

07/00

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

R.A-13/98 ordersheet pg-1 to 6

allowed Date-05/4/2000

Judgement copy pg-1 to 4

M.P-197/98 ordersheet pg-1

disposed Date-12/8/98

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI -5.

ORIGINAL APPLICATION NO. 26/95

MISC PETITION NO. (J.A.NO.)

REVIEW APPLICATION NO. (J.A.NO.)

CONT. PETITION NO. (J.A. NO.)

K. K. Sengupta

APPLICANT(S)

VERSUS

V. O. I. 9 OAS.

RESPONDENT(S)

Mr. B.K. Sharma, Sri B. Melton

Advocate for the
Applicant.

Mr. S. Sarma

Advocate for the
Respondents

Close.

Office Note

Court Orders

this application is in
form and within time.

C. F. of Rs. 50/-
deposited vide

IPO/BD No. 109 S.03882548

Dated ... 27.1.95

17.2.95

Learned counsel Mr B.K.Sharma
moves this application on behalf of
applicant Shri Kanti Kumar Sengupta.
In this application the applicant has
assailed the order No. ESTO-2/68/23
dated 30.1.95 (Annexure-9 to the
application) by which his prayer for
correction of his date of birth has
been rejected. Perused the applica-
tion and the statement of grievances
and reliefs prayed by the applicant.
Heard Mr B.K.Sharma for admission.

The application is admitted.

Issue notice by Registered post on
respondents No.1 and 2. Respondent
No.3 will be served by special
messenger at the cost of the appli-
cant. No one is present on behalf of
the respondents. Written statement
on 24.3.1995 as the learned counsel
for the applicant prays for expedi-
tious disposal.

Heard Mr B.K.Sharma, the learned
counsel for the applicant with
regard to the interim relief pra-

6 *16/2*
at 5.20 pm
16/2
16/2

2
O.A. 26/95

OFFICE NOTE:

COURT ORDERS

17.2.95

No one is present for the respondents. The applicant is to retire on 28.2.95 on superannuation according to the date of birth entered in the service records.

List on 24.2.1995 for consideration of interim prayer in view of the urgency of the matter.

Inform the respondents.

Requisites are ready
on 21.2.95 & issued vide
N.R. 883-885 dt. 21.2.95

Dr
21/2

pp

24.2.95

Counsel of both sides are present. Heard them regarding interim relief prayer. The applicant is to retire on 28.2.95 according to the date of birth recorded in the service book. However, Mr B.K.Sharma, the learned counsel for the applicant seeks for an interim order to allow the applicant to continue in service beyond 28.2.95 as he is due to retire on 28.2.99 in view of the correction made in the Matriculation certificate. This prayer of the applicant cannot however be allowed, as if it is allowed as an interim order it will amount to the disposal of the application. Therefore the retirement of the applicant on 28.2.95 will be subject to the result of this application O.A.26/95.

List on 24.3.1995 for further order.

Copy of the order may be furnished to the counsel of the parties.

60
Member

Order dt. 24.2.95 issued
vide no. 1054-55 dt. 23.95

Dr
21/2

(3)

O.A. 26/95

24.3.95

Written statement has not been submitted. Mr S.Ali, Sr.C.G.S.C seeks further time for submission of written statement.

List for hearing on 5.5.95 as there is a prayer for expeditiōe disposal made on 17.2.95. In the meantime the learned Sr.C.G.S.C will submit written statement before 5.5.95

60
Member

PG

RCM
2M/S

10.4.95

Written statement
submitted by the
Respondent.

PG 60

Notice duly served on
R.no. 122.

for
2/4
Rejoinder has not
been filed

2/6

PG

PG 60

60
Member

Learned counsel Mr S.Sarma for the applicant prays for two weeks adjournment in order to enable him to submit rejoinder to the written statement. Prayer allowed.

Adjourned to 23.6.1995 for hearing. In the meantime the applicant may submit rejoinder with copy to the respondents.

Learned Addl.C.G.S.C Mr G.Sarma appears for the respondents. He is requested to submit memo of appearance before the next date of hearing.

23.6.95

Counsel of the parties are present. Mr B.K.Sharma, learned counsel for the applicant submits for adjournment on the ground that he will submit an application for calling specific records relevant to the decision of the application and also for submission of rejoinder. Prayer allowed.

Hearing adjourned to 4.8.1995.

6
Member

W/S on behalf of
Respondents filed on 8.9.95
10.6.95 & Rejoinder
on behalf of applicant
filed on 6.7.95

pg

8.9.95

Counsel of the parties are present. Adjourned to 24.11.95 for hearing.

6
Member

Trs
7.7.95.

pg

to
11/9

To be listed for
hearing on 8.9.95.

24.11.95

Counsel of the parties are present.

Hearing adjourned to 8.12.95.

Bow

6
Member

pg

lm
27/11/95

8.12.95

Leave note of Mr B.K.Sharma.

Learned Addl.C.G.S.C Mr G.Sarma
is present for respondents.

Hearing adjourned to 19.1.1996.


Member

pg

19.1.96

Counsel of both sides are absent.

Hearing adjourned to 1.3.1996.


Member

pg

103-96

Learned counsel Mr.S.Sarma for
the applicant is present. Mr.G.Sharma
Addl.C.G.S.C. is present.

Mr.S.Sarma seeks for adjournment
for obtaining instructions from the appli-
cant. Adjourned for hearing on 8-3-96.


Member

lm

8.3.96

Counsel of the parties are present and
completed their submissions. Hearing
concluded. Judgment reserved.


Member

pg

15-3-96

Mr. B.K. Sharma for the applicant.
 Mr. G. Sarma Addl.C.G.S.C for the respondents.

Judgment pronounced. Application is dismissed in terms of order. No order as to costs.

15-3-96

Mr. B.K. Sharma for the applicant.
 Mr. G. Sharma Addl.C.G.S.C. for the respondents.

Judgment pronounced. Application is dismissed in terms of order. No order as to costs.

60
Member

12.6.96
 Copy of final order
 issued to the parties
 vide D.No - 1668 to 1673

dtd - 25.6.96

lm

5.4.00 Vide order dated. 5.4.00 in R.A.No. 13 of 98 the Review Application is allowed and the order dated 15.3.1996 is recalled and the O.A. is restored to file for fresh hearing. List for hearing on 10.5.00.

60
Member

lm

10.5.2000 Adjournment sought for on behalf of both the parties as the counsel for the parties are busy due to personal reasons.
 List on 16.5.2000 for hearing.

8m
Member (J)2/6/00

The Case is ready
 for hearing.

pg

16.5.00

On the prayer of Mr. A. Deb Roy, on behalf of Mr. B.C. Pathak, learned Addl. C.G.S.C. the case is adjourned to 5.6.2000.

List on 5.6.2000 for hearing.

8m
Member (J)

trd

J

X

Notes of the Registry	Date	Order of the Tribunal
	15.6.00	<p>Present : Hon'ble Mr.D.C.Verma, Judicial Member</p> <p>Heard the learned counsel for the parties. Hearing concluded. Judgment reserved.</p> <p><i>[Signature]</i></p> <p>Judicial (Member)</p>
<p><u>16.6.2002</u></p> <p>Copy of the Judgment has been sent to the parties for issuing the same to the applicant as well as to the add. Case for the Respondent.</p> <p>AS</p>	12.6.00	<p>Present: Hon'ble Mr.D.C.Verma, Judicial Member.</p> <p>Judgment and order pronounced in Open Court. Kept in separate sheets. Application is dismissed. No costs.</p> <p><i>[Signature]</i></p> <p>Member (Judicial)</p>

No	Notes of the Registry	Date	Order of the Tribunal
1			

10

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. . 26 of 1995.

12-6-2000.
DATE OF DECISION

Shri Kanti Kumar Sen Gupta

PETITIONER(S)

S/Shri B.K.Sharma, S.Sarma.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors v. C.G.S.C.

RESPONDENT(S)

Shri B.C.Pathak, Addl.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR D.C.VERMA, JUDICIAL MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Judicial Member.

✓ 12/6

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 26 of 1995.

Date of Order : This the 26th Day of June, 2000.

The Hon'ble Mr D.C.Verma, Judicial Member.

Shri Kanti Kumar Sen Gupta
at present working as Sub-Divisional Engineer,
Udharbond, Silchar under Telecom District Engineer,
Silchar. . . . Applicant.

By Advocate Shri B.K.Sharma, S.Sarma.

- Versus -

1. The Union of India
represented by the Secretary to the Govt. of India,
Ministry of Telecommunications,
New Delhi.
2. The Director General,
Telecommunications, New Delhi.
3. The Chief General Manager(Telecom),
Assam Circle, Ulubari, Guwahati-7. . . . Respondents.

By Advocate Shri B.C.Pathak, Addl.C.G.S.C.

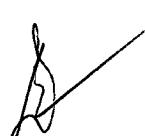
O R D E R

D.C.VERMA, JUDICIAL MEMBER,

By this O.A. the applicant has prayed for correction
of date of his birth from 1.3.1937 to 28.2.1941. As this
case has a little chequered history, brief facts is required
to be given.

The present O.A. was initially dismissed vide order
dated 15.3.1996. The applicant filed Review Application
which was registered as 13/98. The Review Application was
allowed vide order dated 5.4.2000. Consequently the O.A.
has again come up for hearing before this Bench.

2. Admittedly, the date of birth of the applicant in
the service record is 1.3.1937. This date of birth was
recorded on the basis of the Matriculation Certificate.


contd...2

It so happened that the Gauhati University took a decision for entertaining application for correction of age entered in the Matriculation Certificate and accordingly a notice dated 14.8.1969 was issued by the Registrar, Gauhati University. On receipt of said information the applicant applied for correction of date of birth in his Matriculation Certificate and filed the required documents. The Gauhati University corrected the age of the applicant in the Matriculation Certificate as 14 years 1 day as on 1.3.1955 instead of 18 years 1 day as on 1.3.1955. After the correction was made by the Registrar, Gauhati University in February 1971, the applicant applied to the departmental authority for correcting the date of birth in the Service Book. The said application was sent on 26.6.1972. The department vide its letter dated 4.6.1975 (copy Annexure-3 to the O.A) called upon the applicant to intimate the circumstance which ~~is~~ stood on the way of the applicant in making representation on an earlier date for correction of date of birth in the service record. On 13.6.1975 (Annexure-4) the applicant replied to the same. Thereafter there was no correspondance for several years. As per the applicant he sent representation in 1983, 1985 and 1988 with no reply. Subsequently, on 11.1.1995 the applicant sent a representation (Annexure-4). By Annexure-9 letter the respondents rejected the applicant's claim as time barred. Consequently the present O.A. has been filed to challenge this order.

3. The submission of learned counsel for the applicant is that Annexure-9 was not decided by the respondents on merit and consequently the respondents be directed to decide applicant's case on merit. The second ground is that the cause of action arose to the applicant when the impugned

order dated 30.1.1995 (Annexure-9 to the O.A) was communicated to the applicant.

4. Learned counsel for the respondents has, on the other hand, submitted that the present O.A. is highly barred by limitation. Secondly, the correction of date of birth made by the Gauhati University in the Matriculation Certificate is not binding on the respondents. Thirdly, that the applicant entered in service in the year 1960 and the date of birth recorded in the Service Book is 1.3.1937 which cannot be changed by a subsequent change of date of birth in the Matriculation Certificate, 11 years after entry in the service.

5. Heard learned counsel for the parties at some length. It is admitted in para 4.3 of the O.A. that at the time of entry in the service, the date of birth of the applicant was recorded as 1.3.1937 in the Service Book on the basis of age recorded in the Matriculation Certificate. Once a date of birth has been recorded in the service Book and accepted by the employee that cannot be changed due to subsequent change of date of birth in his School Certificate. In the case of Union of India vs. C.Rama Swamy and others, 1997 S.C.C (L&S) 1158, the Hon'ble Supreme Court had held that on the basis of a ^{judicial} decree correction of date of birth in Secondary School Leaving Certificate did not entitle the employee to corresponding correction in official records because such correction was not permitted by the rules. In the case before this Bench as has been stated above, admittedly, the recorded date of birth of the applicant in the service book is 1.3.1937. After a decade the Registrar, Gauhati University changed the date of birth in the Matriculation Certificate of the applicant. Said



contd..4

change of date of birth made by the Registrar, Gauhati University is not binding on the department, unless there is a clerical mistake in the date of birth recorded in the Service Book and accepted by the employee. Consequently in my view the applicant's case has no merit.

6. From Annexure-3 dated 4.6.1975 it appears that the applicant had made his first representation for correction of date of birth on 26.6.1972. But after sending reply dated 13.6.1975 the applicant kept quite till 1983. Thus for about eight years the respondents had not taken any action/Cause of action arose to the applicant in the year 1972. The applicant then, did not agitate the matter further and kept quite for about 8 years. The applicant thereafter sent representations in 1983, 1985 and then 1988. Again the applicant kept quite for about 7 years and sent a representation on 11.1.1995. In the representation dated 11.1.1995 the applicant did not make any mention about his earlier representations made prior to 1983. This representation dated 11.1.1995 was rejected by the respondents by the impugned order dated 30.1.1995, as time barred. The submission of the learned counsel for the applicant that the respondents be directed to decide the representation on merit cannot be accepted at this belated stage. The applicant lost his right as he did not agitate the matter in the year 1975 and kept quite for several years. Sending of representations one after another would not give rise a new cause of action to the applicant. The Central Administrative Tribunal came into existence after the Administrative Tribunals Act 1985 was notified on 1.11.1985. As per Section 21(2) of the Administrative Tribunals Act this Tribunal has no jurisdiction to entertain an application in respect of a cause of action

^{date the}
which arose to an employee 3 years prior to the Administrative Tribunals Act came into force. As the cause of action had arisen to the applicant in the year 1972, i.e. 3 years prior to Administrative Tribunals Act came into force, for such a cause of action this Tribunal cannot entertain the application. Hon'ble 7 Judges Bench of the Apex Court in the case of S.S.Rathore vs State of M.P. (1989) 4 SCC 582 realised the apathy of the Government department and observed :

"Redressal of grievances in the hands of the departmental authorities take an unduly long time. This is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily, a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation."

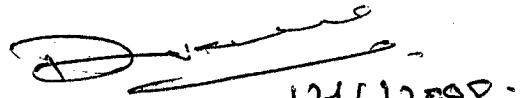
The above observation of the Apex Court is equally applicable to the present case. The legislature was also aware and consequently it was provided in Section 21 of the Administrative Tribunals Act that if an appeal or representation is not decided within a period of 6 months, the aggrieved party may approach within 1 year after expiry of the said period of 6 months. The aggrieved person cannot be left without ^{1/2} the remedy for decades to come and consequently, even if the representation is not decided the aggrieved person has a remedy to approach the Tribunal within the period prescribed under Section 21. This however, does not mean that an aggrieved person can extend the period of limitation by making representations after representations. That would make the limitation provision provided in Section

21 as redundant. It is with this view that Hon'ble Apex Court in the case of S.S.Rathore (supra) while discussing Section 20 and 21 of the Administrative Tribunals Act held that six months' period from the date of preferring of an appeal or making of a representation shall be taken to be the date when cause of action shall be taken to have first arisen and observed :

We, therefore, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representation not provided by law are not governed by this principle."

7. In view of the observations made above in my view there is no merit in the submissions of the learned counsel for the applicant and the same cannot be accepted.

Accordingly the O.A. is dismissed. Costs on parties.


(D.C. VERMA) 12/6/2000
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI-5.

O.A. NO. 26 of 1995.
T.A. NO.

DATE OF DECISION 15-3-1996.

Shri Kanti Kumar Sen Gupta

(PETITIONER(S))

Shri B.K.Sharma.

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr G.Sarma, Addl.C.G.S.C.

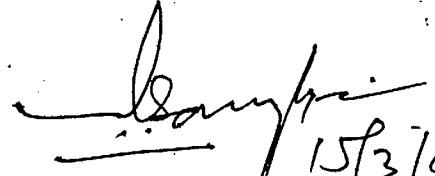
ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

THE HON'BLE

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

Judgment delivered by Hon'ble Shri G.L.Sanglyine, Member (A)


15/3/96

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.26 of 1995.

Date of Order : This the 15th Day of March, 1996.

Shri G.L.Sanglyine, Member (Administrative)

Shri Kanti Kumar Sen Gupta
Sub-Divisional Engineer,
Udharbond, Silchar under Telecom.
District Engineer, Silchar.

... Applicant

By Advocate Shri B.K.Sharma.

- Versus -

1. Union of India
represented by the Secretary to the
Govt. of India, Ministry of Telecommunications,
New Delhi.
2. The Director General,
Telecommunications, New Delhi.
3. The Chief General Manager (Telecom.)
Assam Circle, Ulubari, Guwahati-7. ... Respondents.

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, MEMBER (A)

On 11.1.95 the applicant requested the Chief General Manager, Telecom. Circle, Guwahati, respondent No.3 for correction of his date of birth recorded in his service book as per Matric certificate issued by the University of Gauhati. The respondent No.3 did not entertain the request of the applicant on the ground that it was time barred and this was communicated vide his letter No.ESTQ-2/68/23 dated 30.1.1995 (Annexure-9).

2. The applicant entered service in the erstwhile Indian Posts & Telegraphs Department as Telephone Operator on 4.2.1960 on the basis of his age recorded in his Matriculation certificate. According to the Matriculation

15.3.96

certificate his age was 18 years 1 day as on 1.3.1955, that is, his date of birth was 1.3.1937. He claims that his age was erroneously recorded in the Matriculation certificate which should have been correctly recorded as 14 years 1 day as on 1.3.1955. He also claims though unsupported that he was making correspondances with the Gauhati University for correction of his age. An opportunity arose on 27.8.69 when by a notice dated 14.8.1969 the University invited applications for correction of age entered in the Matriculation certificates. The applicant availed of this opportunity and on 27.2.71 his age as on 1.3.1955 was changed from 18 years 1 day to 14 years 1 day by the University. Thereafter on 26.6.1972 he applied for correction of his date of birth recorded in his service book and in reply thereto the General Manager, Telecommunications, N.E. Circle, Shillong called upon him to explain the delay in making such request on 26.6.1972 when the correction in the Matriculation certificate was made as early as on 27.2.1971 vide his letter No. STBX-7/PI/Misc dated 4.6.75. It is the contention of the applicant that he had submitted his reply on 13.6.75 but no reply was communicated to him and, as a result, he had again submitted representations in 1983, 1985, 1988 and 1995. The impugned order dated 30.1.95 is in reply to his representation dated 11.1.95. The applicant is aggrieved with this order dated 30.1.95. According to him this order of rejection of his request was issued arbitrarily and without taking his claim into consideration on its merit. It is the contention of the applicant that the respondents cannot be justified in their action. They are aware that the applicant had made

contd. 3...

15.3.96

representation as far back as in 1972 but they kept silent and did not take any action on his representation since 1975 after the letter dated 4.6.75 was replied by him and have not communicated their decision. There cannot therefore be any ground of delay or laches attributable to him. The applicant submits that since the respondents have acted illegally and have not considered his claim on merit while arriving at the decision that his request was time barred, the impugned order cannot be sustained and is liable to be set aside and quashed.

3. The respondents do not deny in their written statement that the applicant made request for alteration of his date of birth in 1972 and that the applicant replied to the letter No. STBX-7/PI/Misc dated 4.6.75 but stated that the applicant failed to satisfactorily explained the cause of delay and that the reasons attributed by the applicant to the delay of 1½ year in making the request was ^{not} convincing. They have not, however, disclosed when the above findings were recorded and whether the applicant was informed at any time about their findings. This failure of the respondents is not, however, in my opinion material for decision of the challenge of the applicant in this application against the findings of respondent No.3 recorded in the impugned order No. ESTQ-2/68/23 dated 30.1.95 (Annexure-9) that the request of the applicant cannot be entertained as it was time barred. This finding is to be understood with reference to the representation dated 11.1.95 (Annexure-8). The representation of 1972 evidently was before the General Manager, Telecommunications, N.E.Circle, Shillong. The other alleged representations of 1983, 1985 and 1988 were also

made to the same authority. The representation dated 11.1.95 on the other hand was made by the applicant to the Chief General Manager, Telecommunications Circle, Ulubari, Guwahati. The case of the applicant as placed before the respondent No.3 according to the representation dated 11.1.95 is as below :

"To

The Chief General Manager,
Telecom Circle, Ulubari,
Guwahati-7.

(Through the T.D.E.Silchar)

Sub : Prayer for correction of date of birth.

Sir,

I have the honour to state that I have apply in 1983, 85, 88 for correction of my date of birth as per Matric Certificate issued by University of Guwahati in the Service Book.

I therefore, pray to correct my date of birth accordingly in the Service Book. The Zerox copy of the certificate is also enclosed herewith for favour of your kind reference.

Thanking you.

Yours faithfully,

Dated at Silchar
the 11.1.95.

Sd/-

(SHRI KANTI KUMAR SENGUPTA)
Sub-Divisional Engineer,
Group Exchange
Udarbond."

This representation does not disclose the past prior to 1983 before respondent No.3. It further transpires from this application that the earliest application was made in 1983 and the Matriculation certificate enclosed with this representation shows on its face that the correction of date of birth of the applicant was made on 26.2.71. Apparently the applicant deliberately omitted referring to the position from 1972 to 1975 while placing his case before the Chief General Manager, Telecom., Assam Circle,

15.3.96

contd. 5...

22

Ulubari, Guwahati, respondent No.3, vide his representation dated 11.1.95. He did not even enclose with the aforesaid representation dated 11.1.95, the copies of the representations of 1983, 1985 and 1988 mentioned therein and had mentioned them therein in a vague and cryptic manner. In view of the facts placed before him by the applicant the respondent No.3 cannot be blamed for arriving at the conclusion that the request of the applicant was time barred even if on the face of the representation of the applicant he took into consideration only the period from 1971 shown in the Matriculation certificate to the first mentioned representation of 1983 and not to speak of the period from 1971 upto 1995. It is of no avail to consider what conclusion respondent No.3 could have arrived at on consideration of the facts which were not placed before him by the petitioner. I therefore hold the view that the respondent No.3 is justified in rejecting the request of the applicant as contained in his representation dated 11.1.1995 as being time barred. The respondent No.3 was also not under any obligation to give the applicant an opportunity of being heard before rejecting the aforesaid representation. Mr B.K.Sharma submitted that the claim of the applicant for alteration of his date of birth is genuine and the respondents be directed to consider his claim afresh on merit by taking into consideration his representation dated 26.6.1972 and his reply dated 13.6.1975 aforesaid. He also submitted that in his representations dated 25.1.1983, Annexure-5, dated 22.11.1985, Annexure-6, dated 1.12.1988, Annexure-7, he had referred to the earlier correspondences and since in the representation dated 11.1.1995 a reference has been made to the

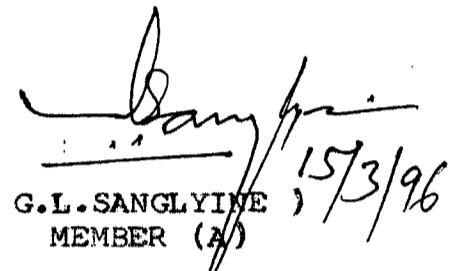
15.3.96
contd. 6...

representations of 1983, 1985 and 1988 the respondents cannot come to the conclusion that his representation was time barred. He further submitted that the respondent No.3 had rejected the representation dated 11.1.95 without assigning any reason in support of his finding therein and on this ground also the matter is required to be reconsidered by the respondents. I am not inclined to give such direction for I consider that it will be unfair and unjust to issue such direction when the applicant himself had not in his representation dated 11.1.1995 requested the Respondent No.3 to take his aforesaid representation dated 26.6.1972 and his reply dated 13.6.1975 into consideration for the purpose of deciding his claim for alteration of his date of birth recorded in his Service Book. I have already mentioned above that in his representation dated 11.1.1995 the applicant had simply vaguely and cryptically referred to the representations of 1983, 1985 and 1988. He had not specified any date. He had not enclosed any copy thereof with the representation dated 11.1.1995. Therefore, it cannot be presumed that those representations of 1983, 1985 and 1988 mentioned in his representation dated 11.1.1995 represent the representations at Annexure-5, 6 and 7 of this application. As such the above contention of the learned counsel in this regard cannot be accepted. Further, the order contained in the letter No. ESTQ-2/68/23 dated 30.1.95 (Annexure-9), cannot be set aside on the ground that it is a non speaking order as on the facts of the case as revealed by the applicant in his representation dated 11.1.1995 it is an apt order to be issued.

15.3.96

4. In the light of the findings mentioned above arrived at by me, I am further of the view that other contentions raised in this application are not necessary to be considered for the purpose of its disposal.

The application is dismissed. No order as to costs.


(G.L. SANGLYINE) 15/3/96
MEMBER (A)

16 FEB 1995

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Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

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

Title of the case : O.A. No. 26 of 1995

Shri Kanti Kumar Sen Gupta ... Applicant

- Versus -

The Union of India & Others ... Respondents

I N D E X

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For use in Tribunal's Office :

Date of filing :
Registration No. :

REGISTRAR

16 FEB 1995

Guwahati Bench
प्रभागी बैच

2
Filed by the applicant
through Advocate
13-1-95

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

O.A. No. 26 of 1995

BETWEEN

1. Shri Kanti Kumar Sen Gupta,
at present working as Sub-Divisional Engineer,
Udharpur, Silchar under Telecom District Engineer,
Silchar

... APPLICANT

AND

1. The Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Telecommunication,
New Delhi.
2. The Director General,
Telecommunication, New Delhi.
3. The Chief General Manager (Telecom.) ✓
Assam Circle, Ulubari, Guwahati-7.

... RESPONDENTS

DETAILS OF APPLICATION

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

The instant applicant is directed against the order No. ESTQ-2/68/23 dated 30.1.95 issued by the Assistant Director, Telecom (Staff) for the Chief General Manager, Assam Circle, Guwahati-7.

2. JURISDICTION OF THE TRIBUNAL :

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

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Guwahati Bench

गुवाहाटी न्यायालय

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3. LIMITATION :

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

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protections guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the applicant entered into the services of the Telecom Department with effect from 4.2.60 as Telephone Operator. After due promotion from time to time, he is now holding the post of Sub-Divisional Engineer at Udharbond under the Telecom District Engineer, Silchar.

4.3 That at the time of entry into the service, the date of birth of the applicant was recorded as 1.3.37 in his service book on the basis of the age recorded in the matriculation certificate. Although the said recorded date of birth on the basis of the age recorded in the matriculation certificate was wrong, the date of birth of birth of the applicant being 28.2.41, the applicant had no other alternative ~~than~~ in absence of any correction in the matriculation certificate. Be it stated here that in the matriculation certificate, the age of the applicant was erroneously recorded as 18 years as on 1.3.55 instead of 14 years 1 day. The applicant immediately made correspondence with the Gauhati University, but nothing was communicated to him.

Contd...P/3.

1.3.37
vs.
28.2.41

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Gauhati Bench
গুৱাহাটী বেচেন্স

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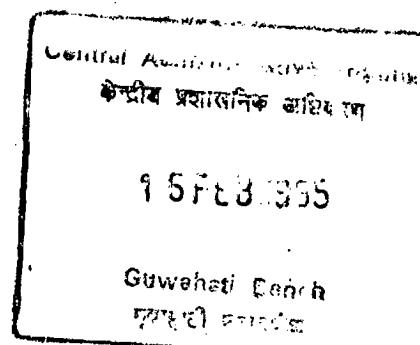
4.4 That subsequently, the Gauhati University took a decision for entertaining applications for correction of age entered in the matriculation certificate and accordingly a notice dated 14.8.69 was issued by the Registrar, Gauhati University which was also published in the Assam Gazette on 27.8.69. In the said notification, the following documents were called for alongwith the application for correction of the age :

- (a) Original horoscope ;
- (b) Extract of Municipal Birth Register or Gaoburah's Hathchitha or certificate by the Sub-Deputy Collector of the Circle concerned ;
- (c) Statement from the Headmaster concerned ;
- (d) Affidavit sworn before a 1st Class Magistrate
- (e) Fee of Rs. 20/-.

A copy of the said notification as published in the Assam Gazette dated 27.8.69 is annexed as ANNEXURE-1.

4.5 That the applicant on receipt of the said information immediately applied for correction of age in his matriculation certificate with all the abovenamed documents to the Gauhati University authority. After necessary scrutiny and verification of all the documents furnished, the age of the applicant in his matriculation certificate was corrected as 14 years 1 day as on 1.3.55. The said correction was made under the signature of the Registrar, Gauhati University dated 26.2.71.

A photostat copy of the matriculation certificate (corrected) is annexed herewith as ANNEXURE-2.



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4.6 That on such correction of age in the matriculation certificate, the applicant applied to the authority in the department for correct recording of his date of birth in the service book. Alongwith the application, he also submitted a copy of the matriculation certificate. The authority vide its letter No. STBX-7/PI/Misc dated 4.6.75 asked the applicant to intimate the office immediately the circumstances which stood on the way of representing the case earlier for such correction in service record. In the said letter, it was pointed out that while Gauhati University corrected the age in matriculation certificate under their letter dated 21.2.71, but the applicant applied for correction of the date of birth only on 26.6.72. The applicant on receipt of the said letter, intimated the circumstances leading to the alleged delay in submitting his application for correction of his date of birth in the service book. In his said letter dated 13.6.75, the applicant pointed out that due to unavoidable domestic circumstances such as prolong sickness and breakdown of his health of his wife, sudden death of his mother and preparation for E.S. examination, stood on his way in taking effort in the matter. In his letter, he regretted the delay, if any.

Copies of the said letters dated 4.6.75 and 13.6.75 are annexed as ANNEXURES 3 and 4 respectively.

4.7 That after the said communication, the applicant has not been intimated anything although he has been

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Gauhati Bench
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making representations from time to time. Every time he had gone to the office, he was assured of doing something in the matter. The concerned official gave him the hope that correction of date of birth in the service book is a formality to be observed with due process and the same would take some time and the applicant need not worry for the same. The applicant also made series of representations urging for correction of his date of birth both oral and in writing, but till date no response has been shown to these representations.

In this connection, the applicant annexes herewith the copies of the representations dated 25.1.83, 22.11.85, 1.12.88 and 11.1.95 and marked the same as ANNEXURES 5, 6, 7 and 8 respectively.

4.8 That after the aforesaid silence and inaction on the part of the respondents, the Assistant Director, Telecom (Staff) for the Chief General Manager, Assam Telecom Circle has issued the impugned letter No. ESTG 2468/23 dated 30.1.95 addressed to the T.D.E., Silchar. The T.D.E., Silchar in turn has handed over the same to the applicant. The applicant is completely taken aback to receive a copy of the aforesaid letter by which it has been communicated that the request of the applicant for correction of date of birth in the service book cannot be entertained allegedly on the ground of being time barred.

contd...P/5(a)

15 Feb. 95

- 5(a) -

Gauhati Bench
गौहाटी बैठकी

A copy of the said letter dated 30.1.95 is
annexed herewith as ANNEXURE-9

4.8(a) That the applicant states that prima facie the aforesaid decision is illegal, arbitrary and legally not sustainable inasmuch as the same does not communicate any decision on merit of the case of the applicant. There is no laches and/or negligence on the part of the applicant inasmuch as he had duly intimated the matter of correction of recorded date of birth in the matriculation certificate way back in 1972 to which further querries were also made by the respondents. Pursuant to such querries, the applicant also submitted his reply and thereafter even after pursuing the matter with the department, the respondents all along maintained their silence and all the requests of the applicant fell into the deaf ears. The respondents cannot now turn round the factual position that the case of the applicant is time barred. Such a situation is the own creation of the respondents and no fault can be found with the applicant. As pointed out above, the applicant kept on representing his case, but nothing was communicated to him and now at the ~~xx~~ page end of his

Contd....P/6.

career contrary to the assurances given by the respondents that his date of birth as recorded in the service book would be corrected. The impugned letter has been issued by which a valuable right of the applicant ~~has been~~ is sought to infringe and that too without going into the matter on merit.

4.8(b) That because of the aforesaid inaction on the part of the respondents, the applicant is facing acute hardship and he is going to be retired on superannuation with effect from 28.2.95. He made numerous oral/personal representations before the respondents and has been making so before them ; but all have maintained silence and now the applicant has come under the protective hands of the Hon'ble Tribunal as a last resort having no other alternative. Contrary to the assurances given by the respondents for correction of his date of birth recorded in the service book as per the correction made in the matriculation certificate they have maintained silence over the matter, as a result of which the applicant is going to lose four valuable years of service. The family of the applicant consists

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of his wife, son and daughter. His son is a student of Class X and will be appearing in the ensuing H.S.L.C. examination and his daughter is a student of Higher Secondary Classes. Thus it can well be imagined as to what would be the condition of the applicant and his family members in the event of his prematured retirement.

4.9 That the applicant states that the respondents cannot deny him from the valuable right of being continued in service till superannuation according to the actual date of birth as per recorded age in the matriculation certificate.

4.10 That the applicant states that the right to get the date of birth corrected continues during the entire service, more so when the applicant made his representations at the appropriate time for correction of his date of birth recorded in the service book. In the instant case, the respondents by their inaction to dispose of the representations have made the applicant to suffer and now at the fage end of his service as per the wrongly recorded date of birth, he has to approach this Hon'ble Tribunal seeking redressal of his grievances.

4.11 That the applicant states that there is no earthly reason as to why his date of birth cannot be corrected on the basis of the age recorded in the matriculation certificate. Till date, the respondents have not denied the correctness of the same. Needless to say that the age

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Guwahati Bench
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recorded in the matriculation certificate is the basis for recording the date of birth in the service book and after correction of the recorded age in the matriculation certificate, the respondents are duty bound to accept the same, more so when there is no ambiguity in the matter.

4.12 That the applicant states that as per the recorded date of birth in the service book, the applicant is going to retire on attaining superannuation on 28.2.95 ; but as per the corrected age in the matriculation certificate, he will continue in his service upto 28.2.99, his date of birth being 28.2.41.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that *prima facie* inaction on the part of the respondents are illegal, arbitrary and are not sustainable in the eye of law.

5.2 For that the applicant having not been given any reasonable opportunity of being heard before the deemed rejection of his claim for correct recording of his date of birth, same is violative of principles of natural justice.

5.3 For that the applicant has got a right to continue in his service till his superannuation according to his actual date of birth and the same cannot be denied to him.

5.4 For that malafide, arbitrariness and colourable exercise of power being the foundation of the inaction and silence over the matter on the part of the respondents,

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same are not sustainable and appropriate direction is called for in the matter to the respondents so that the applicant can continue in his service till he attains superannuation on retirement on 28.2.99.

5.5 For that the impugned order is *prima facie* illegal and has been issued in malafide and in colourable exercise of power inasmuch as the respondents are fully aware of that the applicant has got a genuine case for correction of date of birth in his service book and to evade that reality the respondents have resorted to such a technical plea attributable to them only.

5.6 For that the applicant atleast has got a right to be considered for correction of his date of birth as per the matriculation certificate, but the respondents have not given their consideration to the applicant and thereby has denied a valuable right.

5.7 For that in any view of the matter, the inaction on the part of the respondents are not sustainable.

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative remedy other than approaching this Hon'ble Tribunal.

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

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which the application has been made before any court of law, or any other authority and/or other Bench of the Hon'ble Tribunal and/or any such application, writ petition or suit is pending before any of them.

15 FEB 1995

8. RELIEFS SOUGHT :Guwahati Bench
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Under the facts and circumstances stated above, the applicant prays that the instant application be admitted, records be called for and upon hearing the parties on the cause or casues that may be shown and on perusal of the records be pleased to grant the following reliefs :

- (i) To set aside and quash the impugned order dated 30.1.95 (Annexure-9)
- ✓(ii) To direct the respondents to correct the recorded date of birth of the applicant in his service book as 28.2.41 in place of 1.3.37 with all consequential benefits of service ;
- (iii) To direct the respondents not to retire the applicant from service with effect from 28.2.95 on the basis of the wrongly recorded date of birth in the service book i.e. 1.3.37 and to allow him to continue in service till his actual date of ~~xxxx~~ retirement i.e. 28.2.99 as per his actual date of birth i.e. 28.2.41 with all consequential benefits.
- (iv) Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application, the applicant prays for an interim direction to the respondents to allow the applicant to continue in service beyond 28.2.95 inasmuch as prima facie the date of birth of the applicant is 28.2.41 on the basis of ~~xxx~~ which he will continue in service till 28.2.99, balance of convenience also lies in favour of the applicant. Interim order as has been prayed for, if not granted, the applicant will suffer irreparable loss and injury.

10.....

The application is filed through Advocate.

11. PARTICULARS OF THE POSTAL ORDER :

- (i) I.P.O.No. : 8 08 882548.
(ii) Date : 27-1-95
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

VERIFICATION

I, Shri Kanti Kumar Sen Gupta, aged about 54 years, son of Late K.P. Sen Gupta, at present working as Sub-Divisional Engineer, Department of Telecommunication, at Udharbond, Silchar, do hereby solemnly verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice. And I have not suppressed any material facts.

And I sign this verification on this the 10th day of Feb. 1995.

Kanti Kumar Sen Gupta

16 FEB 1955

Gauhati Bench গুৱাহাটী বিধায়কী

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ANNEXURE-1

(Extract of the Assam Gazette, August 27, 1969)

Gauhati the 14th August 1969.

GAUHATI UNIVERSITY

Public Notice regarding correction of Age entry in the
Matric Certificate.

It is notified for information all concerned that application for correction of age entry in the Matric Certificate will be entertained by the University for a period of Two years with effect from the date of publication of this notice in the Assam Gazette after which no such applications will be entertained. The following documents and fees are to be submitted along with the applications for correction of age :

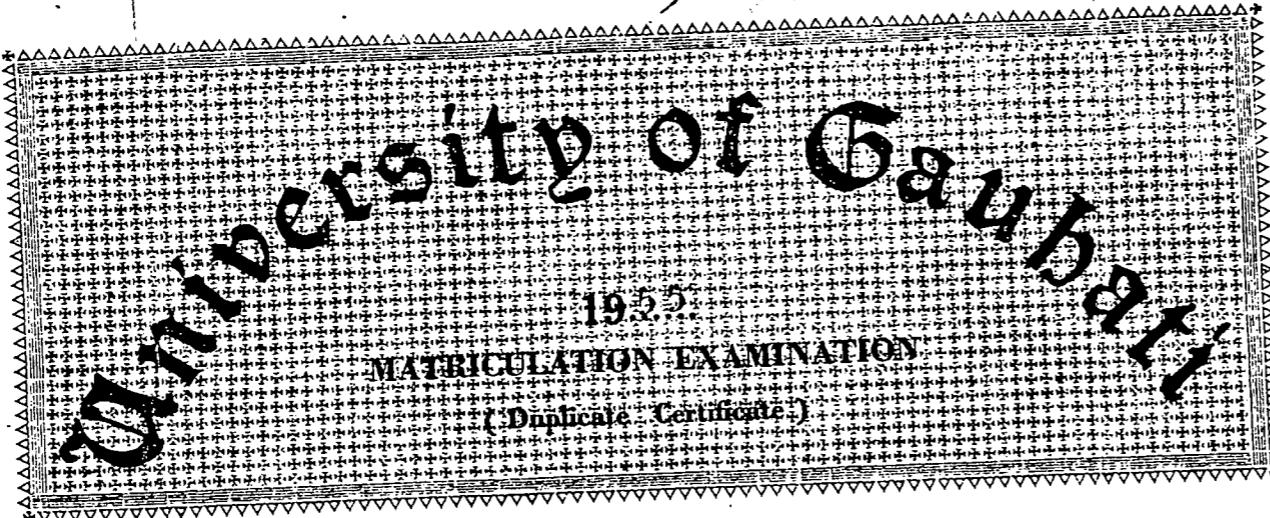
1. Original Horoscope ;
 2. Extract from Municipal Birth Registrar or Gaobura's Hat-chitha certified by the Sub-Deputy Collector of the Circle concerned.
 3. State form from the Headmaster concerned.
 4. Affidavit sworn in before a first class Magistrate
 5. Fees of Rs. 20 (Twenty) .

This supersedes the previous notification dated 29th June 1964, on the subject.

Registrar
Gauhati University.

Any document to
show that Cess. were
made with G.M.
before 27.8.69?

Altairus
de
Dreher



272

I certify that Kanti Kumar Sen Gupta Roll Sl
No. 35, aged 14 (Fourteen) years x months 1 (one) days on the

First March, 1955, duly passed the Matriculation Examination, 1955

of this University and was placed in the Third Division.



GAUHATI: ASSAM

The 26th July 1955.

Countersigned

R. Datta
Registrar

1955
July
1955

Sd/- R. Datta
Registrar

H. J. Datta
H. J. Datta

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

From :

General Manager,
Telecommunications.
N.E. Circle, Shillong-793001

To

Shri Kanti Kr. Sen Gupta,
E. S. (Transmission)
C/O C.T.O. Gauhati.

No. STBX-7/PI/Misc.

Dated at Sh 4.6.75

Sub : Change of date of birth - case of Sri Kanti Kr. Sengupta, formerly PI (now Engg. Supervisor).

Ref : Your application dated 26.6.72.

Whereas it is seen that the connection of age entry in your Matriculation Certificate has been made under Gauhati University letter No. Cer/Ca/2/71/260 dated 27.2.71 but you have applied for correction of date of birth on your service records only on 26.6.72 for the first time.

You are, therefore, called upon to intimate this office immediately the circumstances which stood on the way of representing the case earlier for such correction in service records.

Sd/-

For General Manager, Telecommunication,
N.E. Circle, Shillong-793001.

Attachment

To

The General Manager, Telecommunications,
N.E. Circle,
Shillong.

Dated 13th June '75.

Through proper channel.

Sub : Change of Date of birth - case of Shri Kanti
Kumar Sen Gupta formerly PI (Now Engg. Supervisor).

Ref : Your letter No. STB-7/PI/Misc dt. 4.6.75.

Sir,

Reference to your letter No. cited above I most
humbly and respectfully state that the application for
change of birth could not be submitted earlier than 26.6.72
due to the unavoidable domestic circumstances prevailing
for a prolonged period resulting in the serious breakdown
of health of my wife. Besides, my preparation for E.S.
examination and sudden death of my mother stood on the
way of my taking efforts in the matter.

Under the above circumstances, I beg for your
kind honour to consider my case sympathetically and pass
favourable orders for accepting the same for which act
of your kindness, I shall remain ever grateful to you.
The delay is sincerely regretted and hoped to be excused.

Yours faithfully,

Sd/-

Kanti Kumar Sen Gupta.

E.S. General,
C/O A.E. Electrical Office
C.T.O. Compound.
P.O. Gauhati-1.
Dist. Kamrup, Assam.

*Attached
J.S.*

Chamal - M/S.

ANNEXURE-5

To

The Chief General Manager, Telecom.
N.E. Circle, Shillong.

Sub : Prayer for change of date of birth in my
Service Book.

Sir,

Kindly refer your letter No. STB-7/PI/Misc.
dated 4.6.75. In response to your above letter I
have requested your kindself for correct of my date
of birth vide my application dated 13.6.75. But till
date I have not received any reply.

I therefore, pray to your kindself to
correct my date of birth at an early date and for
which act of kindness I will remain ever grateful
to you.

Thanking you,

Yours faithfully,

Chawdhury

Sd/-

(SHRI KANTI KUMAR SENGUPTA)
S.D.O. Telegraph, Aizwal,
Date 25th Jan. 1983.

Attest
A.

...

To

The Chief General Manager, Telecom.
N.E. Circle, Shillong.

Sub : Prayer for correction of date of birth
in my service Record.

Sir,

Kindly refer my representation dated 13.6.75
and 25.1.83, wherein I requested your kindself for
making necessary correction in my service records
but till date I have not received any letter from
you.

I therefore, pray to your kindself, to make
the necessary correct in my service records so
that I would not be deprived from my legitimate
claim.

Thanking you,

Yours faithfully,

Sd/-

(SHRI KANTI KUMAR SENGUPTA)
S.D.O. Telegraph, Tura
Dated 22.11.1985.

Attest
S.

Chand?

...

To

The Chief General Manager, Telecom.
N.E. Circle, Shillong.

Sub : Prayer for correcting date of birth in
Service records of Shri K.K. Sengupta.

Sir,

Kindly refer my application dated 13.6.75 &
25.1.83 and 22.11.85 wherein it was requested to
correct my date of birth as per my Matriculation
Certificate, but till date it is observed no correct-
ion was made so far.

I, therefore, pray to your kindself to correct
the date of birth my service Record so that I will
be getting my legitimate benefit.

Thanking you,

Yours faithfully,

Sd/-

(SHRI KANTI KUMAR SENGUPTA)
A.E. (W), Haflong.
Date - 1.12.88.

Channed?

Attestd
A.

To

The Chief General Manager,
Telecom Circle, Ulubari,
Guwahati-7.

(THROUGH THE T.D.E.SILCHAR)

Sub : Prayer for correction of date of birth.

Sir,

I have the honour to state that I have apply in 1983, 85, 88 for correction of my date of birth as per Matric Certificate issued by University of Guwahati in the Service Book.

I therefore, pray to correct my date of birth accordingly in the Service Book. The Zerox copy of the certificate is also enclosed herewith for favour of your kind reference.

Thanking you,

Yours faithfully,

Dated at Silchar
the 11.1.95

Sd/-

(SHERI KANTI KUMAR SENGUPTA)
Sub-Divisional Engineer,
Group Exchange
Udarbond.

...

Attest
S.

GOVERNMENT OF INDIA
MINISTRY OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER :: ASSAM CIRCLE
ULUBARI: GUWAHATI - 781007

No. ESTQ- 2/68/23

Dated at Guwahati the 30.01.95

To

The Telecom. District Engineer,
Silchar.

Sub : Correction of date of birth in the Service Book
Case of Sri K.K. Sengupta, S.D.E./Uderbond.

Ref : Your letter No. TDE-SC/MISC/94-95 dtd. 11.01.95.

With reference to the subject cited above. In
this regards the undersigned is directed to inform you
that the request of the officer can not be entertained
as it is time barred. The officer concerned may be inti-
mated accordingly.

Sd/- 30.1.95.

(K.S.K. Prasad Sarma)
Asstt. Director ~~Gelecom~~ (Staff)
for Chief General Manager
Assam Telecom. Circle, Guwahati-7.

Attn: S.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

10 APR 1995

Guwahati Bench
10 APR 1995

✓
10 APR 1995
Guwahati Bench
CAT
7.4.95

In the matter of :

O.A. No. 26 of 1995
Shri K.K. Sengupta ...Applicant.

-Versus-

Union of India & Ors....Respondents.

-AND-

In the matter of :

Written Statement on behalf
of the Respondents.

N. K. Rabha.

I, Shri M. Biswas, Asstt. Director Telecom.

(HRD), in the office of the Chief General Manager,
Assam Telecom Circle, Guwahati do hereby solemnly
affirm and declare as follows :-

1. That a copy of application along with an order passed by this Hon'ble Tribunal has been served upon the Respondent, the Chief General Manager, Assam Telecom Circle, Ulubari, Guwahati and same being forwarded to me for compliance of the Tribunal's order,

I do

Recd copy
B.M.Biswas
7.4.95
2. S. B. K. Shrivastava
7.4.95

I do hereby make the para-wise comment in the form of Written Statement and say categorically that save and except what is admitted in this Written Statement, rest may be treated as total denial by this Respondent. Moreover, this Written Statement will also be the written statement for other Respondent.

2. That with regards to the contents made in paragraphs-1, 2, 3, 4.1 & 4.2 of the application, I beg to state that I have nothing to comment.

3. That with regards to the contents made in paragraph-4.3 of the application, I beg to state that at the time of initial entry in the department in 1960 the essential particulars of the applicant was entered in the Service Book in the due manner and by the appropriate authority on the basis of supporting documents. The entries were made in the presence of the applicant who after having satisfied himself of the correctness of the entries put his hand in token of his total agreement.

4. That with regards to the contents made in paragraph 4.4. and 4.5. of the application, I beg to state that the notification referred to was an open invitation to every individual who intended to alter the Date of Birth recorded in the certificate issued by the University.

There is.....

There is nothing on record to establish that the applicant had approached the University on his own to rectify the alleged wrong entry in the certificate. It may be so that the applicant had taken advantage of the liberal policy of the University to alter his Date of Birth with ulterior motive.

5. That with regards to the contents made in paragraph-4.6 of the application, I beg to state that the applicant made request for alteration of the entry in the Service Book on the strength of corrected Matriculation Certificate after a lapse of 1 and half year but failed to satisfactorily explain the cause of delay. The reason attributed by the applicant was not convincing as he was on duty during the intervening period despite the reported domestic problem. If the applicant could attend to duty there could be hardly any reason for not making the representation immediately after the receipt of the corrected certificate.

20.2.71
90.6.72
But did they
reject in
writing?
if so?

6. That with regards to the contents made in paragraph 4.7 of the application, I beg to state that there is nothing to show that the applicant had made further representation on the subject. No responsible officer did ever assure of a positive and affirmative action as it was known to the authority that the case was devoid of merit.

Contd.....

7. That with regards to the contents made in paragraph 4.8 of the application, I beg to state that in his representation dated 11.01.1995 which is the first of its kind to CGMT, Guwahati the applicant had admitted that he had applied for the correctness in 1983. There was no indication of the reference which were made with GGMT, Shillong in 70s. Even though the earlier correspondence were not available for verification of the statement, it was safely assumed that the applicant had not made the request earlier than 1983. Accordingly the request was turned down as time barred as the maximum permissible time had elapsed by then.

8. That with regards to the contents made in paragraph 8(a)(b), I beg to state that the departmental authority has applied its mind to the rules and procedure before arriving at the final decision. Note 6 below FR 56 makes it abundantly clear that the entry in the Service Book regarding the Date of Birth shall not be subject to any alteration unless a request in the regard is made within 5 years of entry in the Government Service. Such an alteration is permissible only if it is

Rebeller Rest / Aff
are bound by
the Contract of
Service - ?
What effect has the
action of University
on Rest?

found that a clerical mistake had taken place while making the original entry. The same condition is reiterated in Rule 281 of F.H.B. Vol.I.

The rule.....

The rule governing the alteration of Date of Birth is thus very rigid and has to be followed strictly to prevent any abuse of the rules. The basic idea is that the important factor like age which determines the eligibility criteria at the time of appointment and also influence the career of the Govt. Servant throughout the service life should be decided once for all at the time of appointment and should not be open for any alteration at a subsequent date. It is all the important to bear in mind that the proposed change of Date of Birth will in all probability render the applicant ineligible for the initial appointment as TS Clerk. The applicant was recruited against the vacancies of 1st Half of 1959 and notice inviting applications might have been issued in Mid 1959. In that event the candidates are required to be over 18 years of age as on the crucial date and his selection to the post would become irregular.

1959
41-2-28
18-0-00
59-2-28

Mention may be made that the candidates selected for appointment against vacancies of 1st half year 1959 are not likely to join duty before 2/1960 as the process of selection is a time consuming one which is again followed by 3 months induction training before the candidate can join duty.

9. That with regards to the contents made in paragraph 4.9. of the application, I beg to state that the applicant.....

the applicant has served the department till attaining Superannuation as per his age entered in the Service Book and retired from Service on 28.2.1995. The position is irreversable.

10. That with regards to the contents made in paragraph 4.10 & 4.11 of the application, I beg to state that the full fact of the case and the provision of rules governing the alteration of Date of Birth has been explained in foregoing para.

11. That the present application is mis-conceived of fact and ill-conceived of law.

12. That the present application is without any merit and same is liable to be summarily rejected.

13. That there being no any cause of action, the application is liable to be summarily dismissed.

14. That the present application is barred by law of limitation.

Contd.....

15. That the applicant has made out a case of no merit taking the advantage of the liberal policy of the University to alter his Date of Birth with ulterior motive.

16. That the present application is not maintainable for non joinder of necessary party.

17. That the Respondent crave leave of this Hon'ble Tribunal to file Written Statement in addition if so required.

18. That this Written Statement is filed bonafide and in the interest of justice.

Verification.....

S/ 27

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VERIFICATION:

N K. Rabha
I, Shri M. Biswas, Asstt. Director

Telecom.(HRD) in the office of the Chief General Manager, Assam Telecom Circle, Guwahati do hereby solemnly affirm and declare that the statements made in paragraph-1 of this Written Statement are true to my knowledge and those made from paragraph-2 to 10 are derived from records which I believe to be true and rest are humble submission before this Hon'ble Tribunal.

I sign this Verification on this 7th day of April, 1995 at Guwahati.

W. H. P.
7.4.95
Asstt. Director Telecom (H R D)
O/o the C. G. M. T. Assam Circle,
Guwahati 781 007

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

Central Administrative Tribunal
केन्द्रीय अधिकारी नियन्त्रण बोर्ड

30
6 JUL 1995

Guwahati Bench
गুৱাহাটী বৰানীক

O.A. No. 26 of 1995

Shri K.K. Sen Gupta

- Versus -

Union of India & Ors.

Filed by
Mr. S. K. Sen Gupta
6.7.95

REJOINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENTS

The applicant begs to state as follows :

1. That the applicant has gone through the written statement filed on behalf of the respondents and I have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow other statements made in the written statement are categorically denied. Further the statements which are not borne on records are also denied and the respondents are put to the strictest proof thereof.
2. That with regard to the statements made in paragraphs 1 and 2 of the written statement, the applicant reiterates and reaffirms the statements made in paragraphs 1, 2, 3, 4.1 and 4.2 of the application.
3. That with regard to the statements made in paragraph 3 of the W.S., the applicant denies that the entries were made in presence of the applicant and that he put his hands in total agreement having satisfied himself of the correctness of the entries made in the Service Book. The circumstances have been fully explained in paragraph 3 of the application.
4. That with regard to the statements made in paragraph 4 of the W.S., it is denied that the applicant

did not approach the University on his own to rectify the correction of age in the matriculation certificate. Because of that intention only, the applicant had approached the Gauhati University authority as has been explained in paragraph 4.4 and 4.5 of the application. It is further stated that the applicant took personal initiative and was able to convince the University authority regarding the mistake in the entry of age in the certificate. It took a long period for correcting the age in the matriculation certificate. Being fully satisfied, the Gauhati University authority corrected the age in the matriculation certificate. So the question of liberal policy of the University or the ulterior motive of the changing the date of birth does not arise. It was nothing but a correction of mistake by the University authority.

5. That with regard to the statements made in paragraph 5 of the ~~application~~ W.S. while reiterating and reaffirming the statements made in paragraph 4.6 of the application, the applicant begs to ~~specifically~~ state that the applicant made a request for correction of his date of birth pursuant to which correction made in the matriculation certificate in pursuance of which Annexure-3 letter dated 4.6.75 was issued to the applicant. In the said letter, the Department did not deny the authenticity of the correction but asked for an intimation for the circumstances which stood on the way of the applicant to report his case at an earlier date. Be it stated here that the necessary correction in the age in the matriculation certificate was made by the University

uthority in 1971 and the applicant received the same belatedly and therefore because of the circumstances mentioned in Annexure-4 letter could not make necessary correspondences at an earlier date. Be that as it may a delay of ~~is~~ about one year in making the request of correction of the date of birth cannot be the basis for the respondents to deny the necessary correction to the applicant. Furthermore, as per their Annexure ³ letter ¹ the applicant had replied to vide his Annexure-4 letter and it was incumbent upon the respondents either to accept the explanation given in Annexure-4 letter or to reject the same. But they did not do anything in the matter and the same is still kept hanging.

6. That with regard to the statements made in paragraph 6 of the W.S., the applicant denies that there is nothing to show that the applicant had made further representation on the subject. In this connection, the applicant categorically reiterates and reaffirms the statements made in paragraph ~~Annexure~~ 4.7 of the application.

~~ix~~

7. That with regard to the statements made in paragraph 7 of the W.S. the applicant denies that his representation dated 11.1.95 was the first of its kind. After correction of age in the matriculation certificate the applicant all along prayed for correction of his date of birth ^{as per} in the matriculation certificate. As such requests were made on the basis of the position of the applicant

and his place of posting but nothing was communicated to him. The applicant also issued reminder letters always to his competent higher authorities with the expectation that necessary correction would be made in the Service Book and with that expectation the applicant applied on 11.1.95 to the C.G. M.(T), Guwahati.

8. That with regard to the statements made in paragraph 8 of the W.S., the applicant states that his case is fully covered under the Rules quoted in the application inasmuch as after the correction made by the University authority he had applied for the correction of his age in his service book well in the stipulated period of five years. As regards the statements that the proposed change will in all probability render the applicant ineligible for the appointment of T.S. Clerk, the applicant begs to state that his date of birth after correction is 28.2.41. Thus at the time of his appointment i.e. 4.2.60, his age was 19 years 1 month. So even at the time of advertisement, he was about 18 years old. It is further stated that the initial appointment of the applicant was not as T.S. Clerk but he was recruited as Telephone Operator with a training period of 2 months and not three months as has been mentioned by the respondents.

9. That with regard to the statements made in paragraphs 9 to 18 of the W.S., the applicant while reiterating and reaffirming the statements made in the application, do not admit anything contrary to the relevant records.

10. That the applicant submits that the respondents apart from the stand that the applicant did not approach

the authority within a reasonable period from the date of correction of age in the matriculation certificate have not stated anything against the grievances made by the applicant regarding the correction of his date of birth in the Service Book. They have also not disputed the veracity of the corrections made in the matriculation certificate. Thus there is no earthly reason as to why the ~~expensed~~ prayer of the applicant should not be allowed.

11. That under the facts and circumstances stated above, the O.A. deserves to be allowed with cost.

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

I, Shri Kanti Kumar Sengupta, the applicant in O.A. No. 26/95, do hereby solemnly verify and state that the statements made in paragraphs 1 to 10 are true to my knowledge and those made in paragraph 11 are my humble submissions before this Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this the ~~say~~
day of 1995 at Guwahati.

Kanti Kumar Sengupta