P. (C) no 3563/02. On 22.2.05, the writ petition came up for hearing and the Hon'ble High Court disposed of the same as withdrawn with liberty to approach the appropriate forum.
12. That, accordingly, the applicant approached this Hon'ble Tribunal by filing an original application and the same was registered and numbered as O.A. no 92/05. On 04.08.06, the above case came up for hearing and this Hon'ble Tribunal after hearing all concerned parties, disposed of the same by setting aside order dt: 19.4.02 (Annexure- 11) and further gave the following directions:
 - (i) The applicant shall obtain the countersignature of the Inspector of Schools in the School Leaving Certificate,
 - (ii) The respondent authorities shall permit the applicant to take medical examination in the Railway Hospital to ascertain the actual age, and
 - (iii) Thereafter on production of the correct documents by the applicant, the respondents shall verify them and then proceed further based on the verified school certificate and medical certificate in offering the employment to the applicant.

Sreyash Choudhury



The Hon'ble Tribunal further held that if after medical test the date of birth of the applicant more or less tally with 1972, 22.02.72 maybe taken as the date of birth.

Accordingly, on obtaining a true copy of the order, the applicant submitted the same before the authorities.

A copy of the order dt: 04.08.06 is annexed herewith and marked as
ANNEXURE-12

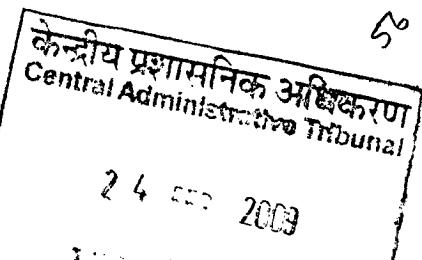
13. That, in pursuance thereof, the Respondent no 2 wrote a letter no E/227/Misc/LM/Rectt (QAO) dt: 30.11.06 to the applicant, whereby he was advised to attend the office with all documents in support of his date of birth for taking further necessary action.

Copy of the letter dated 30.11.06 is annexed herewith and marked as
ANNEXURE-13.

14. That, on receipt of the letter dt: 30.11.06 (Annexure-13), the applicant immediately attended the office of the respondent no 2 and submitted the school certificate, but without the medical certificate as he could not get himself examined in the railway hospital. It will be relevant to state here that the applicant being not an employee of the railway, he couldnot get himself examined in the railway hospital without permission from the concerned authority and as such he requested the respondent no 2, to issue necessary permission letter to him so that he could appear before the Chief Medical Superintendent, Lumding, for assessing his correct date of birth as directed by this Hon'ble Tribunal. The respondent no 2, for reasons best known to him refused to give him such letter and after much persuasion he received letter no E/227/Misc/LM/ Rectt/(QAD) dt: 28.12.06 from the office of the respondent no 2, whereby he was advised to report before the Chief Medical Superintendent, Lumding on any working day to assess his correct age through medical examination and to bear the entire cost that will be incurred for making such examination.

A copy of the letter dt: 28.12.06 is annexed herewith and marked as
ANNEXURE-14

Swydown Choudhury



15. That, on receipt of letter dt: 28.12.06, the applicant appeared before the Chief Medical Superintendent, Lumding on 29.12.06. After examining him the Chief Medical Superintendent, Lumding handed a letter to him and directed him to hand it over to the respondent no 2, accordingly the applicant complied with. While handing over the letter, on being requested by the applicant, the Chief Medical Superintendent, Lumding verbally told him that on examination he found the applicant's age below 40 years. Thereafter, the applicant did not receive any response from the respondent authorities for a long time, the applicant then submitted a representation dt: 24.02.07 before the respondent no 2 requesting him to communicate the decision. In response to his representation dt: 24.02.07, the applicant received letter no E/227/Misc/LM/ Rectt/(QAD) dt: 09.03.07 on 16.3.07 from the office of the respondent no 2, whereby he was again asked to submit 4 passport size photos immediately. The applicant duly submitted the same.

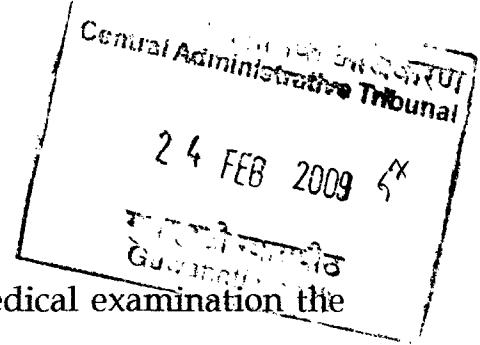
A copy of the representation dt: 24.02.07 is annexed herewith and marked as **ANNEXURE-15.**

16. That, in the month of March 2007, the applicant visited his former school at Badarpur and inquired from the school authorities to advise him as to what to do for getting the school leaving certificate countersigned by the Inspector of School, Karimganj. The school authorities advised him to submit an application. Accordingly, the applicant submitted an application before the school authorities, which was duly received and he was told that since the headmaster of the school was on leave, on his return, the applicant shall be informed after verification of the school records.

17. That, on receiving no response from the respondent authorities the applicant again on 03.05.07 submitted a representation before the respondent no 2 requesting him to communicate him about the fate of his case.

In response to his representation dt: 03.05.07, the applicant received letter no E/227/Misc/LM/ Rectt/(QAD) dt: 23.05.07 from the office of the respondent no 2, whereby he was asked to submit the school certificate duly countersigned by the Inspector of Schools and

Swapan Choudhury



he was further informed that as regard the medical examination the matter was under process at appropriate level.

Thereafter, the applicant received letter no E/227/Misc/LM/Rectt/(QAD) dt: 25.05.07 from the office of the respondent no 2, whereby he was again asked to appear for medical examination and accordingly he appeared.

Again after few days the applicant received another letter E/227/Misc/LM/ Rectt/(QAD) dt: 18.07.07 from the office of the respondent no 2, whereby he was again advised to submit the school certificate duly countersigned by the Inspector of Schools within 31.07.07.

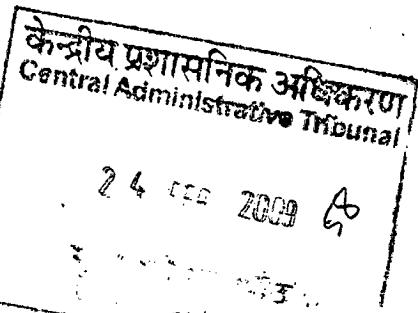
Copies of the letters dt: 03.05.07, 23.05.07, 25.05.07 and 18.07.07 are annexed herewith and marked as **ANNEXURE-16, 17, 18 & 19** respectively.

18. That, in the meanwhile the applicant visited his former school and inquired about the application submitted by him on 18th March, 2007 for getting his school certificate countersigned by the Inspector of Schools. The school authorities on one pretext or another gave him evasive replies.

On receiving the letter dt: 18.07.07 (Annexure- 19) from the respondent no 2, the applicant again visited his school and inquired whether the school certificate has been countersigned by the Inspector of Schools as requested by him earlier otherwise he will be highly prejudiced. The school authorities then informed him that the application submitted by him earlier has been misplaced and therefore he had to re-submit the same. The applicant accordingly on 27.07.07 submitted another application for obtaining countersignature of the Inspector of Schools, Karimganj on his School Leaving Certificate issued on 31.12.87 as ordered by this Hon'ble Tribunal. Accordingly, the school authorities forwarded the same to the Inspector of Schools, Karimganj for necessary action. The office of the Inspector of Schools, Karimganj, informed the applicant verbally that after due verification the school certificate shall be countersigned.

A copy of the application dt: 27.07.07 is annexed herewith and marked as **ANNEXURE-20.**

Swapan Choudhury



19. That, thereafter under such circumstances, the applicant was perplexed and did not knew what to do and moreover being not, much literate he did not knew about the procedure that has to be followed in such circumstance. While situation remained as such, the applicant was shocked and surprised to receive the impugned letter no E/227/Misc/LM/ Rectt..(QAO)/Docket dt: 27.08.07 from the office of the respondent no 2, whereby he was informed that since he has not submitted the school certificate duly countersigned by the Inspector of Schools, Karimganj, as directed by this Hon'ble Tribunal in order dt: 04.08.06 in O.A. 92/05, the railway authorities could not verify the genuiness of the documents submitted by him. Further, as directed by the Hon'ble Tribunal, considering the medical report regarding the date of birth and the records available at the office, the Railways were convinced that the applicant was not eligible for appointment. It will be relevant to mentioned here that no copies of the medical report submitted by the Chief Medical Superintendent, Railway Hospital, Lumding, has been given to the applicant and as such, he is not aware of its contents.

Copy of the impugned letter dt: 27.08.07 is annexed herewith and marked as ANNEXURE-21

20. That on receiving the impugned letter dt: 27.08.07, the applicant was confused and did not knew what to do. Thereafter he visited the office of the Inspector of Schools, Karimganj several times and inquired about the counter signature on his school certificate, but he did not received any positive response and after long perseverance on 04.12.07, he received the School Leaving Certificate duly countersigned by the Inspector of Schools, Karimganj on 26.11.07.

Thereafter, immediately on 05.12.07, the applicant submitted an application/appeal before the respondent no 2, explaining the reasons for which he could not submit the school certificate duly countersigned by the Inspector of Schools, Karimganj at the earliest and requested to reconsider the decision as communicated vide letter dt: 27.08.07 (Annexure- 21). In the application, he clearly mentioned that the applicant being an ordinary person it was not within his capacity and control to persuade the Inspector of Schools, Karimganj to countersign the school certificate at the earliest.

Swyambhu Choudhury

24 FEB 2009

Guwahati Bench

Copies of the application/appeal dt: 05.12.07 alongwith the school certificate duly countersigned by the Inspector of Schools, Karimganj are annexed herewith and marked as ANEXURE-22 & 23 respectively.

21. That, on 14.1.08, the applicant received the impugned letter no E/227/Misc/LM/ Rectt/(QAD) Docket dt: 08.01.08 from the office of the respondent no 2, wherein it was mentioned that his application dt: 05.12.07, was put up before the authority and after perusal of the records and the letter dt: 27.08.07, it has passed the order that the decision communicated vide letter dt: 27.08.07 stands good.

In this regard the applicant begs to state that the respondent no 2 has failed to take into consideration the fact that the delay in submitting the school certificate duly countersigned by the Inspector of Schools, Karimganj, was not for reasons attributable to him and it was for reasons beyond his control

Copy of the impugned letter dt: 8.1.08 alongwith the envelope showing the date of receipt is annexed herewith and marked as ANNEXURE- 24.

22. That, being aggrieved by the action of the respondent authorities in depriving him from his appointment in Group D post in an whimsical manner, the applicant is once again approaching this Hon'ble Tribunal for due relief. The applicant further states that since the day when the respondent no 3 verbally asked him not to come for duties when the process of absorption in Group D posts under respondent no 2, was going on and also on being deprived of absorption by the railway authorities vide letter dt 19.4.02, he is somehow managing his life and family by earning his livelihood by doing petty works like working as daily wage earner etc. As such, there has been some delay in filing this application and this Hon'ble Tribunal may be pleased to condone the delay, otherwise a great prejudice shall be caused to the applicant.

Swyambhu Chudhury

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5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- I. For that, in the given facts and circumstances of the case, the action of the respondents is illegal and arbitrary, unreasonable, capricious, discriminatory and bad in law and is liable to be quashed and set aside.
- II. For that, the purported reason that appears from the impugned orders for non-consideration is absolutely irrelevant and has no bearing with the facts and circumstances of the case. The date of birth of the applicant being 22.2.72, which is recorded in all correspondences including certificates and application for absorption and has also been admitted by the respondent authorities, unable to produce document in support of incorrect recording of his date of birth in the initial record of the Respondent no 3 Society cannot be justifiable ground for rejecting the case of your applicant and the same is liable to be set aside.
- III. For that, the applicant has obtained the countersignature of the Inspector of Schools, Karimganj, as directed by the Hon'ble Tribunal in O.A. 92/05 in order to show the genuiness of the school leaving certificate showing his date of birth as 22.2.72 and while doing so there has been some delay, which was beyond his control and competence. Further, no prejudice, whatsoever would be suffered by the respondents in as much as, there is no dispute with regard to the age and suitability for absorption in Group D posts. Non-consideration of the case of the applicant for absorption in Group-D post for being unable to produce at the earliest the school document duly countersigned by the Inspector of Schools, Karimganj, as directed by the Hon'ble Tribunal in O.A. 92/05, is whimsical exercise of power and is liable to be set aside.
- IV. For that, the formation of definite opinion by the respondent no 2 as communicated by the impugned letters dt: 27.8.07 and 8.1.08 is violative of the principle of natural justice and fair play in action, as this Hon'ble Tribunal had in order dt: 04.08.06 had cast a duty upon the railway authorities to act with an open mind and come to a conclusion only after the documents as stated in order dt: 04.08.06 was adduced. That not being done inspite of submission of application dt: 05.12.07 (Annexure-22) (stating the reasons of delay

Swyambhu Choudhury

24 FEB 2013

in submission of the countersigned school certificate) shows biasness and non-application of mind of the respondent authorities.

V. For that, considering the time taken by the respondent authorities in implementing their part of order 04.08.06 in O.A.92/05 and subjecting the applicant to appear twice in medical examination, the respondents authorities ought to have reviewed the impugned order dt: 27.08.07 (Annexure-21), for the fact that the delay in obtaining the countersignature was beyond the control of the applicant. That not having been done the action of the authorities is illegal, arbitrary and unjustifiable in law and is liable to be set aside.

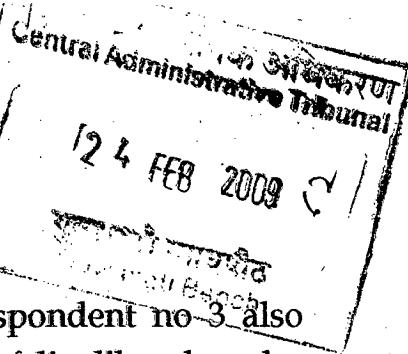
VI. For that, order dt: 04.08.06 in O.A.92/05 had placed the authorities of N. F. Railway under an obligation to exercise the powers conferred on them fairly and reasonably, but the respondent authorities with scant regard to fairness and reasonableness in administrative function has inspite of knowing the reason of delay in submitting the countersigned school certificate has acted arbitrarily and unreasonably. Such action of the authorities is liable to be quashed and set aside.

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

VIII. For that, it will be apparent from letter dt: 27.11.2001 (Annexure-6) that the Screening Committee otherwise found the applicant fit for absorption in Group D posts, accordingly recommended his name for absorption. But inspite of that the respondent authorities has now sought to deprive the applicant from his right to absorption on the ground that he failed to submit the countersigned school certificate (which was due to reasons beyond his control though later on he submitted the same and prayed for review)and the medical report with regard to his age.

IX. For that, the applicant has been meted out with hostile discrimination in as much as, all similarly situated candidates have been absorbed in Group-D posts and only the applicant has been left out without any justiciable grounds. The right to equality of the applicant as enshrined under Article 14 of the constitution of India has been latently violated calling for judicial interference. The

Swami Chaudhary



existing engagement of the applicant under respondent no 3 also having been discontinued, his right to means of livelihood under Article 21 has been infringed by procedure not established by law.

- X. For that, the way the respondent authorities have acted would show that they have not applied its mind to the fact and the directions of this Hon'ble Tribunal in O.A. No 92/05 and that not having been done the impugned letters are liable to be quashed and set aside.
- XI. For that, the applicant has made out a *prima facie* case and if he is deprived from, the absorption in Group-D post to which he is lawfully entitled irreparable loss and injury would be caused to him.
- XII. For that, in any view, of the matter the impugned action of the authorities are bad in law and liable to be set aside.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant had submitted a representation/appeal dt: 5.12.07 before the respondent no 2 praying for re-consideration of the order dt: 27.8.07(Annexure- 21), 11, 15, but his prayer for re-consideration was rejected by letter dt: 08.01.08(Annexure- 24)

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

The applicant further declares that he had previously filed O.A.no.92/2005 before this Hon'ble Tribunal with regard to the matter in respect of which this application has been made. However this Hon'ble Tribunal, by order dt: 04.08.06 disposed of the same by setting aside order dt: 19.04.02 and further directing the applicant to obtain the countersignature of the Inspector of Schools in the School Leaving Certificate and the respondent authorities shall permit him to take medical examination in the Railway Hospital to ascertain the actual age, thereafter the respondent authorities shall proceed further based on the verified school certificate and medical certificate in offering the employment to the applicant. However, the respondent authorities has by impugned letters dt: 27.8.07 and 08.1.08 has rejected his right to offer for absorption. He has not filed any other application, writ petition or suit on the same matter before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

Swyambhunath Chudhury

24 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench8. **PRAYER**

It is, therefore, prayed that this Hon'ble Tribunal may be pleased to admit this application, call for the entire records of the case, ask the respondents to show cause as to why the impugned letters dt: 27.8.07 (Annexure-21) and dt: 08.01.08 (Annexure-24) shall not be quashed and set aside and/or as to why a direction shall not be issued directing the respondent no 2 to recall or cancel the impugned letters dt: 27.8.07 (Annexure-21) and dt: 08.01.08 (Annexure-24) and absorb the applicant in Group-D posts to which he is duly eligible, as per letter dt: 27.11.01 (Annexure-6), after taking into consideration the directions given by this Hon'ble Tribunal in order dt: 4.8.06 in O.A. no 92/05 and after perusing the causes shown, if any and hearing the parties, be pleased to quashed and set aside the impugned letters dt: 27.8.07 (Annexure-21) and dt: 08.01.08 (Annexure-24) and absorb the applicant in Group-D posts to which he is duly eligible, as per letter dt: 27.11.01 (Annexure-6), after taking into consideration the directions given by this Hon'ble Tribunal in order dt: 4.8.06 in O.A. no 92/05 and/or pass any order or orders as the Hon'ble Tribunal may deem fit and proper.

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

9. **INTERM ORDER, IF ANY PRAYED FOR : DOES NOT ARISE.**10. **PARTICULARS OF THE POSTAL ORDER IN RESPECT OF THE APPLICATION FEE.**

IPO NO 20G391139 dated 7.2.09 issued by Guwahati Post Office.

11. **LIST OF ENCLOSURE:**

As stated in the Index.

Swyambhu Choudhury

केन्द्रीय प्रशासनिक अधिकार
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायपाल
Guwahati Bench

VERIFICATION

I, Sri Swapan Choudhury, Son of Sri Judhisthir Ranjan Choudhury, aged about 36 years, Resident of Budhha Colony, P.O. Badarpur, District: Karimganj, Assam do, hereby verify that the statements made in paragraphs nos 12, 3, 8, 2, 15, 16
17 (1st para) 18 and 22 are true to my personal knowledge and statements made in paragraphs nos 3, 5, 6, 7, 10, 11, 12, 13, 14, 17 (2nd, 3rd & 4th para)^{19 & para 21} are believed to be true on legal advice and that I have not suppressed any material facts.

Place:- Guwahati

Date:- 24.2.09

Swapan Choudhury

SIGNATURE OF THE APPLICANT

24 FEB 2009

-17-

Guwahati Bench

ANNEXURE-1

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

NO. 12-A/87

Dated 31-12-87

CERTIFIED that Swapan Choudhury, son of Jidhi Thakur Choudhury, an inhabitant of Rly. Colony Badarpur, ^{Pop.} District Karimganj, left the Zurm Moura H/S School on 31-12-87. His age at that date according to the Admission Register was 22-2-72 years date of birth months 0 days. He was reading in class IX (Final) and had passed the examination for promotion to class X (Final).

All sums due by him have been paid: viz, fees upto 31-12-87 (date).

Fines nilCharacter Good

Reasons for leaving

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

Swapan Choudhury
31/12/87

Headmaster,

Headmaster OM LALUZA HIR School OM LALUZA HIR
District D.C. Karimganj

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

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

Attested by
Swapan Choudhury
 Adm.

ANNEXURE-2

(5)

Assam Schedule XAMI, Form No. 17X

X-10(B)

GOVERNMENT OF ASSAM
DEPARTMENT OF LABOUR
EMPLOYMENT EXCHANGE

IDENTITY CARD

(Not an Introduction card for interview with employees)

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायर्पाठी
Guwahati Bench

1. Name of Applicant Shre, Seagun Choudhury
2. Date of Registration 19.3.91
3. Registration No. 1941/91
4. N. C. O. Code No. X02.10
Dali & Bill 22-02-72

INSTRUCTION TO APPLICANT

(a) Bring this card with you whenever you come to the Exchange.	Date before which registration should be renewed
(b) Quote your Registration Number and N. C. O. Number whenever you write to the Exchange.	<u>3/9/01</u>
(c) Renew your Registration every three months.	<u>2/9/01</u>
<u>If you do not renew by the due date your registration will be cancelled.</u>	
(d) You can renew your registration personally or by post. For renewal by post DO NOT SEND THIS CARD. Apply to the Exchange on a REPLY PAID POST CARD.	<u>3/9/00</u>

CERTIFIED TO BE TRUE

Deka.

ADVOCATE

EMPLOYMENT
EXCHANGE
Guwahati

RECEIVED

Attested by
Bhondhury
Adv

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

Regd. No. S / 91, Estd. 1959

P.O. - Badarpur

Dt.-Karimganj

Date 5/7/87

Ref: - ECCS / 87

OFFICE ORDER

124 FEB 2009

In terms of the suitability test held on 25/4/87 Shri Swapan Choudhury, (I) Scaleman of the society is considered to be

নুস্বত্ত কর্তৃত
Guwahati Suitable for

the post of Sales Asstt-Cum-Accounts Clerk.

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

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

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

Sd/-

M. K. Nath.

Secretary

N. F. Railway

Employees Consumers' Co-operative Society Ltd., Badarpur

Copy to staff concerned through Manager of the Society for guidance

Attested by
Swapan Choudhury

ANNEXURE

FORMAT OF APPLICATION

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

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

Serial No. 32

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

नियमित प्रशासनिक अधिकारी विवरण
Central Administrative Tribunals

24 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

With due respect I beg to state
working as a worker in N.F.Rly. E.C.C.S. d/c

As a Scale man since 22.2.81
(date of engagement) continuously and still working in the
same Co-operative Society/ Stores/ Club/ office.

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

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

Contd.. 2-1

Attested by
Swapani Choudhury
Adm

- 21 -

6) Educational Qualifications: - Class (10) Pass
(Attested copy of school certificates to be attached) (Enclosed attested copy)

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

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

9) Any other qualification, if any: - Nil

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

केन्द्रीय प्रशासन विवाद आयोग रायगढ़ अधिकारी
Central Administrative Tribunal

124 FEB 2009

मुख्य दस्तावेज़
Guarantee Bench

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

Place: - Badarpur

Date: - 14.9.2001

Yours faithfully,

Swapan Choudhury.

Signature of the Worker

Signature of the

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

Forwarded to DRD (P) / King for further disposal Please
(This is in reference to your AFNO E/227/Misc/LM/Recd/
dated 7.9.2001) - 00

T/Mistry.

14/9/2001
Secretary,

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

-22-

Date 2008

-17-

Circular Certificate of Postage

BY AIR MAIL POST.

H. F. Railway.

Office of the
Divl. Railway Manager
Lumding.

Dated 03 / 11 / 2001

S. I. / 227 / HSC / LIV / REC / (30).

To
Shri Suapan Choudhury (1).

S/o. Late/shri Jyothi Nath Choudhury

G/o. Buddha Goloy - Vill -

P/o. Badarpore - dist. Karimganj. PIN - 788806
(Assam).

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

In connection with consideration of your appointment in
Group-D category to Rly. you are advised to report to the office of
the undersigned immediately.No TA/DA will be paid to you for your journey to and from
Lumding and also for your stay at Lumding which may be for more
than one day.You should also come prepared to deposit an amount of
Rs. 16/- only as medical examination fee on first appointment, if
approved for appointment.You must bring with you the following certificate in original
and also two copies of each duly attested.

- (i) School certificate for academic qualification.)
- (ii) Proof in support of date of birth viz. Any one.
- (a) School leaving certificate or)
- (b) Baptismal certificate or)
- (c) Affidavit sworn before Court of Law.)

No other proof including Horoscope will be accepted.

No other proof including Horoscope will be accepted.

(iii) Two character certificates from two Gazetted Officers.
(Proforma enclosed as per Annexure-'A').(iv). 4 (four) copies of your passport size recent photograph duly
attested by the Gazetted Officer on the front side of the
photograph and another copy without attestation i.e. total
05 copies.

Contd... P/No.2

Attested by
Choudhury
S. I.संघीय प्रशासनिक अदायक
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायपाठ
Guwahati Bench

- 2 -

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

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

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

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

24 FEB 2009

গুৱাহাটী চাচাপুঠ
Guwahati Bench

Encl : - Annexure-'A'.

N.B. :- The validity of the call letter is upto 22.11.2001.
If you do not report or inform your acceptance on or before 23.11.2001, your offer will be cancelled and in future you will not be considered for Apptt.

for Divl. Railway Manager (P)
N.E.R. Railway, Lumding.

(A.K.DEH, A.P.O/ L.M.G)

FOR SC/ST CANDIDATES ONLY.

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

for Divl. Railway Manager (P).
N.E.R. Railway, Lumding.

135n/51101

ANNEXURE-6

(4)

N. F. RAILWAY

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

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

Dated: 27.11.2001

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

Sub: Correction of date of birth.

Re: This office letter of even number
dated 19.10.2001.

केन्द्रीय प्रशासनिक अदिकारा
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी चायपीठ
Guwahati Bench

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

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

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

Attested by
Swapnil Choudhury

* *

N. F. Railway

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

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

Dated 18.12.2001

From: DRM (P)'s Office
Lumding

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

Sub : Date of birth

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

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

This should be treated as most urgent.

Sd/-

Illegible

For Div. Rly. Manager (P)

N. F. Rly, Lumding

Attested by:
Choudhury
Adv.

रेपर (रहानो वरक लिखे
Write on both sides if required)

कृपया लिखें

N.F.R. Rely

N.F. G. 40A

RB. GL. 19

Recd/Dated 18/2/2001

राज्य/No. E/227/MSC/LM/Recd/H (RAO)

DR.M(P)'s Office

Guwahati

रिक्त/Sub: Date of birth

To Shri Swapna Charchury (C)
S/Ass'tt Employees Consul-
mers Co. opt. Society Ltd.

N.F.R. Rly. Badarpur.

70 Secy. Ecos Ltd.

N.F.R. Rly. Badarpur.

केन्द्रीय प्रशासनिक बोर्ड
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी बाबरी

Guwahati Bench

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

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

This should be treated as most
urgent.

As on 20/2/2001

कृपया लिखें (लाभिक)

कृपया लिखें (कार्यालय)

For Divisional Manager (F)

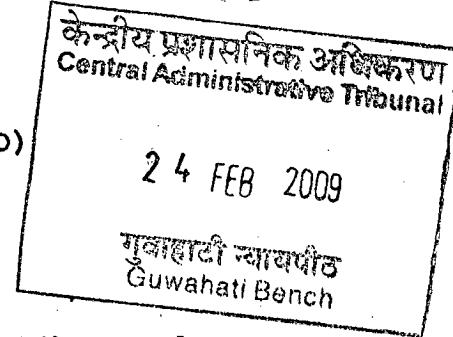
N.F.R. Rly. Lumding

To

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

Sub :- Date of Birth.

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



Sir,

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

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

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

Dated, Badarpur
the 28th Dec. '01.

yours' faithfully,

Enclo : As above.

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

CERTIFIED TO BE TRUE

ADVOCATE

Attested by
Swapan Choudhury

ANNEXURE-9

To

The Divisional Rly. Manager (P)/Lumding.

Sub :- Prayer for my due appointment.

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

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

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

.....
Sir,

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

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

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

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

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

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

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

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

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

Date: 13.02.02
Place: Badarpur

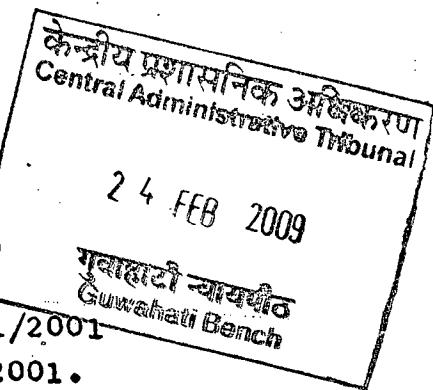
Yours' faithfully,

Swapan Choudhury (I)

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

.....

Attested by
Swapan Choudhury
Badarpur



REGISTERED, A/D

TO

Divisional Railway Manager (Personnel)
N.F.Railway /Irrading.

Sir,

Reg :- Appointment in Group 'D' Post (Trackman)

Ref :- My Regd. letter dt.13.02.02.

I have the honour to state that as I was attached to N.F.R.C.CS Ltd/BPB. The process regarding my appointment in Group 'D' post (Trackman) started and to that effect all necessary forms were duly filled in by me, submitting all relevant records while as per yours No.E/227/Misc./Recrt. (gao) dt.28.11.01 Medical Examination Fees of Rs.16.00 was deposited same date under M.R. No.251411 but I was not medically examined, due to your putting of impediment of wrong date of birth whenever my date of birth was correctly inserted in the application dt.14.9.01 addressed to CPU,N.F.Railway/Mali-goan.

That, after a considerable time I was asked to resubmit the school certificate to determine the date of birth and the same was sent by Regd. post on 28.12.01 and duly received by you on 31.12.01. and duly examined by you after which I was waiting for your directive for my medical examination and due appointment which in the meantime delayed, and so I wrote you on 13.02.02, but my letter was not replied with, not to speak of the necessary action.

That, the entire state of order regarding my appointment has caused a severe disgust, because in the meantime all others with me were appointed, and my fate is not known, in the context of which kindly arrange early appointment to end my all round hardship, to the extent of an early reply.

Date :11.03.02

yours faithfully.

(Swapan Choudhury (I)
Sales Assistant
N.F.Rly. Employees Consumers
Co-operative society Ltd.
Badarpur.

Home Address :
C/o. Juchisthir Ranjan Choudhury
Buddha Colony, Badarpur
P.O.Badarpur -783 806
Dist : Karimganj (Assam)

Attested by
Swapan Choudhury
S.W.

केन्द्रीय प्रशासनिक अदायकरण
Central Administrative Tribunal
24 FEB. 2009
गुवाहाटी बायपोर्ट
Guwahati Bench

केन्द्रीय प्रशासनिक अदिकारी
Central Administrative Tribunal

24 FEB 2009

N.F.Rly.

गुवाहाटी न्यायालय Office of the
Guwahati Bench Civil.Rly.Manager (P),

Lumding, dtd: 19/04/2002.

W.R/227/Misc/IM/Recd (QAO)

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

C/o Secretary,
SCCS Ltd. Badarpur.

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

As you could not produce any document to prove
your date of birth as 24-1-59, your apptt. in the Railways
in Group-D post could not be considered as communicated by
GM(P)/MLG's letter No.E/41/5(C) Pt.V QA dtd: 12-4-2002.

This is for your information

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

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

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

Attested by
Swapna Chowdhury

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 92 of 2005.

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

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

The Hon'ble Sri Gautam Ray, Administrative Member.

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

... Applicant

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

Versus -

Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon,
Guwahati.

Divisional Railway Manager (P)
N.F. Railway, Lumding,
District - Nagaon, Assam.

3. N.F. Railway Employees' Co-operative
Society Ltd.,
P.O. - Badarpur
Dist. - Karimganj, represented by its Secretary.

... Respondents.

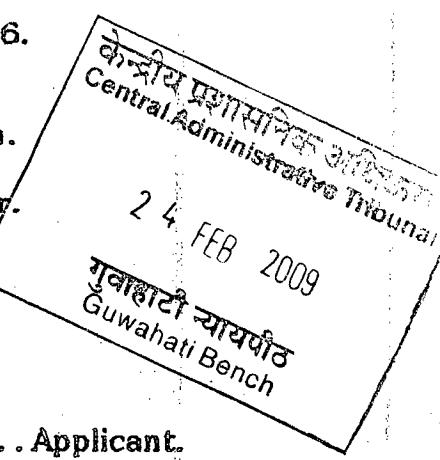
By Advocates Mr S. Sarma and Ms B. Devi.

ORDER (ORAL)

K.V. SACHIDANANDAN (V.C.)

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

Attested by
K. V. Sachidanandan



24 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

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

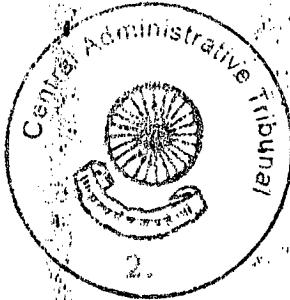
" It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the

24 FEB 2009

गुवाहाटी बायपार्ट
Guwahati Bench

3

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



2. Heard Mr B. Choudhury, learned Counsel for the Applicant and Ms B. Devi, learned Counsel represented the Respondents on behalf of Mr S. Sarma, learned Railway Counsel for the Respondents.

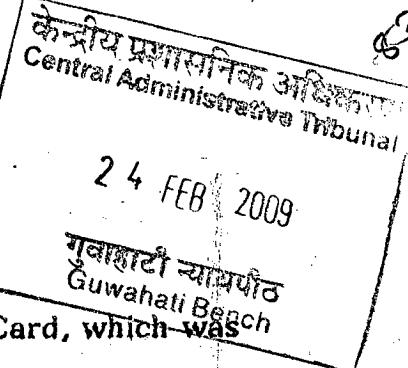
3. Ms. B. Devi, learned Counsel on behalf of the Respondents submitted that she has filed a detailed written statement contending that the Divisional Railway Manager (P), Lumding issued a letter on 01.12.1999 to the Secretary to the Quasi Administrative Officer/Organisation connected with the Railways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

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

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

5. We have given due consideration to the arguments, pleadings and materials placed on record. The crux point to consider is what is the date of birth of the Applicant and whether the Applicant is entitled for offer of appointment that has been intimated by the Railways. Annexure - 1 is the School Leaving certificate, where date of birth of the Applicant is recorded as 22.02.1972 while he was reading in Class - IX and had passed the examination for promotion to class - X. In the said certificate only School Headmaster has signed.



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

"In reference to above, one Sh. Swapan Choudhury, No. 1 attached to N.F. R. E.C.C.S./BPB attended this office and submitted an application indicating that his date of birth as per certificates/documents is 22.2.72 where as by mistake has been indicated as 2.1.59. The original School certificate of the candidate has been verified and it is revealed that his date of birth should be 22.2.72 and no 2.1.59 although, in the statement the date of birth was indicated as 2.1.59. One of the Committee member has been consulted and it is clarified by the said member that the statement available with the Committee was rectified and date of birth was taken as 22.2.72.

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

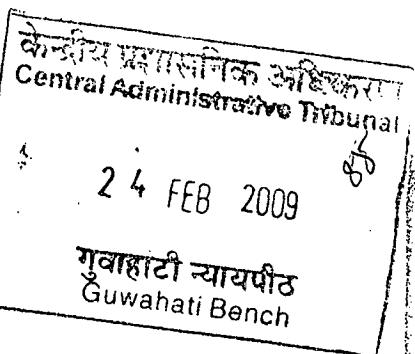
6. On going through the said letter, it is very clear "in the statement the date of birth was indicated as 2.1.59. One of the Committee member has been consulted and it is clarified by the said member that the statement available with the Committee was rectified and date of birth was taken as 22.2.72."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

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गुवाहाटी न्यायालय
Guwahati Bench

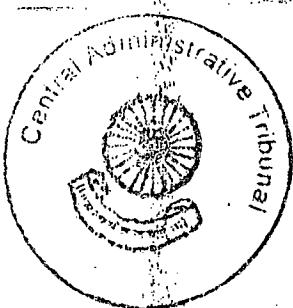
was engaged at the age of 9 years, which is violative of the child labour rules. In such case, a responsible Co-operative Society has engaged the Applicant at the age of 9 years for their purpose. Therefore, the date of birth that has been recorded by the Railways as 02.01.1959 cannot be taken as true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

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



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

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



Sd/ VICE CHAIRMAN
Sd/ MEMBER (A)

TRUE COPY

प्रतिफल

25-8-06

अनुमान अधिकारी
Section Officer (Judi)

Central Administrative Tribunal

गुवाहाटी न्यायपीठ

Guwahati Bench

गुवाहाटी, Guwahati-5

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TYPED COPY

N.F.Railway

24 FEB 2009 ANNEXURE- 13

Guwahati Bench

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

Dated 30.11.06

From DRM (P) LMG

To Sri Swapan Choudhury,
S/ Asst. NFRECCS Ltd/BPB.
C/O Secy. ECCS Ltd/BPB

Sub: Date of birth

Ref:.....

It is seen from the statement submitted by Secy. ECCS Ltd/Badarpur that your date of birth is recorded as 02.01.59.

You are , hereby advised to attend this office with all documents in support of your date of birth to the undersigned for taking further necessary action on any working day, if desire so, at your own cost.

Sd/ illegible 30.11.2006.
Divl.Rly.Manager (P)
N.F.Rly. Lumding.

Copy to:-

1. P9/1/BPB: He is advised to verify the records in connection with the above case in details and submit his report alongwith supporting documents at the earliest.

Sd/ illegible
Divl.Rly.Manager (P)
N.F.Rly. Lumding.

Affested by
Swapan Choudhury
Adv.

केन्द्रीय प्रशासनिक अधिकारी बोर्ड
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

N.R. G. 40A

N.R. GL. 19

Dated/ 30.11.06

सर्वानुसारी अवधारणा फॉर्म

Use this form if required

रोपण दिन

N.R. Railway

कार्यालय/No. E/227/MISC/LM/Reet. (QAO)

DRM(P)LMG

✓ Sri Swapan Choudhury
S/Asstt. N.R.Eccs Ltd./B.P.B.
C/o, Secy. Eccs Ltd./B.P.B.

Date of birth:

मात्र/Sub:

ट्रैक/Ref:

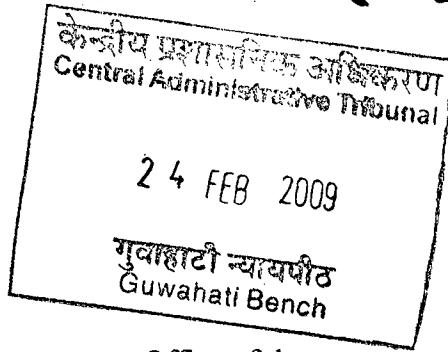
It is seen from the statement submitted by Secy. Eccs Ltd./Bardarpur that your date of birth is recorded as 02.01.59

You are, hereby advised to attend this office with all documents in support of your date of birth to the undersigned immediately for taking further necessary action on any working day, if desired so, at your own cost.

W.B. 30.11.06
Mr. P. K. Bhattacharya
Asstt. Secy. Eccs Ltd.
Mr. D. K. Bhattacharya
M.R. Rly. Manager
Mr. R. K. Bhattacharya

Copy to:

1. P9/1/BPB: He is advised to verify the records in connection with the above case in details and submit his report along with supporting documents at the earliest.



NORTHEAST FRONTIER RAILWAY

No. E/227/Misc/LM/Rectt/(QAD)

Office of the
Divl. Railway Manager (P)
Lumding/Dated: 28/12/206

To,
Shri Swapan Chowdhury,
S/Asst. NFRECCS Ltd/BPB
C/o Secy. ECCS Ltd/BPB

Sub: Medical test to ascertain age (D.O.B) of Sri Swapan Chowdhury.

In compliance with Honble CAT/GHY's order dt 04/08/06 in O.A/92/05- Sri Swapan Chowdhury Vs U.O.I & others you had been advised to attend this office with all documents in support of your age accordingly you appeared before the under signed but without any documents medical report in support of your age (D.O.B) except the school certificate which bears your D.O.B as 22/2/72. *which has not been accepted.*

You are advised to report to CMS/LMG on any working day to assess your correct age (D.O.B) through medical examination. In this process (assessing your D.O.B through medical examination) the entire cost will have to be borne by you.

✓ 28/12/06
(MD Salim)
APO/PC/LMG
For Divl. Railway Manager (P)

Copy to:

- 1) CMS/LMG, for information & n/action please. Further on reporting by Shri Swapan Chowdhury he may like to take necessary step to assess the correct age (D.O.B) and send the medical report to his office for taking further action. As stated above, the cost of medical test will be borne by the party himself recent photo, signature & L.T.I of Shri Swapan Chowdhury furnished below for identification, are duly attested by the under signed.
- 2) APO/Legal Cell/LMG. For information please.

For Divisional Manager (P)
N.F.Railway/Lumding.

(L.T.I of S. Chowdhury)

✓ Swapan Chowdhury
Attested
28/12/06

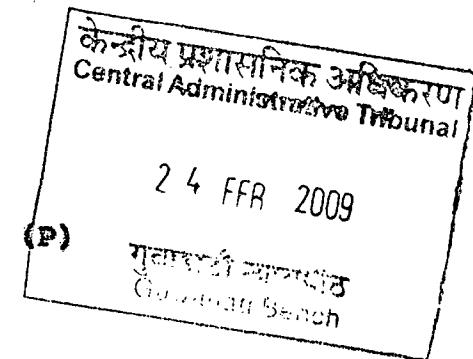
Attested by
Swapan Chowdhury
28/12/06

REGISTERED, A/D

From : Swapan Chowdhury
S/Asstt. NFRECCS Ltd
C/O. Secretary
N.F.Rly. Emp. Co-op.
Consumers Society Ltd.,
P.O. Badarpur-788 806
Distt : Karimganj.

Date : 24.02.07

To
Divisional Railway Manager (P)
N.F.Railway/Lumding,
P.O. Lumding,
Dist. Nagaon, Assam.



Sir,

Sub :- Medical test to ascertain age (D.O.B.)
of Sri Swapan Chowdhury.

Ref :- Yours No. E/227/Misc./LM/Recatt/QAD
dt. 28.12.06.

I have the honour to let you know that, on receipt of yours No. above, signed by MD. Salim, APO/PC/LMG I appeared before CMS/LMG on 29.12.06 who directed back me to yours on the same date with a letter, which was duly handed over to you, whenever I asked about the fate of the case, you replied that, soon I will be contacted from your end, but I heard nothing so far, the matter which is much embarrassing.

Kindly let me know your next course of action towards early disposal of the case, for reaching the required goal.

Yours faithfully,

Copy to :-

(SWAPAN CHOWDHURY)

- 1) CMS/LMG for his kind information and necessary action.
- 2) Sri B. Choudhury
Advocate, Gauhati-
for his kind information about the latest development of the order of Hon'ble CAT in the OA No. 92 of 2005.

-42-

LEGAL MATTER
URGENT.

20

From: Swapan Chowdhury
S/Astt. NFRECCS Ltd.,
C/o. Secretary,
N.F.Rly., Emp. Co-op.
Consumers Society Ltd.
P.O. Badarpur -788806, Dist. Karimganj.

REGISTERED, A/D
Date : 03.05.2007

केन्द्रीय प्रशासनिक अदिकाराण
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

To: Divisional Railway Manager (P)
N.F.Railway/Lumding, P.O. Lumding -782447
Dist. Nagaon, Assam.

Sir, Sub:- Medical Test to ascertain age (D.O.B.)
of Sri Swapan Chowdhury.

Ref :- Yours No. E/227/Misc/LM/Rectt (QAD) dated. 09.03.07
signed by Sri P.K.Das, APO/PC/LMG.

I have the honour to let you know that, yours No. above
was received by me on 16.03.07 and on 20.03.07 Photograph were
placed before you at your office by me, after which no communication
from your end was received by me.

That, it may be mentioned here that, similar process of
placing photograph before you on your advice under above No. dated
28.12.06 signed by Md. Salim, APO/PC/LMG I appeared before you and
CMS/LMG on 29.12.06 (vide my letter dt. 24.02.07) when the result
was your repetition of same advice in respect of Photograph under
yours No. above dated 09.03.07.

That I cannot exactly understand how long your said
process of killing time will be continued towards denial of justice
due to justice delayed, though yours No. above dated 28.12.06 worded
with starting " in Compliance with Hon'ble CAT/GHY's order dt.
04.08.06 in O.A.A/92/05...." and now em I to believe your action
to be in strict compliance with the Hon'ble CAT/GHY's Verdict.

That, further your extra judicial comment /remarks
in yours No. above dtd. 28.12.06 where you have stated that, the
cost of medical test will be borne by the party...." which was
your own interpretation of the Hon'ble CAT /GHY's order, thus
I request you to go through the order with careful perusal, under
legal consideration.

That, with helpless reluctance I like to say that,
I am not at all ready to test my patience, tolerance and persever-
ance in respect of writing again and again at the cost of wastage
of time to the spell of months to year, while you are requested
to communicate as early as possible latest by the 3rd Week of May
2007 to know the fate of my case to think otherwise over the
circumstances to come.

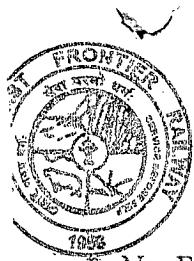
That, your failure to reply in time will invite
my lawyer to appear in the field to resolve the case.

Thanking you and expecting your communication.

Yours faithfully,

Date : 03.05.2007

(SWAPAN CHOWDHURY)



N.F.Railway *By Regd. Post*

Office of the
Divl. Railway manager (P)
N.F.Railway, Lumding
Dt. 23/05/2007

No. E/227/Misc/LM/Recet.(QAO) Docket
To,

Sri Swapan Chowdhury
Sale Asstt, NFRECCS/Badarpur
C/o Secretary, N.F.Railway, Emp Co-Opt Consumers Society Ltd.
P.O Badarpur, Dist- Karimganj
Pin-788806

Sub:- School Certificate.
Ref:- Your application dtd 03-05-07.

केन्द्रीय प्रशासनिक अदिक्षकरण
Central Administrative Tribunal

24 FEB 2008

गुवाहाटी न्यायालय
Guwahati Bench

Please call for your application dated 19-12-06 whereby you submitted school certificate without countersignature of Inspector of School.

As per Hon'ble CAT Guwahati's order dtd 04-08-06 passed in OA 92/05 you were required to obtain the school certificate duly countersigned by Inspector of School to prove the genuineness of the said certificate.

As such you are advised once again to submit the school certificate duly countersigned by Inspector of School as per Hon'ble CAT Guwahati's order.

As regards, Medical examination, the matter is under process to do it at the appropriate level.

D. N. DAS (P.K.DAS)
APO/PC/LMG
For DRM (P) LMG

83455

-44-

ANNEXURE-18

By FAX

AN

By. Regd. Post

N.E.Railway

Office of the
Divl. Railway Manager (P)

N.F.Railway, Lumding
Dt. 25/05/2007

সর্বোচ্চ প্রশাসনিক অধিকার
Central Administrative Tribunal

24 FEB 2009

গুৱাহাটী বিভাগ
Guwahati Bench

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

To,

Sri Swapan Chowdhury
S/Asstt. NFRECCS Ltd/BPB
C/o Secy. ECCS Ltd BPR

Sub:- Medical test to ascertain age (DOB) of Sri
Swapan Chowdhury.

You are hereby advised to attend CMS/LMG's office on
08-06-07 at 10.00 Hrs for the above medical examination certain.

10/05/07
5.07
(P.K.DAS)

APO/PC/LMG

For DRM (P) LMG

N.F.Railway

Copy to:-

CMS/LMG :- for information and necessary action please.

For DRM (P) LMG

N.F.Railway

N.F.Railway *By Regd. Post*

Office of the
Divl. Railway Manager (P)
N.F.Railway, Lumding
Dt. 18/07/2007

No. E/227/Misc/LM/Rectt.(QAO)Docket
To,

Sri Swapan Chowdhury
Sale Astt., NFRECCS/Badarpur
C/O Secretary, N.F.Railway Emp Co-Opt Consumers Society Ltd
P.O-Badarpur, Dist- Karimganj
Pin- 788806

Sub:-School certificate.

Please call for this office letter of even no. dt. 23-05-07
wherein you were requested to submit school certificate duly
countersigned by the Inspector of schools as laid down in Court's verdict
dt. 04-08-06.

But the same not yet submitted by you till date.

You are, hereby further advised to submit school
certificate duly countersigned by the Inspector of Schools as directed by
Hon'ble Court within 31-07-2007.

Dr. P.K.DAS
(P.K.DAS)
APO/PC/LMG
For DRM (P) LMG
N.F.Railway

N.F. RAILWAY

To

Head Master,
Zum Mouza High School,
B A D A R P U R

केन्द्रीय प्रशासनिक अदालत Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

Sir, Sub:- Countersignature of Inspector of Schools, Karimganj on School certificate issued by you on 31.12.87 as ordered by Hon'ble CAT/GHY.

I have the honour to state that, I was an ex-student of your school and obtained the school leaving Certificate dt. 31.12.87, with which I applied for an employment in N.F.Railway, but consequent to the litigation as ordered by Hon'ble CAT/Guwahati on 4.8.2006 countersignature of Inspector of Schools, Karimganj is required on the school certificate, in this connection vide DRM(P)/LMG's No.E/227/Misc/LM/Recd (QAO) Docket dt. 18.07.07 enclosed herewith.

Hence I like to request you to kindly arrange the countersignature process on the certificate issued or to issue another certificate duly countersigned by Inspector of Schools, Karimganj, as the matter may deem it fit, so that I may submit the countersigned certificate with the appointing authority for my appointment, while for the act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Enclo :1 (one)

Dt. 27.07.07

Swapan Choudhury

(SHAPAN CHOWDHURY)

S/O. Late Jadhishthir Choudhury
Buddha Colony, Badarpur
P.O. Badarpur - 788806
Distt : Karimganj / Assam

S.O.I
E

Forwarded to professor
of Schools & D. C. Hari Singh
for necessary action as no
center fail or a division in
is unavoidable in the
as per reply of the
H. M. Roma Gurha
for his letter dated 5
J. N. 12-2091
Rev. Prof. S. S. P. Singh
Part viii
the School
Previous
12-2091
J. N.
Zum Head Master
Zum Mouze Manager
Badamur. High School.

By Regd Post with A/D

N.F.Railway

Office of the
Divl. Railway Manager (P)
N.F.Railway, Lumding
Dt. 27/08/2007

No. E/227/Misc/LM/Rectt.(QAO)Docket
To,

Sri Swapan Chowdhury
Sale Astt., NFRECCS/Badarpur
C/O Secretary, N.F.Railway Emp Co-Opt Consumers Society Ltd.
P.O-Badarpur, Dist- Karimganj
Pin- 788806

केन्द्रीय प्रशासनिक अधिकारात
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

Sub:-Hon'ble CAT GHY's order dtd 04-08-06 passed in OA
No. 92/05.

The Hon'ble CAT GHY's order dtd 04-08-06 passed in OA No. 92/05 inter alia directed you to obtain the counter signature on the school certificate by the Inspector of Schools to prove the genuiness of the said certificate. But you have not complied the Hon'ble CAT GHY's above order.

In addition to this, you were advised to submit the same for verification of document vide this office's letter of even no dtd 18-07-07 and 23-05-07. Despite this you have not responded.

As such in the given circumstances, the Railway respondents could not be able to verify the genuiness of the document submitted by you.

The Railway administration in compliance with the Hon'ble CAT, GHY's order took necessary step within the stipulated time for the medical test as to determination of your age. Considering the medical report regarding the date of birth and also the records available at this office, the Railway is convinced that you are not eligible for appointment.

This is in compliance of Hon'ble CAT's order mentioned above.

AKS
(K.P.SINGH)

DPO/IC/LMG
for DRM (P) LMG

Copy to:-

- (1) GM(P)MLG:- for information please.
- (2) Legal cell at office.

for DRM (P) LMG

Attested by
Chowdhury
Adv.

To

The Divisional Railway Manager (P)
N.F.Railway /Lumding.

Sir,

Sub :- School Certificate.

Ref :- Yours No.E/227/Misc/LM/Rectt. (QAO)
Docket dt.27.08.07.

While submitting the School certificate as directed by Hon'ble CAT/GHY for your verification and respective process towards the employment.

That, it is not at all a fact that I have not complied the Hon'ble CAT/GHY's order but towards the compliance I pursued the matter with the respective authority towards the issuing of school certificate in desired form, which took much time in process and only issued on 01.11.2007 and countersigned on 26.11.2007 by Inspector of Schools, Karimganj and received on 4.12.07.

That, your letters asking the school certificate were received in time but were not replied with due to non-availability of certificate when I was much perplexed and not in a position to write.

That, regarding the time-frame nothing was stipulated by Hon'ble CAT but it was stipulated by me, seeing your delay in processing the matter of medical test and it was beyond my capacity to pressurize the State Education Deptt. in the matter of their respective process, and as the process was over the certificate was issued in the desired form, while for the delay I am not at all liable.

So, in the above context you cannot convince yourself that I am not eligible for appointment.

Hence, you are prayed to start the appointment process soon.

Yours faithfully,

Date :05.12.07

Enclo :Photo copy of
school certificate.


(Sri Swapan Chowdhury)

At Office :

Sale Asstt., NFRCCS/Badarpur
C/O. Secretary, N.F.Railway
Emp. Co-opt. Consumer Society Ltd
P.O. Badarpur - 788 806
Distt : Karimganj.

Swapan
Chowdhury

केन्द्रीय प्रशासनिक अदिकारी
Central Administrative Tribunal

24 FEB 2009

गुवाहाटी बायांगुड
Guwahati Bench

Zum Mouza High School

BADARPUR

Transfer/Leaving Certificate

Serial No.: 158

Date... 01-11-07

Certified that Sri/Srimati..... Swapan..... Chaudhury.....
 Son/Daughter of..... Teekhi..... Rangesh Chaudhury, an inhabitant of
 Village..... P.C. Calomoy..... P.O. Paradarpan.....

Dist. Karimganj left this institution on the 3.1.2007 20.

His/Her date of Birth according to the Admission Register was on
 22.2.1972 (In words) 22nd Feb. 1972.....

He/She was reading in Class... X... (Middle) and had/had not passed the
 the Annual Examination for promotion to Class... X... (Pass).....

All our dues by him/her have been paid, viz.

Fee upto. 3.1.2007 (date)

Fines— 0/-

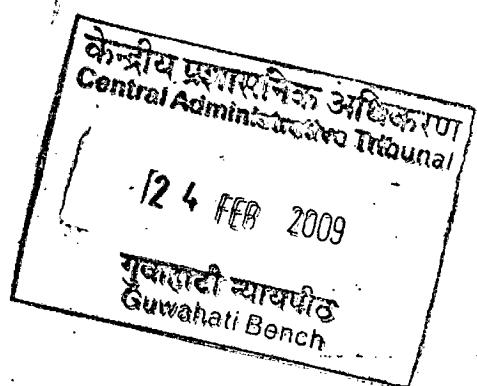
Character— good

Reasons for Leaving :-

1. Unavoidable change of residence.
2. Ill health
3. Completion of the school course.
4. Minor reasons.

COUNTER SIGNED
 26/11/07
 INSPECTOR OF SCHOOLS

26/11/07
 Head Master
 Zum Mouza High School
 P.O. Badarpur, Karimganj



TYPED COPY

ANNEXURE-24.

By regd. Post with A/D

No E/227/Misc/LM/Rectt.(QAO)/Docket

Office of the Divl. Rly. Manager(P)

Lumding, Dt: 8.1.08
108 वाय प्रशासनिक अधिकारी
Central Administrative Officer

To
Sri Swapan Chowdhury
S/Asstt.NFRECCS/BPB
C/O Secy.NFRECCS Ltd.
P.O. Badarpur.
Dist: Karimganj, Pin 788806

24 FEB 2009

गुवाहाटी न्यायालय
Guwahati Bench

Sub: School Certificate

Ref: Your Application dt: 05.12.07

Your application dt: 05.12.07 was put up to the authority. After perusal your appeal, relevant papers of the case & this office letter dt: 27.8.07 has passed the following order.

"The decision communicated earlier vide this office letter of even no dt: 27.8.07 is stand good"

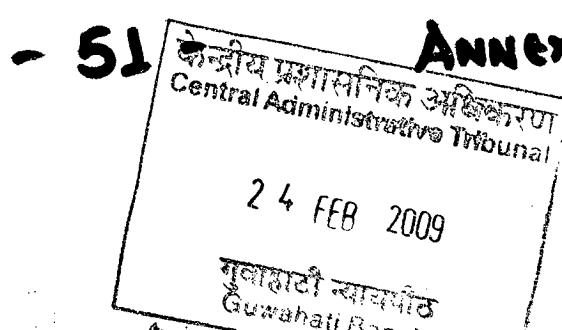
This is for your information.

Sd/Illegible

Dt: 8.1.08

For Divl. Rly Manager (P)

N.F. Rly. Lumding.



NO. E/227/MISC/LM/Rectl. (A/J) Docket.

To,
Shri Swapnil Chowdhury
S/Asstt. NFRCCS S/BP/B
Co-Secy. NFRCCS Ltd.
P.O. - Badarpur
Dist - Karimganj
PIN - 788806.

Office of the
Divl. Rly. Manager (P)
Lumding
DH. B.I. Os.

Sub: School certificate.
Ref: your application dt. 5.12.07.

Your application dt. 5.12.07 was put up to the authority. After perusal your appeal, relevant papers of the case & this office letter dt. 27.8.07 has passed the following order.

"The decision communicated earlier w/c this office letter of even no. dt. 27.8.07 is stand good."

This is for your information.

W/ST/38
On date 2009
G. d. 2009
to Divl. Rly. Manager (P)
G. d. Rly. Lumding

SE.5

भारत सरकार सेवार्थ

Regd. Post. No. 141

R/10

ON INDIA GOVERNMENT SERVICE

To Shri Swapan Choudhury
M/Asslt. NFECC/18 PA

C/o - Secy NFECC Ltd

Badarpur

PIN - 88806

378/2011
Tribunal

24/10/2009

High Court
Guwahati Bench

53

File in Court on 29/8/09

Court Officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH, GUWAHATI

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

O.A. NO. 33 of 2009

511 20 AUG 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Sri. Swapon Choudhury

.....Applicant.

-Vs-

Union of India & Ors

.....Respondent.

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Filed by

Bharati Debn
28.8.09.

Advocate: Guwahati.

102

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH AT GUWAHATI

O.A. No. 33 of 2009

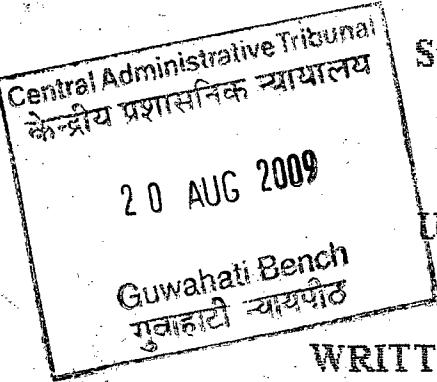
Sri. Swapon Choudhury

.....Applicant.

-Vs-

Union of India & others

..... Respondents.



**WRITTEN STATEMENTS ON BEHALF OF THE
RESPONDENTS.**

The Written statements of the Respondents are as follows:-

1. That a copy of the Original Application No.33/2009(hereinafter) referred to as the "application" has been served upon the respondents. The respondents have gone through the same and understood the contents thereof.
2. That save and except the statements which are specifically admitted by the respondents, the rest of the statements made in the application may be treated as denied.
3. That the statements made in paragraph 1 to the application is not admitted by the deponent.
4. That the answering Respondent has denied the correctness of the statements made in paragraph 2 to the application. If the date of birth is treated to be 22.02.72 then the age of the applicant in his first entry in service would be 9(nine) years which is not the permissible age limit as prescribed by law.
5. That in regard to the statements made in paragraph 3 and 4 to the application the answering Respondent does not admit anything, which is beyond the record.
6. That in regard to the statements made in paragraph 5 to the application the answering Respondent begs to state that the applicant's first engagement in service as Saleman -cum- peon on 22.3.81 might have been

Swapon Choudhury

विद्युत कार्यालय कार्यालय
Sr. Divl. Person - Office

पु. सी. इलेज, शारदिया

N. S. Rly, L. d. d. n. 20.8.09.

Filed by
Swapon Choudhury
Advocate, M/s
R/A, N/F, Rly
20.8.09.

20 AUG 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

on the basis of his age proof document stated to be as 2.1.59. The date of birth of the applicant was recorded as 2.01.59 thereafter he was promoted to officiate as Sales Asstt-cum- Accounts Clerk in the said society by order of the Respondent dated 5.7.87. The concerned Authority due to mistake and oversight forwarded the application of the applicant for absorption in Group D posts of Quasi Administrative Officer's workers without verifying the age which was subsequently detected by the Respondent No.2/DRM (P)/LMG and thereby the applicant was directed to produce original testimonials as mentioned in his letter vide Annexure-5 to the application.

7. That in regard to the statements made in paragraph 6 to the application the answering Respondent begs to state that the G.M (P) Maligaon by his intimation letter 23.7.2001 requested Respondent No.2 to take appropriate steps leading to verification of the school certificate and other relevant documents for his appointment as per the extant procedure to that effect.

8. That in regard to the statements made in paragraph 7 to the application the deponent has no comment. In order to mitigate the discrepancies as to the date of birth of the applicant the Respondent No.2 issued a letter to the applicant to submit documents relating to his date of birth.

9. That in regard to the statements made in paragraph 8 to the application the answering Respondent begs to state that the applicant did not submit his original age proof document as per proper procedure to be duly counter signed by the concerned Inspector of Schools.

10. That in regard to the statements made in paragraph 9 to the application are not accepted at all. Further, on enquiry it was found out that the applicant worked during 1981-1987 in the office of the NFRECCS and had abstained from attending his school.

11. That in regard to the statements made in paragraph 10 to the application the answering Respondent begs to state that the applicant's candidature could not be considered as he failed to produce genuine documents in support of his age. The GM (P)/Maligaon on being referred to

Guwahati Bench
Sr. Divl. Regd. No. 103
महानगर नियमित अधिकारी
N. E. Rly., Lawding

20 AUG 2009

Guwahati Bench

গুৱাহাটী ন্যায়পৌঠ

the given date of birth of the applicant as 22.2.79 opined that the said age cannot be accepted as no person at the age of nine (9) years can be employed in any establishment which amounts to exploitation of a child and is in complete violation of Constitutional rights as well as Child Labour Laws.

12. That in regard to the statements made in paragraph 11 to the application the deponent has no comment.

13. That in regard to the statements made in paragraph 12 to the application the answering Respondent begs to state that it is a direction of the Hon'ble Tribunal to be complied with by both the parties as stated in the order of the Hon'ble Tribunal dated 4.08.06 vide OA No.92/05 and as such the deponent does not admit anything beyond the records.

14. That the deponent has no comment in regard to the statements made in paragraph 13,14 and 15 to the application unless contrary to the records. As per the direction of the Hon'ble Tribunal dated 4.8.2006 in OA No.92/05 the Respondent advised the applicant for medical examination along with all relevant documents in support of his age.

15. That the deponent has no comment in regard to the statements made in paragraph 16 to the application. The applicant may be asked to strict proof of the aforesaid statements.

16. That the deponent has denied the correctness of the statements made in first part of paragraph 17 to the application. So far the statements made in other parts of paragraph 17 are concerned the deponent begs to state that the applicant was advised to attend CMS/LMG's office for medical examination. Accordingly the applicant was medically examined by a medical Board, which eventually came to the conclusion that the applicant's age range would be between 25 years and 40 years and the same was communicated to the DPO/IC/LMG dated 6.7.07 by the CMS/LMG. Thereafter the CMS/LMG conveyed his opinion to the DPO/IC/LMG through his letter dated 26.7.07. The applicant was again repeatedly asked through various departmental correspondences to submit the school certificate for determination of his actual date of birth duly countersigned by the concerned Inspector of Schools but he failed to the produce the same in

Guwahati Bench

পুস্তক প্রক্ষেপ
পুস্তক প্রক্ষেপ, আমুল
Sr. Divl. T. No. 100
N. E. Riy., Law. ding

20 AUG 2009

Guwahati Bench

reasonable time. Lastly the Respondent Authority ~~directed him to submit~~ the said school certificate with all formalities within the stipulated time as stated in the letter dated 18.7.2007(Annexure-19 to the OA).

Copies of letters as to age determination of the applicant dated 6.7.07 and 26.7.07 are annexed herewith and marked as Annexure A and -B.

17. That the statements made in paragraph 18 are misleading. The applicant may be asked to strict proof of the contention as stated in the application stated to be submitted to the Head master of the concerned school vide Annexure 20 to the OA along with the endorsement of the Head master of the said school.

18. That the statements averred in paragraph 19 to the application are not acceptable at all. Since the applicant failed to produce his school certificate countersigned by the Inspector of the Schools, Karimganj to prove the genuineness of the said certificate, the Railway Authority after repeated request through intimation letters and awaiting considerably for a long period, was tenaciously compelled to pass the order on 27.08.2007 considering the medical report regarding the date of birth and also the records available at the office stating that the applicant was not eligible for appointment.

19. That the contentions of the applicant stated in paragraph 20 and 21 to the application are totally not correct. That the certificate submitted by the applicant on 5.12.2007 and that filed earlier had no similarity. Moreover at the time of inquiry conducted by the Railway Authority stated clearly that there was no record available regarding issuance of the earlier school certificate. In the earlier school certificate it was stated that he left the school for "unavoidable change of residence" but the school certificate issued on 1.11.07 written as duplicate and produced on 5.12.2007 stated that he left the school for "minor reason". This two contrary remarks raises serious doubts regarding the authenticity of said certificate leading to the date of birth. As such there is no eventuality of procuring the correctness of the certificate relating to the actual date of birth. The Railway Authority did not consider

✓
Ankumardas

St. Divl. T. No. 2009
N. E. T. L. C. C.
N. E. T. L. C. C.

20 AUG 2009

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

the appointment of the applicant as he failed to produce the genuine school certificate in support of his date of birth. The duplicate school certificate must be issued from the original records pertaining the date of birth for which the said records may kindly be called for in order to justify its authenticity.

A copy of the reply letter dated 19.12.06 of the Head master Zum Mouza High School, Karimganj is annexed hereto as Annexure-C.

20. That the deponent begs to state that in terms to the Railway Board's letter dated 30.5.2000 and taking into account the future of the employees working in Quasi-Administration Organization application were sought from such regular employees for absorption in Railways and provided some eligibility criteria. The said employee must be on roll continuously for a prescribed period of at least three (3) years, subject to fulfillment of prescribed educational qualification. Such staff should have been engaged in the said Quasi-Administration Organization within the prescribed age limit. As such an employee who had joined the organization in nine (9) years cannot be treated to fulfill the age limit as prescribed.

A copy of the by the Railway Board's letter dated 30.5.09 is annexed hereto as Annexure-D.

21. That the statements made in paragraph 22 to the application the deponent begs to state that due to lack of genuine age proof document the applicant was not absorbed in Group D post. The applicant filed his application beyond the prescribed period of time as provided by the Central Administrative Tribunal Act without explaining the delay in filing the said application.

22. That the deponent begs to submit that the applicant was promoted on his sincere service by N. F Railway Employees Consumer Cooperative Society Limited (NFRCCS), Badarpur (Katinganj) as stated by him. From his initial engagement in NFRCCS it transpires that the applicant worked from 1981-1987. If the certificate stated to have issued on 31.12.87 (Annexure-A to the OA) is taken into consideration then it is impossible on

श्रीराम कविकार अधिकारी
Divl. T. 10000/- 00/-
दूर्मिला, शामिल
N. E. 10000/-, L. 10000/-

20 AUG 2009

Guwahati Bench

his part to attend classes during the said period. It is further submitted that the school certificate in question produced by the applicant, which states his age of 9 years at the time of his initial appointment itself is contradictory and beyond the permissible age limit of an employee and as such the error is apparent from the face of that particular document which relies upon the date of birth.

23. That the respondent /Riy authority has rightly passed the order considering all the relevant facts and circumstances and the documents on records and there is no irregularity and infirmity to be interfered by the Hon'ble Tribunal and if the appeal is allowed the respondent /authority will be seriously prejudiced.

24. That the applicant craves the indulgence of the Hon'ble Court to file any additional/amended written statement for the ends of justice.

25. That the application filed by the applicant are baseless and devoid of merit and as such not tenable in the eye of law and liable to be dismissed with heavy cost.

26. That in any view of the matter raised in the application and the reasons set forth thereon, there cannot be any cause of action against the respondent and the application is liable to be dismissed with cost.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to peruse the records and after hearing the parties be pleased to dismiss the application with cost. And pass such other orders/orders as to the Hon'ble Court may deem fit and proper considering the facts and circumstances of the case and for the ends of justice.

And for this the Respondent as in duty bond shall ever pray.

Sr. Div. Panel, असम
N. E. Riy, Lancing

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

20 AUG 2009

Guwahati Bench
गुवाहाटी न्यायालय

VERIFICATION

I, Shri. AMBESWAR SAIKIA, Son of LATE CHANDRA SAIKIA
..... resident of LUMDING, at present
working as the Sr. DIVISIONAL PERSONNEL OFFICER / LUMDING
being competent and duly authorized to sign this verification do hereby
solemnly affirm and state that the statements made in paragraph 3-22
are true to my knowledge and belief, and the rests are my humble
submission before this Hon'ble Tribunal. I have not suppressed any material
fact.

And I sign this verification on this 19th day of August 2009
at Guwahati.

Ambevar SAIKIA

DEPONENT
श्री अम्बेश्वर सैकिए
Sr. Divl. Personnel Officer
पु.सी. रैल्ड, लामडिय
N. E. Rly., Lumbding

(8)

Annexure - A

CO 9

66
599
11-7-07

(61)

94

N.F.RLY

No. H/184/LM

Office of the
Chief Medical Supdt.
Lumding Dt- 06/7/07

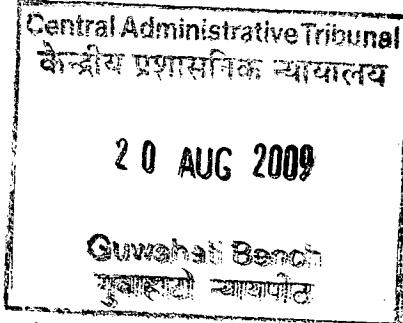
To,

DRO/IC/LMG

Sub- Age determination of Sri Swapan Chaudhury S/Asstt/NFR ECCS/BPB.

The Medical board , consisting of Dr.R.K.Roy CMS/LMG, Dr.T.Daimari Sr.DMO/Surg , Dr.B.Basumatary DMO/Phy , after examining the above named and going through the X-Rays and its report by Dr.D.K.Das Sr.DMO/Radiology/LMG , have come to the conclusion that the age of Sri Swapan Chaudhury is between 25 year //
and 40 year

This is for information and necessary action please.



(DR.R.K.ROY)
Chief Medical Supdt.
Lumding

DPO / LMG
DPO
APO
COS / OS

R. K. Roy
P. C. D. M. B.
M. D.
On 20/7

Verified to be true

copy

Tickey Rachel ²⁵ Lohar

Advocate, Guwahati

62
No - H/184/L.M

63
30/7

⑨
N.F.RLY.

62

Annexure - B

R-6

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10

Chief Medical Supdt.
Lumding, Dt - 26/7/07

To,
DPO/IC/LMG.

Sub - Age determination of Shri Swapan Chaudhury S/Asst/NFR ECCS/BPB.

Ref - Your Letter No. E/227/Min/LM/Recd (QAO) Docket Dt - 23/7/07.

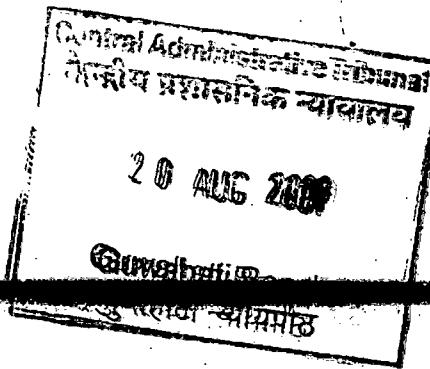
With reference to above it is to inform you that actual age can not be determined by Medical Examination. We can give only age range. Valid document for this is only School Certificate, Birth Certificate.

This is for your information and needful please.

h2
(DR.R.K.ROY)
CMS/LMG

RK ROY by- Rajan Roy

29
DPO/IC/Recd 26/7
DPO.....
A.P.O.....
C.O.S/OS.....
R.C.E.C. 26/7/07



Certified to be true copy.

Tikay Rachel John.

Advocate, Dibrugarh

OFFICE OF THE HEADMASTER
ZUM MOUZA HIGH SCHOOL, BADARPUR
Dist. - Karimganj - Assam, Pin.-788806

Ref.

प्रोसेस अधिकारी न्यायालय

Date ..19.1.2006....

20 AUG 2006

Guwahati Bench
गुवाहाटी न्यायपीठ

To

The ~~Res~~ Personal Inspector
N. F. B. G., Badarpur.

Ref:- 815/muse/06

Subject:- Verification of School Anti-flea

Sri,

With reference to the subject cited above
I have the honor to inform you that
the anti-flea issued by the then
Headmaster of Zum Mouza High School
in favor of Swapna Choudhury was
verified by me but no record was
available at the office.

Yours for your information and
necessary action

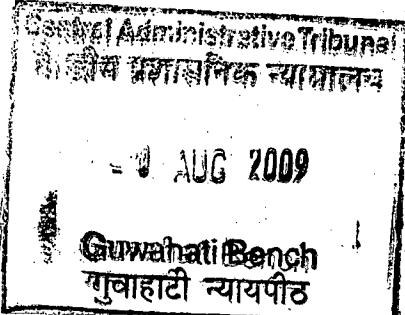
Yours faithfully
D. N.

Head Master
ZUM MOUZA HIGH SCHOOL
P O Badarpur, Karimganj.

Certified to be true copy:

Tikkey Lachit Tora
Advocate, Guwahati

(11)



- 9 AUG 2009

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1/2

ANNEXURE-CTyped Copy

**OFFICE OF THE HEADMASTER ZUM MOUZA HIGH
SCHOOL, BADARPUR**

Dist. - Karimganj -Assam, Pin, -788806

Date. 19.12.06

To,

The Personal Inspector
N.F Rly, Badarpur.

Ref.- E 15/Misc/06

Sub: - Verification of School Certificate.

Sir,

With reference to the subject cited above I have the honour to inform that the certificate issued by the Headmaster of Zum Mouza High School in favour of Swapon Choudhury was verified by me but no record is available at the office.

This for your information and necessary action.

Yours faithfully

-sd-

(Seal)
Head Master
Zum Mouza High School.
P.O Badarpur, Karimganj.

Verified to be true copy:
Siky Rachel John
Advocate, Guwahati

(12)

X1

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

ANNEXURE - D.

(65) 12/3
R-8
RBB No. 103/2000
SC No. 29 to MC No. 32

NO.E(NG)II/99/RR-1/15

New Delhi, dt. 30.5.2000

NPF The General Manager(PY OSD, All Zonal Railways/ PUs,
RE/ Allahabad, MTP/Calcutta, Mumbai, Chennai,
CAO(R), DCW/ Patiala, COFMOW/ New Delhi,
DG, RDSO/ Lucknow, Director, IRISET/ Secunderabad,
IRICEN/ Pune, IRIBEN/ Nasik, IRIM&EE/ Jamalpur,
Principal, RSC/ Vadodara, Chairmen/RRBs

Sub: Recruitment in Group 'D' category on the Railways of the staff working
in quasi-administrative offices/ organizations connected with Railways.

Attention is invited to Board's letter No. E(NG)II/95/RR-1/40 dated 11.6.97,
wherein it was laid down that the staff working in the quasi-administrative offices or
organizations connected with the Railways, will henceforth have to compete alongwith
other eligible candidates for recruitment to the Railway service, as and when notifications
for recruitment to Group 'D' posts etc. are issued by the Railways/RRBs.

2. A demand had been raised by both the recognized Staff Federations that those
staff of quasi-administrative offices/ organizations who were working in these offices as
on 10.6.97 should be considered for absorption in Railway service, as was being done
earlier in terms of Board's letter No. E(NG)III/77/RR-1/5 dated 26.8.77.

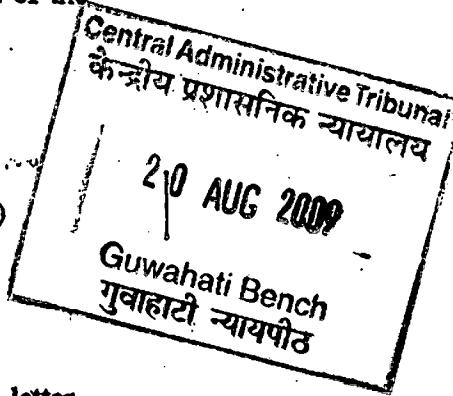
3. The matter has been considered by the Board. It has now been decided that, as a
one time relaxation, the Railways may consider absorption of only those staff of quasi-
administrative offices/ organizations who were on roll continuously for a period of at
least three years as on 10.6.97, and are still on roll, subject to fulfilment of prescribed
educational qualification required for recruitment to Group 'D' posts. Such staff should
have been engaged within the prescribed age limit. Such absorption should be resorted to
only after exhausting the list of ex-Casual Labour borne on the Live Casual Labour
Registers/Supplementary Live Casual Labour Registers. The Units/Bodies whose staff
are proposed to be absorbed in this manner and their total number should however be first
intimated to the Board and the process should be undertaken only after Board's clearance.
Proposals sent to the Board for such clearance should have the personal approval of the
General Manager.

4. Please acknowledge receipt.
(Hindi version will follow)

Spoff

(Deviika Chhikara)
Director Establishment (N)
Railway Board.

(Copy of Railway Board's letter No. E(NG)II/95/RR-1/40 dated 11.6.97)



Attention is invited to the instructions contained in Board's letter
No.E(NG)III/77/RR-1/5 dated 26.8.77, providing for absorption, by screening, of staff of
Quasi-administrative Offices or Organisations connected with the Railways, in Railway
service.

The matter has been reviewed by the Board and it has been decided that in
supersession of the letter dated 26.8.77 referred to above, the staff working in the quasi-
administrative offices or organisation connected with the Railways, will henceforth have
to compete alongwith other eligible candidates for recruitment to the Railway services
as and when notifications for recruitment to posts suiting their qualification, etc. are
issued by the Railways or RRB's.

Such staff will, however, continue to be entitled to the age concession in such
recruitments to the extents of 5 (five) years or service rendered in such organisations
whichever is less, as contained in Board's letter Dated 30.10.73.

Certified to be true copy.

Tilkey Rachel John
Advocate, Guwahati

✓✓✓

NOTICE

From:

Ms. Jikky Rachel John.
Advocate, Guwahati.

Date : 20.8.09.

To:

Mr. B. Choudhury.
Advocate, Guwahati.

Ref : OA 33/2009

Sri Swapon Choudhury

..... Applicant.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्याय नियमों वाली न्यायालय
of India & Ors

..... Respondent

Sir,

20 AUG 2009

Guwahati Bench

Please take notice that a Written Statement in the above noted matter is being filed today by the Respondent. A copy of the same is enclosed herewith for your use.

Kindly acknowledge.

Thanking you,

Yours faithfully,

Received Copy:

Jikky Rachel John
20/8/09 at 11:25 A.M.

Advocate, Guwahati.

Jikky Rachel John
Advocate, Guwahati

I hereby undertake to serve a copy of the written statement to the learned counsel Mr. B. Choudhury, appearing on behalf of the applicant.

Jikky Rachel John.
Advocate, Guwahati.
20.8.09.

File in Court on... 10/11/09
Court Officer.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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10 NOV 2009
Guwahati Bench
गुवाहाटी न्यायपीठ
10/11/09

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

O. A. NO. 33/2009.

Sri Swapan Choudhury

..... Applicant.

- Versus -

Union of India and others.

..... Respondents

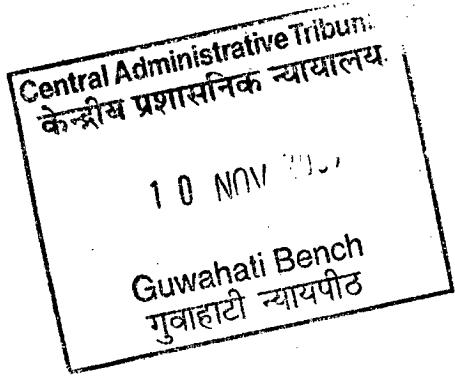
INDEX

SL. NO.	PARTICULARS	PAGE NO.
1.	Rejoinder petition	1 to 5
2.	Verification	6

Filed by
Swapan Choudhury
Advocate 10/11/09

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



O. A. NO. 33/2009

Sri Swapan Choudhury

..... Applicant.

- Versus -

Union of India & Others

..... Respondents.

A rejoinder by the applicant to the written statement submitted by the respondents.

MOST RESPECTFULLY BEGS TO STATE:

1. That the applicant begs to state that he has received a copy of the written statement submitted by the respondents and has understood the contents thereof. At the outset, before replying to the various statements made in the written statement, this applicant states that none of the statements made therein are admitted save and except those, if so specifically admitted in this reply.
2. That the statements made in paragraphs No. 1 and 2 are routine and needs no reply.
3. That with regard to the statements made in paragraph No. 3, 4 and 5 of the written statement the applicant begs to reiterate what is stated in the relevant paragraphs in the original application and further states that the action of the railway authorities was arbitrary and unreasonable, more so in view of the directions given in O.A. 92/05.
4. That the applicant with regard to the statements made in paragraph no 6 begs to state that curiously enough the railway authorities without any authority have sought to justify their stand on mere assumption/presumption. Further, perusal of letter dt: 3.11.01 (Annexure-5 to the original application) issued from the office of respondent no 2 would reveal that the same was a call letter for appointment and not a letter detecting

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Begs to state in Choudhury
Filed by the applicant
through Bilkam Choudhury
10.11.09

10 NOV 2003

Guwahati Bench
गुवाहाटी न्यायपीठ

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mistake. Further it also showed that the applicant was selected for appointment.

5. That the applicant denies the correctness of the statements made in paragraph no 7 and 8 of the written statement and reiterates the statements made in the relevant paragraph no 6 and 7 of the original application. Further the applicant states that the reference about the letter dt: 23.7.01 was never made known or placed before this Hon'ble Tribunal in the earlier proceeding. Further a perusal of letter dt: 27.11.01, would show that it was only on this date the office of General Manager (P), Maligaon, asked the respondent no 2 for the first time to verify the school documents and thereafter to make arrangement for his appointment.
6. That the statements made in paragraph no 9 of the written statement is denied and the applicant states that he was never asked by the respondent authorities to submit his original age proof document duly countersigned by the Inspector of Schools. It was only pursuant to the order dt: 4.8.06 passed in O.A. no 92/05, he submitted the same duly countersigned by the Inspector of School.
7. That the statements made in paragraph no 10 of the written statement is denied and the railway authorities are put to strict proof of such statement. The applicant states that he worked in the office of respondent no 3 society till 02.01.02 and now it has come to his knowledge on inquiry that he was spared from the office only on the basis of a note no E/227/MISC/LM/RECTT (QAO) dt: 7.9.01 issued by the respondent no 2 to respondent no 3 society, whereby the respondent no 3 society was directed to spare the applicant from his post in the society so that he could attend the office of the N.F. Railway for his appointment. But the purpose of such sparing has not materialized till date and today he is out of job due to no fault of his and living in a penury condition.
8. That with regard to the statements made in paragraph no 11 of the written statement the applicant beg to state that the order dt: 19.4.02 (Annexure-11 to the original application) has been set aside by this Hon'ble Tribunal in O.A. no 92/05.
9. That with regard to the statements made in paragraph no 13 of the written statement the applicant begs to state that the

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Chuwing

10 NOV

Guwahati Bench
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directions given in the order has to be complied with by both parties, but while implementing such directions one party cannot be free from his obligation or responsibility without giving the other a fair and reasonable opportunity, more so, when the directions given are co-related.

10. That with regards to the statements made in paragraph no 14 and 15 the applicant begs to reiterate the statements made in paragraph no 13, 14, and 15 of the original application.

11. That with regard to the statement made in paragraph no 16 of the written statement the applicant begs to state that when there is discrepancy as regard the date of birth, the opinion of medical board is of utmost importance and taking the opinion given by the Chief Medical Superintendent, Lumding in his letters dt: 6.7.07 and 26.7.07 (Annexure A and B to the written statement), and assuming that the applicant was 40 years on the date of examination, the railway authorities ought to have appointed the applicant.

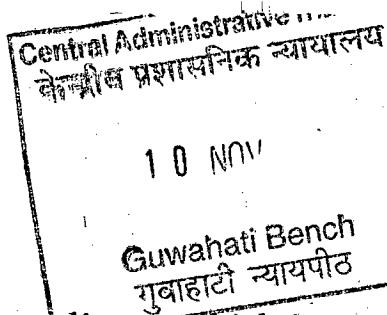
As regard the delay in submitting the school certificate duly countersigned by the Inspector of Schools, the applicant states that he had given a detail application (Annexure-22 to the original application) stating the reasons while praying for review of letter dt: 18.7.07 (Annexure-19 of the original application) and considering the reasons the railway authorities ought to have reviewed the order given in letter dt: 18.7.07, which would have been just and proper but that was not done.

12. That with regard to the statement made in paragraph no 17 and 18 of the written statement the applicant begs to state that his counsel shall make oral submission at the time of hearing.

13. That the statements made in paragraph no 19 of the written statement is totally incorrect and is denied by the applicant. The applicant states that he belongs to the lower strata of the society and he was not much literate and as such it was not within his capacity and control to persuade and pressurise the school authorities and the Inspector of Schools, to countersign the school certificate at the earliest. Moreover, a perusal of application dt: 27.7.07 and the school certificate duly countersigned by the Inspector of Schools, Karimganj on 26.11.07 would show that the same was issued after due verification.

Further from the averments made in the paragraph would show that the railway authorities had relied upon

Subrata Choudhury



materials collected behind the back of the applicant, which is not permissible in law. The letter dt: 19.12.06 given by the Headmaster is overridden by the subsequent forwarding given by the Headmaster to Inspector of Schools in the application dt: 27.2.07.

14. That with regard to the statement made in paragraph no 20 of the written statement the applicant begs to state that his counsel shall make oral submission at the time of hearing and further states that a perusal of Railway Board's letter would show that the applicant is eligible for appointment/absorption.
15. That with regard to the statements made in paragraph no 21 and 22 of the written statement this applicant begs to state that he had filed a separate miscellaneous application alongwith the original application explaining the delay and further begs to reiterate what is stated in a paragraph no 7 of this rejoinder.
16. That the applicant begs to state that considering the grievance of the applicant and the stand of the railway authorities, this Hon'ble Tribunal in the earlier proceeding had issued some directions to be complied with by both parties in order to resolve the dispute as regard the date of birth of the applicant and thereafter to arrive at a fair decision. The directions were that the applicant shall get the school certificate duly countersigned by the Inspector of Schools, Karimganj, the railway authorities shall permit the applicant to get himself examined in the Railway Hospital to ascertain his actual age and thereafter the railway authorities shall proceed further on the basis of such correct documents in offering the employment to the applicant.

It will be pertinent to mention here that the Hon'ble Tribunal did not specify any fixed time for implementation. In such case it can be construed that the same has to be completed within a reasonable time. Further this reasonable time has to be such length of time, which is fairly and properly and reasonably required having regard to the nature of the act or duty and the attending circumstance.

Thus from the given facts and circumstances of the case, the applicant cannot be singled out or held responsible for the delay in submitting the school certificate duly countersigned by the Inspector of Schools, more so, when the reasons for delay was beyond his control.

Further, this Hon'ble Tribunal in the earlier proceeding, amongst other, directed the determination of the actual age of

Subyom Choudhury

10 NOV

Guwahati Bench
गুৱাহাটী ন্যায়পীঠ

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the applicant by medical experts. It is an established principle of law that in case of dispute the assessment of actual age by a medical board is very important and it cannot be discarded lightly.

As such, the act of the railway authorities in closing it eye to the opinion given by the Chief Medical Superintendent, Lumding in its letter dt: 6.7.07 and 26.7.07 (Annexure-A and B to the written statement) and going back to its earlier decision in a manner which was not the intent of the order dt: 4.8.06 in O.A. no 92/05 and therefore such impugned action and order is not sustainable in law and is liable to be set aside.

17. That the applicant begs to state that the direction of this Hon'ble Tribunal in O.A. no 92/05 cast a duty upon the railway authorities to act fairly in taking the decision, so that it does not breed bias, arbitrariness and illegalities. However, the railway authorities having scant regard to fairness and reasonableness has acted arbitrarily and as such the same is liable to quashed and set aside.
18. That with regard to the statements made in paragraph no 23, 24, 25 and 26 of the written statement, this applicant begs to state from what is stated in the original application and in this rejoinder the applicant has made out a *prima facie* case for interference by this Hon'ble Tribunal.

Swyambhu Choudhury

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

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Guwahati Bench
गुवाहाटी न्यायपीठ

VERIFICATION

I, Sri Swapan Choudhury, Son of Sri Judhisthir Ranjan Choudhury, aged about 36 years, Resident of Budhha Colony, P.O. Badarpur, District: Karimganj, Assam do, hereby verify that the statements made in paragraphs nos 1, 2, 3 (A), 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17 and 18 are true to my personal knowledge and statements made in paragraphs nos 3 (A), 1, 8 and 10 are believed to be true on legal advice and that I have not suppressed any material facts.

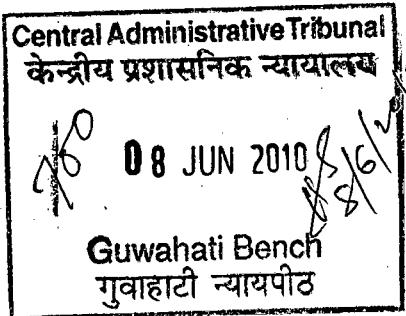
Place:- Guwahati

Date:- 10-11-05

Swapan Choudhury

SIGNATURE OF THE APPLICANT

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH: GUWAHATI



O.A. NO. 33 of 2009

Sri Swapan Choudhury Applicant
-Vs-

Union of India & others Respondents.

AFFIDAVIT

I, Sri AMBESWAR SAIKIA Son of LATE CHANDRA SAIKIA aged about 55 years, occupation- Railway servant, resident of LUMDING P.O. LUMDING, DIST. NAGAON (ASSAM) hereby solemnly declare as follows :-

1. That presently I am working as SENIOR DIVISIONAL PERSONNEL OFFICER N.F.Rly, LUMDING having its Head Qr. at Maligaon, Guwahati.
2. That the precise issue raised in the instant case is determination of age of the applicant who, at the very outset while working as Scale Man-cum-Peon in the Employees Consumers' Co-Operative Society Ltd. /N.F.Rly /Badarpur, stated to be as 02.01.1959 but subsequently shown as 22.2.1972 on the strength of a School Leaving Certificate issued by the Headmaster of the concerned school On 31.12.87 which was repudiated by the respondent/authority.
3. That as per order of the Hon'ble Tribunal dated 4.8.06 in O.A. No. 92/05 respondents were to verify the School Leaving Certificate to be countersigned by the concerned Inspector of Schools and Medical Certificate to determine the applicant's actual age. Consequently a Medical Board was constituted and after M/Examination by the said Board with X-Rays the Chief Medical Superintendent /LMG submitted report that the age of the applicant is between 25 yr. to 40 yr. He also further opined that

except age range actual age can not be determined by medical examination only. And valid document for this is only School Leaving Certificate & Birth Certificate.

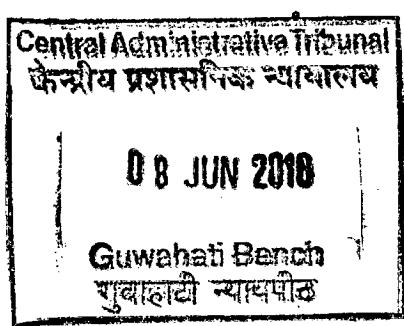
4. That the Hon'ble Tribunal being dissatisfied as to age variation stated to be "between 25 Yr. and 40 Yr" directed the respondent for personnel appearance of the CMS/LMG who opined the above age variation.

5. That as per direction of the Hon'ble Tribunal the then CMS/LMG filed an affidavit in connection with assessment of age of the person in question. And thereafter as per order of the Tribunal the respondent has submitted a list of Faculty of Doctors, Department of Radiology ,GMCH, Govt. of Assam out of whom the respondent has preferred Dr. B.K.Duara, Prof & Head of the Department of Radiology, GMCH as witness to the effect that he can be examined whenever occasion arises as to determination of the applicant's age.

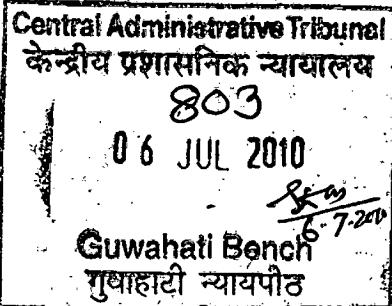
6. That the respondent assures the Hon'ble Tribunal that in case of necessity the said proposed expert may be examined and upon whose deposition /opinion the respondent will rely as to proper assessment of the applicant's age.

7. That the statements made in paragraphs 1,2 3 & 4 are true to my knowledge and belief and the statements made in paragraph 5 are true to my information derived from records which I belief to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this 8th day of May, 2010 at LUMDING



Anubrata Jani
Draconian
Sr. Divl. Personnel Officer
पु.सो.रेलवे, लामडिङ
N. B. Rly., Lumding



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA No. 33 of 2009

Sri Swapna Choudhury

Vs

Union of India and Two Others

AFFIDAVIT

I, Dr. Bijit Kumar Duara, Son of Late Gopal Chandra Duara aged about 50 Years, occupation Government Service, resident of Guwahati (Assam) do hereby solemnly declare as follows : -

1. That, presently I am working as Professor & Head of Department of Radiology, Guwahati Medical College & Hospital, Guwahati (Government of Assam).
2. That, I have received a letter from the Office of the General Manager (Personnel), N.F. Railway, Maligaon (Assam), who referred my name for expert opinion before the Hon'ble Central Administrative Tribunal, Guwahati Bench in respect of determination of age of a person.
3. That, I do hereby give assurance to the Hon'ble Tribunal that in case of necessity, I am able to make myself available to attend the Hon'ble Tribunal to give opinion regarding the above noted subject.
4. That, the statement made in this affidavit and in paragraph 1 & 3 is true to my knowledge and belief and the statement made in paragraph 2 is true to my information, which I believe to be true as per documents received from Railway side.
5. That, presently I am proceeding on summer vacation leave upto 18 July, 2010 after which I will be available for submission before Hon'ble Tribunal.

And, I sign this affidavit on 2nd (Second) day of July 2010 at Guwahati.

Bijit Kumar Duara

Deponent

Solemnly affirmed and declared before me by the deponent who is identified by Sri (Dr.) J.L. Sarcar, Advocate on this the 2nd day of July, 2010

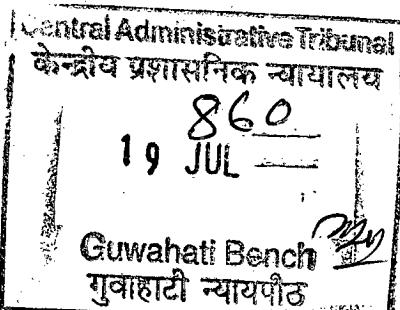
at Guwahati.

Advocate GUWAHATI

Identified by :-

(Signature of Dr. S. N. Choudhury)

(Advocate)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: AT GUWAHATI BENCH

O.A. No.33/09

Shri Swapan Choudhury,

-Vs-

U.O.I & Ors.

IN THE MATTER OF:

An affidavit on behalf of the Chief Personnel Officer, N.F. Railway, Maligaon in regard to the compliance of the Hon'ble Tribunal's directions/order dated 06.07.2010 passed in Original Application.

AFFIDAVIT

I Shri.....CHANDRASIT SAIKIA..... Son of.....Shri Bhagendra Kumar Saikia..... aged about.....46.... years. Occupation Railway service, resident of Guwahati Assam, do hereby solemnly declare and affirm as follows:-

1. That the Hon'ble Tribunal vide their order dated 06.07.2010 in original application has directed to file an affidavit within 10 days on the aspects indicated therein in the order.

A copy of the order dated 06.07.2010 is annexed herewith and marked as Annexure- 'R-1'

2. That in pursuance of the directions on 06.07.2010 itself the then Chief Personnel Officer, namely, Shri Ajay Mohanty consulted with Chief Medical Director, Maligaon, in respect of the action contemplated against the constituent member of the Medical Board for giving the report dated 06.07.2007, as well for a Second Medical test by Radiologist outside the N.F. Railways. The Chief Personnel

*I understand to
serve copy in
the court for
the purpose
of S.D.*

Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

1/23
Chief Personnel Officer
Central Personnel Officer
N.F. Railway, Maligaon
N.F. Railway, Guwahati-11

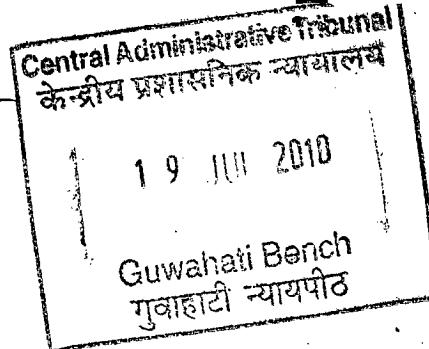
Officer has consulted with the Chief Medical Director, Maligaon on the basis of written letter dated 06.07.2010 from Standing Counsel, N.F. Railway. And the same time, DRM(P)/LMG, i.e. Sr. Divisional Personnel Officer, Lumding was instructed by the then Chief Personnel Officer, to initiate necessary action through Divisional Railway Manager, Lumding to consult with CMD/MLG for taking departmental action against constituent Medical members as the matter entirely related to Lumding Division and since CPO/MLG is not a competent authority to take action against those medical members.

3. That on 07.07.2010, CPO/N.F. Railway issued a FAX letter to CMD/Eastern Railway, Kolkata, to depute a Radiologist from Eastern Railway to DRM/N.F. Railway, Lumding for the purpose of conducting X-ray test and give expert opinion toward determination of age of Shri Swapan Choudhury early. The letter was also endorsed to all concerned as indicated in the same.

A copy of the said letter dated 07.07.2010 is enclosed herewith and marked as Annexure - "R-2".

4. That the Radiologist from Eastern Railway was scheduled to arrive at Lumding on 11.07.2010, accordingly Shri Swapan Choudhury was also advised by DRM(P)/Lumding's letter dtd. 08.07.2010 to attend Lumding Railway Hospital on 12.07.2010, receipt of which he had also duly acknowledged. But, Shri S. Choudhury in the meantime has produced a sick certificate stating the position that he was undergoing treatment by Railway Doctor, Badarpur. Again, by DRM(P)/Lumding's letter dtd. 16.07.2010, Shri Swapan Choudhury has been advised to report to the Central Hospital, N.F. Railway, Maligaon on 21.07.2010 at 10.00 hrs for second test by Radiologist, Eastern Railway who has refixed for test on 21.07.2010 at Guwahati, Maligaon.

The copy of letter dated 08.07.2010, Applicant's sick certificate dtd. 12.07.2010 and letter dtd. 16.07.2010 are enclosed herewith as Annexure - R-3, R-4 and R-5.



5. That, the process, i.e. the second medical test by Radiologist out of N.F. Railway will be completed by or before 23.07.2010 if the applicant, Shri Swapan Choudhury Co-operates with the administration in the process and the report of the Radiologist will be submitted before this Hon'ble Tribunal on the next date of hearing which is fixed on 27.07.2010.

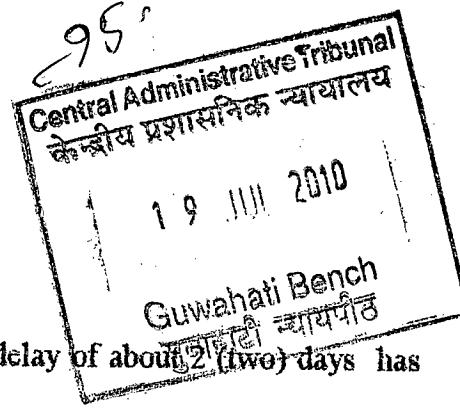
6. That, in regard to contemplated action against the Doctors for giving medical report dated 06.07.2007 mentioned above with such wide variation, it is respectfully submitted that with this intention, DRM(P)/Lumding vide its letter dtd. 08.07.2010 with the approval of DRM/Lumding has advised the Chief Medical Director, N.F. Railway, Maligaon to take necessary departmental action and call for explanation as to why they have given such report as to age dtd. 06.07.2007. In the said letter, the name of the constituent members of Doctors are also indicated for taking necessary departmental action by CMD/MLG.

The letter dtd. 08.07.2010 issued by DRM(P)/LMG is annexed herewith and marked as Annexure- 'R-6'

7. That this affidavit is being filed as per the direction of the Hon'ble Tribunal dated 06.07.2010, but due to involvement of various levels of administrative dealing, and consultations for action against the members of the said Medical Board. There has been some delay in filing this affidavit, and the action already taken has been as indicated above, and further action against the Doctors which is still under process.

8. That this humble deponent has assumed charge and taking the position of Chief Personnel Officer, N.F. Railway, Maligaon on 12.07.2010 and this deponent has to understand the action initiated by the then Chief Personnel officer, i.e. Shri Ajay Mohanty as the said incumbent is on leave w.e.f.10.07.2010 as submitted

John
Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11



before the Hon'ble Tribunal and as such some delay of about 2 (two) days has been caused, in filing this affidavit. The delay is unintentional and the humble deponent tenders unconditional apology before this Hon'ble Tribunal for the same.

9. That it is stated that, this deponent is authorised and competent to swear this affidavit in the matter as directed by the Hon'ble Tribunal by Order dtd. 06.07.2010 in O.A and, the statement in Page 1 to 8 and these paras are true to the knowledge of this deponent and it is also declared that no material facts has been suppressed.
10. That this affidavit is filed bonafide and for the end of justice.

I sign this affidavit on this..... th day of July, 2010 at Guwahati.



Identified by

Bharati Devi
19.7.10

Advocate/Guwahati

DEPOVENT
Chief Personnel Office
N F. Railway, Maligaon
Guwahati-11

Solemnly declared and affirmed before
me who is being identified
Shri....Bharati Devi..., Advocate/
Guwahati. on this 19.... th day of
July, 2010 at Guwahati

(Licit in law)
Advocate. 19-7-10

ORDERSHEET

✓ 1. Original Application No: 33/2009
2. Mise Petition No 18/eq
3. Contempt Petition No /
4. Review Application No /

Applicant(s) Swapan Chandhury

Respondent(s) M. O. I. Tore

Advocate for the Applicant(s): Bi Kitam Chandhury

Advocate for the Respondent(s): 6 Radiology advocate
Nn. B. Devi

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

06.07.2010 M.A. No.119/2010 has been filed by respondents and verified by Mr. Ajay Mohanty, Chief Personnel Officer, N.F.Railways. He appears in person in pursuance of order dated 28.06.2010 and makes the following statements:-

"After receipt of this Tribunals' orders, we contacted Head of Department, Radiology, GMCH Prof. B.K.Duara and he explained that he cannot appear in such type of matters unless so permitted by the Secretary and Commissioner, Govt. of Assam, Health and Family Welfare Department. We have another CPO (Administration) Mr. C.Saikia, who vide his letter dated 15.06.2010 requested the Commissioner & Secretary, Health & Family Welfare (B) Assam Secretariat for permitting Prof. Duara for conducting radiological test. Ultimately, Govt. of Assam on 30.06.2010 allowed said Dr.Duara, to conduct the test, who will conduct the necessary tests. I will be on leave upto 15.08.2010."

We have recorded the statement and we have noticed this aspect. In the facts and circumstances, we are not willing to adjourn the proceedings that long for the simple

Contd...

Attested

19-7-10
Date: 19-7-10
Mr. Personnel Officer (Legal C.)
Name: Debkumar Mallick, Guwahati-781006
Email: Debkumar.Mallick@assam.gov.in

O.A.33/2009

Contd.

06.07.2010

SN-104

reason that the matter, which ought to have been disposed of at their end as early as on 25.02.2010 when we required Mr.R.K.Roy, Chief Medical Superintendent, Lumding to be present in person. In the facts it appears that no reasonable step has been taken as yet to solve the issue highlighted by the Bench. The approach of the respondents is palpably erroneous and give enough room to draw a conclusion that instead of taking expeditious steps, the matter has been dragged on for reasons best known to them.

Shri Mohanty on our query: "whether he has read the various detailed orders passed from time to time?" replied that he has read some of the orders as the case is being dealt with by Lumding Division. He says, "I do not agree with medical report submitted on 06.07.2007 showing the wide gap of age of 15 years namely, between 25 years and 40 years." Immediately, thereafter Shri Mohanty stated that the department be allowed to conduct radiological and other tests of the said person (applicant) to determine his actual age. On our further query that what action has been initiated against those who constituted the Medical Board for submitting such report on 06.07.2007 he said, "report does not reflect the true and correct picture." We direct Shri Mohanty to file an affidavit within 10 days on this aspect either by self or through authorised person. The concerned officer would be at liberty to consult with appropriate authority on the subject. In the meantime, Chief Personnel Officer is authorised to have second medical test of the person, namely the applicant, for his appropriate age determination by an independent medical authority outside N.F.Railways.

contd.

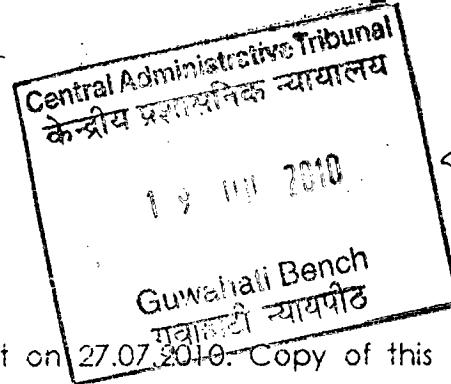
Attested

19.7.10
Chief Personnel Officer (Legal)
N.F.R. Maiti Bhawan, Guwahati-781010
N.F.R. Maiti Bhawan, Guwahati-781010

SN 103

O.A.33/2009

Contd.
06.07.20010



98

List on 27.07.2010. Copy of this order

be made available to learned counsel for
the respondents for compliance.



Sd/- M.K.Gupta

Member (J)

Sd/- M.K.Chaturvedi

Member (A)

Date of Application : 6.7.2010

Date on which order is ready : 6.7.2010

Date on which copy is delivered : 6.7.2010

Certified to be true COPY

Section 10(1) (Jdu)

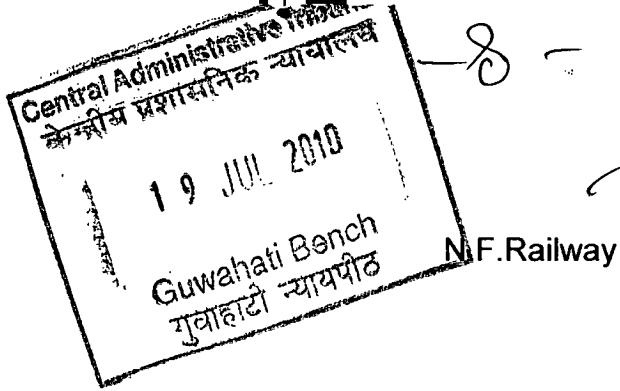
O. A. T. Guwahati Bench

Guwahati-5.

Attest

S
19.7.10

Asst. Personnel Officer (Legal)
पद: राज्य न्यायालय, गুৱাহাটী-৭৮১০
নথি: ১০৩, মালিঙ্গান, গুৱাহাটী-৭৮১০
মোবাইল: ৯৮৭৫৬৪৩২১০



8
99
Annexure-2
CMD-9002020500

Office of the
General Manager(P)
Maligaon, Guwahati 781011

No.E/170/LC/NS/1171 /2009

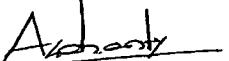
Dated, 7.7.2010

To
The Chief Medical Director
Eastern Railway
Kolkata

Sub: Deputing one Radiologist (Specialist) for determination of age of Shri Swapan Chowdhury in OA No.33/2009, (Shri Swapan Chowdhury vs Union of India & others) before CAT/GHY Bench

In a Court Case (OA No.33/2009 Shri Swapan Chowdhury vs Union of India) of Lumding Division/N.F.Railway in the court of CAT/GHY Bench, it has been given order by the Tribunal to determine the age of applicant Shri Swapan Chowdhury by an X-ray specialist/Radiologist from outside of N.F.Railway.

Thus you are requested to nominate and depute a Radiologist from E.Railway to DRM/N.F.Railway/Lumding for the purpose of conducting the X-ray test and give expert opinion about it i.e. towards determination of age of Shri Swapan Chowdhury early. A line in reply is highly solicited.


(Ajay Mohanty)
Chief Personnel Officer

Copy for information and necessary action to –

1. The CMD/N.F.Rly/MLG
2. The DRM/N.F.Rly/LMG
3. The CMS/N.F.Rly/LMG
4. Sr.DPO/N.F.Rly/LMG to co-ordinate.

Chief Personnel Officer

Assessed
S

19.7.10
Ass. Personnel Officer (Legal Cc)
Shri: Debajyoti, Maligaon, Guwahati-781011
Ass. Personnel Officer (Legal Cc)
Debajyoti, Maligaon, Guwahati-781011

N. F. Railway

Office of the
Divisional Railway Manager (P)
Lumding, N.F. Railway

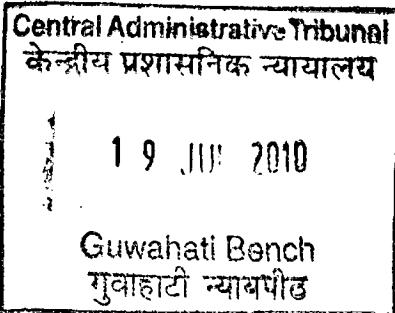
Dated:- 08.07.2010

No. E/Court/OA-33/2009

To
Shri Swapan Choudhury
Salesman cum Peon
NF Railway Employees Co-operative Society,
Badarpur, Distt- Karimganj.

Through:-

The Manager,
NF Railway Employees Co-operative Society,
Badarpur, Distt- Karimganj.



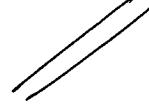
Sub:- Implementation of Hon'ble CAT/GHY's order dated 06.07.2010 in OA-33/2009 (Swapan Choudhury vs UOI & two Others).

The Hon'ble CAT/ Guwahati in order dated 06.07.2010 has directed to take second medical examination regarding determination of your age through independent medical from outside N. F. Railway.

In pursuance of above order dated 06.07.2010, Radiologist from Eastern Railway is scheduled to arrive at Lumding on 11.07.2010 (Monday).

You are therefore, directed to attend the Office of Chief Medical Superintendent, Lumding at 10.00 Hrs of 12.07.2010 (Monday) without fail.

Treat it most urgent.


(A. Saikia)

Sr. Divisional Personnel Officer
For Divisional Railway Manager (P)
Lumding, N.F. Railway

Copy to:-

- 1. CPO/NFR/MLG
- 2. APO/LC/MLG
- 3. Manager, NFRECS/BPB
- 4. B. Choudhury, Advocate/ CAT/GHY

}

For information please,


(A. Saikia) 08.07.10

Sr. Divisional Personnel Officer
For Divisional Railway Manager (P)
Lumding, N.F. Railway

CVA (Solan)
GJ. 9/7/10
APOLC

Attested
GJ. 19.7.10

08.07.2010
Smt. Personnel Officer (Legal)
Name: रेलवे, मालिगांव, गुवाहाटी-781006
Date: 08.07.2010

to Dr. Doo/cols

101-

Medical CertificateCentral Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

1 2010

Guwahati Bench
গুৱাহাটী ন্যায়পৌঢ়

No. 1117/2010

This is to certify that

Swapan Choudhury
Son/daughter/wife of Late "Jyoti Choudhury
residing at Buddha Colony, Badarpur
has been / had been suffering from HypertensionHe / She is / was under my treatment and is / was advised to take complete
bed rest from 8.7.2010 to 12.7.2010
in PG Hospital Badarpur
(both days included). Now, he/she is medically fit to resume his/her

duties/class.

Asf. 13.7.10

Signature: Abbas

12.7.10

Registration No. ~~1234567890~~

Seal with date

Attested

S/ 19.7.10

"প্রকাশ কামুকা" (প্রকা)
Asst. Personnel Officer (Legal Co.
বি. সি. পি. কো. মালিঙ্গী, গুৱাহাটী-৭৮১৫
পুরুষ মালিঙ্গী, গুৱাহাটী-৭৮১৫
পুরুষ মালিঙ্গী, গুৱাহাটী-৭৮১৫

< 102

N. F. Railway

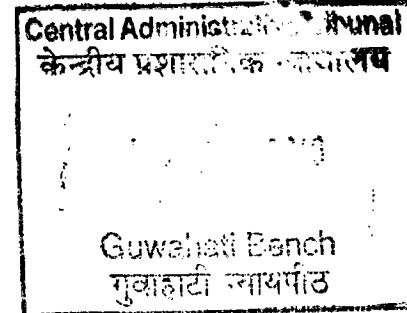
No. E/Court/OA-33/2009

Office of the
 Divisional Railway Manager (P)
 Lumding, N.F. Railway
 Dated:- 16.07.2010

To
 Shri Swapan Choudhury
 Salesman cum Peon
 NF Railway Employees Co-operative Society,
 Badarpur, Distt- Karimganj.

Through:-

The Manager,
 NF Railway Employees Co-operative Society,
 Badarpur, Distt- Karimganj.



Sub:- Implementation of Hon'ble CAT/GHY's order dated 06.07.2010 in OA-33/2009 (Swapan Choudhury vs UOI & Two Others).

Ref:- Earlier letter of this office dated 08.07.2010.

The Hon'ble CAT/ Guwahati in order dated 06.07.2010 has directed to take second medical examination regarding determination of your age through independent medical authority from outside N. F. Railway.

In pursuance of above order dated 06.07.2010, Radiologist from Eastern Railway is scheduled to arrive at Central Hospital, N. F. Railway, Maligaon on 21.07.2010 (Wednesday).

You are therefore, directed to attend the Office of Chief Medical Superintendent, Central Hospital, N. F. Railway, Maligaon at 10.00 Hrs of 21.07.2010 (Wednesday) without fail.

Treat it most urgent.

(A. Saikia)

Sr. Divisional Personnel Officer
 For Divisional Railway Manager (P)
 Lumding, N.F. Railway

Copy to:-

- ✓ 1. CPO/NFR/MLG
- 2. APO/LC/MLG
- 3. Manager, NFRECS/BPB
- 4. B. Choudhury, Advocate/ CAT/CHY
- 5. Shri M. Bhattacharjee, S&WI/I/BPB,
 he is advised to escort the candidate to
 Central Hospital, Maligaon.

}

For information please.

(A. Saikia) 16.7.10

Sr. Divisional Personnel Officer
 For Divisional Railway Manager (P)

Attested

S. 19.7.10

1. Sr. Personnel Officer (Legal) L
 2. Dr. Rakesh, Maligaon, Guwahati-781014
 3. 0361263362

N. F. Railway

Office of the
Divisional Railway Manager (P)
Lumding, N.F. Railway

No. E/Court/OA-33/2009

Dated:- 08.07.2010
13

To
The Chief Medical Director
N. F. Railway, Maligaon(Assam)

Sub:- Implementation of Hon'ble CAT/GHY 's order dated 06.07.2010.

There is a case pending before Hon'ble Central Administrative, Guwahati Bench, Guwahati regarding determination of age of Sri Swapna Choudhury. The age of the petitioner was determined by a medical board constituted by Divisional Railway Hospital, Lumding, N. F. Railway, consisting Dr. R K Roy, CMS/LMG, Dr. Diamary, Sr.DMO/LMG, Dr. B Basumatary , DMO/Phy, on the basis of X-Ray report of Dr. D K Das, Sr.DMO/Radiology/LMG and they had came to the conclusion through their medical report dated 06.07.2007 that the age of said person is between 25 to 40 years.

The related part of order dated 25.02.2010 is quoted hereunder for your kind appraisal-

"In our determined conclusion there cannot be a variation of 15 years in determining the age. Medical authorities have sufficient expertise to determine if not very accurate then at least nearby age group which may vary between a period of 2 to 4 years, but not 15 years. In the circumstances we are convinced that the extraneous material and consideration led to this kind of conclusion. Prima facie this is clear case of dereliction of duty on the part of Medical Officers." The Hon'ble Tribunal wants departmental action against Medical Board for the above.

The Hon'ble CAT/GHY through order dated 25.02.2010, 16.06.2010 & 28.06.2010 directed to appear before Hon'ble Tribunal to CMS/NJP Shri R. K. Roy (Head of concern Medical Board), DRM(P)/LMG & GM(P)/NFR respectively. Lastly, after personal appearance of Chief Personnel Officer, Shri Ajoy Mohanty on behalf of GM(P)/NFR the Hon'ble Tribunal pleased to pass the order dated 06.07.2010. The related part of this order is quoted hereunder for your kind appraisal-

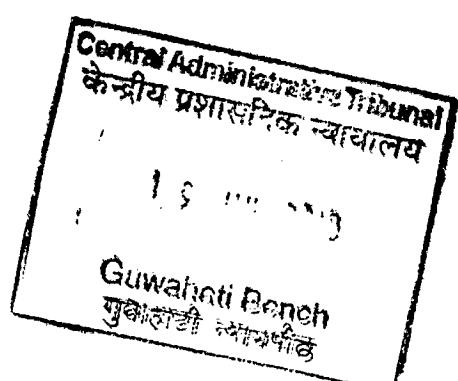
"On our further query that what action has been initiated against those who constituted the Medical Board for submitting such report on 06.07.2007 he said "report does not reflect the true and correct picture". We direct Shri Mohanty to file an affidavit within 10 days on this aspect either by self or through authorized person."

You are therefore requested to initiate suitable departmental action as per direction of Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati, that "Why they have given such a vague report having of 15 years of age variation

Attested

19.7.10

गोपनीय व्यवसायकारी (लियर) *
Legal Cell, Personnel Officer (Legal Cell)
श्री: रमेश, मालिगांव, गुवाहाटी - 781030
Mobile: 9836542100



i.e. 25 to 40 years vide their report dated 06.07.2007". The same may be communicated to this office at earliest possible.

The Chief Personnel Officer, N. F. Railway, Maligaon has to file an affidavit before Hon'ble Tribunal explaining the action taken by the administration against the Doctors in question on or before 16.07.2010.

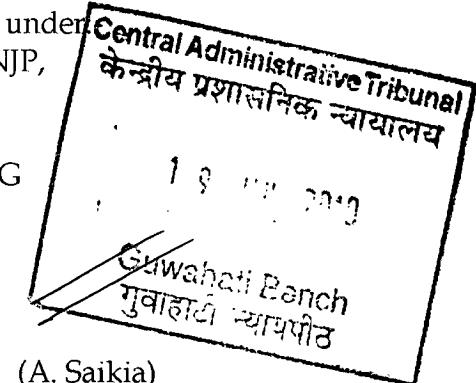
The addresses of Doctors of the Medical board are as under:

1. Dr. R. K. Roy, CMS/ LMG now CMS/NJP,
2. Dr. T. Diamary, Sr.DMO/LMG,
3. Dr. B Basumatary, Sr.DMO/Phy/LMG
4. Dr. D. K. Das, Sr.DMO/Radiology/LMG

This has approval of DRM/LMG.

Please, Treat it most urgent.

DA:- Copy of CAT/GHY's orders.



(A. Saikia)

Sr. Divisional Personnel Officer
For Divisional Railway Manager (P)
Lumding, N.F. Railway

Copy to:- 1. CPO/NFR/MLG
2. APO/LC/MLG
3. Dy.CPO/Gaz/MLG

}

For information please.

(A. Saikia)

Sr. Divisional Personnel Officer
For Divisional Railway Manager (P)
Lumding, N.F. Railway

Attested

S
19.7.10

Asst. Personnel Officer (Legal)
Sri: रमेश, मालिगांव, गुवाहाटी-78
Mobile: 98366 22200

105

File No. 112/2010
Date 26/7/2010
Se. Chg.

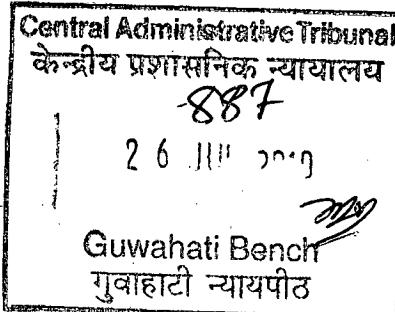
In the Central Administrative Tribunal : Guwahati Bench : Guwahati

OA No. 33/2009

Shri S. Choudhury

-Vs-

U.O.I & Ors.



Joint Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

An Additional affidavit further to affidavit dated 19.07.2010.

1. That after filing of the affidavit dated 19.07.2010 a medical examination for determination of age by Radiological examination of bones of Shri Swapan Choudhury, the applicant in the O.A, has been conducted by Dr. Subhash Das, Sr.DMO/SAG/Radiology, B.R. Singh, Hospital, Eastern Railway, Kolkata, at Central Hospital, Maligaon on 21.07.2010.

The report as a result of the above examination has been submitted with break-up of medical findings as detailed in the said report.

After the details of medical findings the conclusion has been given as under:-

“ Conclusion:- Radiological bone age determined is between 40-50 years, more likely to be between 45-50 yrs. and nearer to 50 yrs.”

I undertake to
serve the copy
for opp party.

Copy of the said report is enclosed as Annexure-

R-1.

Set-2
(For SC.Rly)

26 JUL 2010

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

-2- 106

2. That after the aforesaid second medical examination, Chief Medical Director who is the Head of the Medical Department of N.F. Railway has been informed of the medical report enclosing a copy of the report, under letter dated 22.07.2010 from Divisional Railway Manager (P)'s Office, Lumding Division. Copy of the said letter has also been sent to the CPO/N.F. Railway, Maligaon. The matter of action to be taken by the administration against Doctors of Medical Board/Lumding in view of their report has also been reminded in the said letter dated 22.07.2010.

Copy of the letter dated 22.07.2010 is endorsed
as Annexure R2.

3. That the matter of medical report and finding is not within the competence of the present deponent and it has been learned that Chief Medical Director, N.F. Railway, Maligaon is seized with the matter for further appropriate action. The CMD N.F. Railway, Maligaon has been requested by this deponent by letter dated 23.07.2010 to take urgent action in the matter and advised the CPO, N.F. Railway urgently moreso in view of the judicial proceedings and orders.

Copy of the letter dated 23.07.2010 is endorsed
as Annexure R3.

4. This affidavit filed bonafide and for cause of justice.

Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

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Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 JUL 2010

AFFIDAVIT

Guwahati Bench
गुवाहाटी न्यायालय

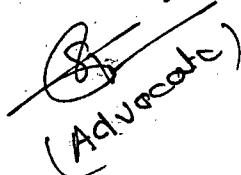
I Shri Chandrajit Saikia aged about 46 yrs., son of Shri Bhabendra Kr. Saikia presently working as Chief Personnel Officer, N.F. Railway, Maligaon, do hereby solemnly affirm and say I that statements in para 1 to 4 above are true to my knowledge and that I have not suppressed any material facts.

I sign this affidavit on this 26th day of July, 2010 at Guwahati.

DEPONENT

Chief Personnel Officer
N.F. Railway, Maligaon
Guwahati-11

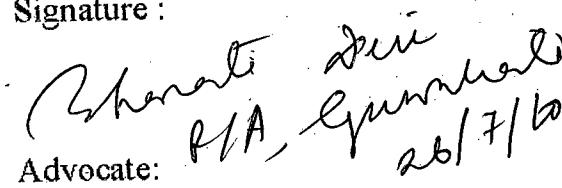
Identified by


(Advocate)

Solemnly affirm before me by the deponent being identified by S. N. Tornali Advocate on this

..... 26th Day of July 2010.

Signature :


Advocate: Bhabendra Kr.
FIA, Guwahati
26/7/10

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Central Administrative Tribunal केन्द्रीय प्रशासनिक न्यायालय
26 III 2010
Guwahati Bench गुवाहाटी न्यायालय

Sagittal Suture:-

Fusion of posterior and anterior end – Hence age between 40-50 yrs.

Lamdoid suture:- Union complete and hence age is above 45 yrs.

Parieto-mastoid and squamous part of temporal bone – not fused with its neighbour and hence age < 55 to 60 yrs.

Coronal suture:- Union complete in lower portion – closed to sphenoid.

Hence age > 40 yrs. (40-50 yrs.)

X Ray Pelvis:- All the Epiphyses fused with parent bone suggestive of age > 25 yrs.

Changes in Symphysis pubis – suggestive of age around 5th decade.

Please note that all the above radiological findings can help to estimate the approximate bone age of a person in the range of 5-10 yrs.

Conclusion:- Radiological bone age determined is between 40-50 yrs., more likely to be between 45-50 yrs. And nearer to 50 yrs.

Subhasish Das
(Dr. Subhasish Das)
Sr DMO/SAG/Radiology
B.R.Singh Hospital,
Eastern Railway,
Kolkata
at CH/Maligaon

Attested

26/3/10
SRI. Personnel Officer, 1LCB
SRI. 100, मालिगाँव, गुवाहाटी, 781018
Mallap. Maligaon, Assam, India

Jul 10 12:57

DRM / LMG

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Annexure - R-2
Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 JUL 2010

N. F. Railway

Guwahati Bench
গুৱাহাটী ন্যায়পীঠ

Office of the
Divisional Railway Manager (P)

Lumding, N.F. Railway

Dated:- 22.07.2010

No. E/Court/OA-33/2009

To
The Chief Medical Director
N. F. Railway, Maligaon(Assam)

Sub:- Implementation of Hon'ble CAT/GHY's order dated 06.07.2010.

Ref:- Dy. CMD(MS)'s Letter No. HE/58/LAW-Pt-5 dated 16.07.2010.

The second medical examination for determination of Shri Swapan Choudhury has been done on 21.07.2010 at Central Hospital, N. F. Railway, Maligaon by Dr. S. Das, Sr.DMO/Radiology/Eastern Railway, B. R. Singh Hospital, Kolkata.

The report is enclosed herewith for your kind appraisal and necessary action, please.

The case is listed on 27.07.2010 and before this the CPO/NFR/MLG has to file an affidavit before Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati explaining the action initiated by the administration against the Doctors of Medical Board/LMG for the reason "Why they have given such a vague report having of 15 years of age variation i.e. 25 to 40 years vide their report dated 06.07.2007".

This may please be treated as most urgent.

DA:-Copy of Medical Report(2nd) dated 21.07.2010.

(A. Saikia)

Sr. Divisional Personnel Officer
For Divisional Railway Manager (P)
Lumding, N.F. Railway

Copy to:-
1. CPO/NFR/MLG
2. APO/LC/MLG
3. Dy.CPO/Gaz/MLG

} For information please.

(A. Saikia)

Sr. Divisional Personnel Officer
For Divisional Railway Manager (P)
Lumding, N.F. Railway

o/c
Balmond
22.07.10
LA

Dotay (C.L.A)

Gu 22/7/10
Apolv

Re
22/7/10

26.11.2010
Guwahati Bench
N.F.Railway गुवाहाटी न्यायपीठ

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

No.E/170/LC/MS/1171/09

Dated, 23.7.2010

To
The Chief Medical Director
N.F.Railway
Maligaon
Guwahati-11

Sub: OA No.33/2009 before CAT/GHY Sri Swapan Chudhury vs UOI & Ors.
Ref: DRM(P)LMG's letter No.E/Court/OA-33/2009 dated 22.7.2010

The report of the 2nd Medical Test on determination of age of Sri Swapan Choudhury has been sent to you by the DRM(P) under letter quoted above. It appears that there is difference between the 1st Medical Report and the report submitted by Dr.S.Das, Sr.DMO Eastern Rly. You will please appreciate that the subject matter of determination of age on medical report is not within the domain of Personnel Branch. I would therefore request you kindly to look into the matter urgently and advise this office for further action. As the matter relates to court proceedings with proposed action against Doctors you will kindly inform this office urgently to enable submission of appropriate information to the Hon'ble Tribunal

Ch
(G.Saikia) 23/7/10
Chief Personnel Officer

Attended

26/7/10
Asstt. Personnel Officer (Legal Cell)
C/o: Legal, Maligaon, Guwahati-7810
26/7/10

OC

Re 26/7/10