

GUWAHATI BENCH : GUWAHATI

APPLICATION NO.

R.A. 13 OF 1998  
O.A. 26 / 95

**Advocate for Respondent(s)**

Notes of the Registry	Date	Order of the Tribunal
<p>This Review application filed by Mr. B.K. Sharma, Advocate on behalf of the applicant, against the judgment and order dated 3.9.96 in the coram of the Hon'ble Member(A).</p> <p>This review application was filed on 28.4.96 but was pending on circulation for some technical difficulties.</p> <p>This application is registered as R.A.No. 13/98 per office Note at page in the 'C' file.</p> <p>Laid for favour of members.</p> <p><i>Sumit</i>  <u>For REGISTRAR</u>  <i>5/6</i></p> <p><i>29.9.98</i></p> <p><i>Notice served issued to the respondents</i></p> <p><i>D.O.No.</i></p> <p><i>D Service reports are still awaited.</i></p> <p><i>No objection is there (M)</i></p>	<p>12-8-98</p> <p>lm</p> <p>23-9-98</p>	<p>Heard Mr. B.K. Sharma learned counsel for the applicant. Steps have not been taken. Copy of the application has not been served to the respondents.</p> <p>Issue notice to the respondents for <del>any</del> objection if, any.</p> <p>List on 23-9-98 for objection and consideration of Admission. on <del>23-9-98</del>. Steps within 5 days.</p> <p><i>[Signature]</i> Member</p> <p>Service report awaited. Mr. U.K. Nair learned counsel mention has been made on behalf of Mr. S. Sarma, learned counsel for the applicant and prays for adjournment.</p> <p>List on 11-11-98 for consideration of Admission.</p> <p><i>[Signature]</i> Member</p>

(2) R.A 13/98

7.0

Notes of the Registry	Date	Order of the Tribunal
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Service of Notice receipt. A  
Issued vide bespokh No. 2847  
to 2849 dt. 22-9-98

11.11.98

On the prayer of Mr S.Sarma, learned  
counsel for the petitioner the case  
is adjourned to 25.11.98 for admission.

By order

pg

1) Service Reports are  
still awaited

25.11.98

Mr G.Sharma learned Addl.C.G.S.C.  
prays for one week time to get instruction  
prayer allowed. List on 2.12.98 for  
consideration of admission.

Member

2) No objection has  
been filed.

pg

1) Service Reports are still  
awaited.

2.12.98

7 days time allowed for filing of  
objection on the prayer of Mr G.Sarma,  
learned Addl.C.G.S.C.

List on 9.12.98 for order.

Member

2) No objection has been  
filed.

pg

1.12.98

Notice duly served  
on respondents No. 1, 2.

9-12-98

Mr. S.Sarma learned counsel for the  
applicant and Mr.G.Sarma learned Addl.  
C.G.S.C. for the respondents. No  
objection has been submitted by the  
respondents. Review Application is  
admitted.

List for hearing of the Review  
Application on 3-2-99.

Member

Don

1-12-98

No objection has been  
filed.

lm

12/12/98

8-12-98

1) Notice duly served  
on R. Nos 1 & 2.

3.2.99

On the prayer of Mr U.K.Nair, learned  
counsel on behalf of Mr B.K.Sharma the  
case is adjourned to 17.2.99 for hearing  
Mr B.C.Pathak, learned Addl.C.G.S.C has  
no objection.

Member

2) No objection has  
been filed.

pg

21/12/98

2-2-99

Notice duly served on  
R. Nos 1 & 2.

3/2/99

3

R-A. 13/98 (O.A. 26/95)

Notes of the Registry

Date

Order of the Tribunal

3

16-2-99

1) Notice duly served on R. Nos 1 & 2.

2) No objection has been filed.

16/2/99

9-3-99

Written statement has not been filed.

19.3.99  
1/3/99 There was a Bench at Amphal a.e.t 15-17-3-99.

8.4.98

No written statement has been filed by the respondent.

16/3

26-4-99

No W/statement has been filed.

26/4

17.2.99

Mr B.C. Pathak, learned Addl. C.G.S.C. submits that he may be granted one month time for filing written statement. However, Mr S. Sarma, learned counsel for the opposite party expresses his desire for early hearing. Therefore, three weeks time is allowed to Mr Pathak for filing written statement. List for hearing on 17.3.99. In the meantime Mr Pathak may submit the written statement with copy to the review applicant.

62  
Member

nkm

10.3.99

This application has been wrongly placed today. It has already been fixed for hearing on 17.3.99.

List on 17.3.99 for hearing as already fixed.

62  
Member

pg

11/3/99

7.4.99

This Review Application is shown in the cause list, but it has not been listed today according to the order sheet. List for hearing on 28.4.99.

62  
Member

nkm

28/4/99

28.4.99

Mr. M.Chanda, learned counsel on behalf of Mr. B.K.Sharma prays for adjournment of the case on the ground that Sri Sharma is in bereavement. Mr. B.C.Pathak, learned Addl. C.G.S.C. has no objection if the case is adjourned.

Contd....

Notes of the Registry	Date	Order of the Tribunal
<p>31-8-99</p> <p>Written statement has been filed by the respondents.</p> <p>3-9-99</p> <p>This case was taken by the Hon'ble V.C. in Chamber when Hon'ble Chairman was sitting with the Hon'ble Member (A) &amp; the 28.5.99 was given wrongly which was a Friday (S.B. of Hon'ble V.C.). Therefore it was not listed on 28.5.99 and wrongly kept pending. Placed before the court for orders alongwith Mrs. filed for acceptance of 28/5.</p> <p>22-11-99</p> <p>1) Affidavit in Reply has been filed</p> <p>2) Notice duly served on R. 1 &amp; 2.</p> <p>30-11-99</p> <p>1) Notice duly served on R. Nos. 1 &amp; 2. The other one still awaited</p> <p>2) W/ statement - has been filed</p>	<p>28.4.99</p> <p>31/5/99</p> <p>8.9.99</p> <p>6.10.99</p> <p>10.11.99</p> <p>24.11.99</p>	<p>Accordingly the case is adjourned till 28.5.99.</p> <p>List it for hearing on 28.5.99.</p> <p>Written statement has been filed and accepted.</p> <p>List on 6.10.99 for hearing.</p> <p>On the prayer of Mr B.C.Pathak, learned Addl.C.G.S.C the case is adjourned to 10.11.99 for hearing.</p> <p>On the prayer of Mr B.C.Pathak, learned Addl.C.G.S.C the case is adjourned to 24.11.99 for hearing.</p> <p>On the prayer of Mr S. Sarma, learned counsel for the applicant the case is adjourned to 1.12.99 for hearing. Mr B.C. Pathak, learned Addl. C.G.S.C. has no objection.</p>

Vice-Chairman

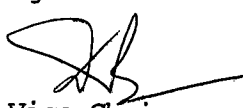





Member

Member

Member

Member

nkm

Notes of the Registry	Date	Order of the Tribunal
<p>7-12-99</p> <p>1) Notice duly served on R Nos 1 &amp; 2. The other are still awaited.</p> <p>2) Affidavit in Reply has been filed.</p> <p>7/12</p>	1.12.99	<p>The case is adjourned till 8.12.99 on the prayer of learned counsel for the parties.</p> <p>List on 8.12.99 for hearing.</p> <p> Vice-Chairman</p>
<p>21-12-99</p> <p>1) Notice duly served on R Nos 1 &amp; 2. The other are still awaited.</p> <p>2) Affidavit in Reply has been filed.</p> <p>21/12</p>	8.12.99	<p>Place the case before Hon'ble Member on 22.12.99 for hearing.</p> <p> Vice-Chairman</p>
<p>18-1-2000</p> <p>1) Notice duly served on R Nos 1 &amp; 2. The other are still awaited.</p> <p>2) Affidavit in Reply has been filed.</p> <p>21/12</p>	22.12.99	<p>On the prayer of Mr S. Sarma, learned counsel for the applicant the case is adjourned to 19.1.2000 for hearing.</p> <p> Member</p>
	19-1-2000	<p>On the prayer of Mr.U.K.Goswami, learned counsel on behalf of counsel for the applicant who are having personal difficulty today, case is adjourned to 9.2.2000 for hearing. List on 2.2.2000.</p> <p> Member</p>
	9.2.2000	<p>On the prayer of counsel for the parties case is adjourned to 23.2.2000</p> <p> Member</p>
<p>8-2-00</p> <p>1) Notice duly served on R Nos 1 &amp; 2.</p> <p>2) Affidavit in Reply has been filed.</p> <p>8/2</p>	23.2.00	<p>On the prayer of the learned counsel for the parties the case is adjourned to 22.3.00 for hearing.</p> <p> Member</p>

(6) R.A 13/28

Notes of the Registry	Date	Order of the Tribunal
<u>22-2-00</u> Affidavit in Reply in sum GSW  22/2	22.3.00  mk	Heard Mr.S.Sarma, learned counsel for the applicant and Mr.B.C. Pathak, learned Addl.C.G.S.C. for the respondents. Hearing concluded. Judgment reserved.  Member
<u>26.4.2000</u> Copy of the Judgment has been sent to the D/Sec. for issuing the dine to the applicant to the Addl.C.G.S.C. for the Responds, vid D.No 27A2000 No 125/1252	5.4.00  lm	Judgment and order pronounced in open Court. Kept in separate sheets. Review Application is allowed. No costs.  Member

Review Application No. 13 of 1998. (In O.A.26/95)

DATE OF DECISION.....5-4-2000.

Shri Kanti Kumar Sengupta

PETITIONER(S)

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

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

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

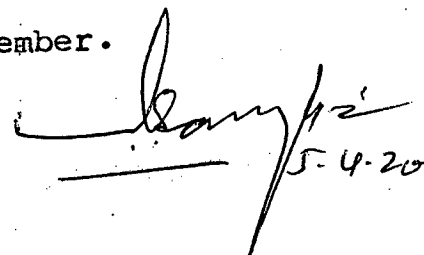
ADVOCATE FOR THE  
RESPONDENT(S)

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE 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 Administrative Member.

  
5-4-2000

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Review Application No. 13 of 1998 (In O.A.26/95)

Date of Order : This the 4<sup>th</sup> Day of April, 2000.

The Hon'ble Shri G.L.Sanglyine, Administrative Member.

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

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

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

O R D E RG.L.SANGLYINE, ADMN.MEMBER,

The applicant joined service on 4.2.1960. The date of his superannuation according to the original Matriculation certificate was on 28.2.1995. In response of a public notice dated 14.8.1969 issued by the Gauhati University he had approached the University for correction of his age. Though the date of the application is not available but it is seen that on 20.2.1971 the Registrar, Gauhati University had corrected the Matriculation certificate of the applicant by changing his age from 18 years 1 day as on 1.3.1955 to 14 years 1 day as on that date. Thereafter on 26.6.1972 the applicant made application to the General Manager, Telecom. N.E.Circle, Shillong for change of his date of birth. The authority directed the applicant to intimate the circumstances as to why representation could not be submitted earlier for correction of the date of



birth in the Service records. According to the applicant on 13.6.1975 he submitted a reply but there was no intimation of decision after that. As a result on 25.1.1983 he submitted representation to the Chief General Manager, Telecom, N.E.Circle, Shillong praying for change of date of birth in his service book. This according to him was followed by representations dated 22.11.1985 and 1.12.1988. All these were addressed to the Chief General Manager, Telecom, N.E.Circle, Shillong mentioning the previous references. According to him there was no reply from the respondents. He therefore, submitted another representation dated 11.1.1995 addressed to the Chief General Manager, Telecom, Assam Circle, Ulubari, Guwahati praying for correction of his date of birth as follows :

"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."

The Assistant Director General, Staff of the office of the Chief General Manager, Telecom, Assam Circle, Ulubari, Guwahati informed the Telecom District Engineer, Silchar on 30.1.1995 that the request of the applicant cannot be entertained as it was time barred. Thereupon the applicant submitted O.A.26 of 1995 on 16.2.1995. This O.A. was disposed of by order dated 15.3.1996 dismissing the application.


2. The Review Application was submitted against this order dated 15.3.1996 in O.A.26/95. The respondents have submitted an affidavit in reply to the Review Application. Learned counsel Mr S.Sarma appears for the applicant and Mr B.C.Pathak, learned Addl.C.G.S.C for the respondents.

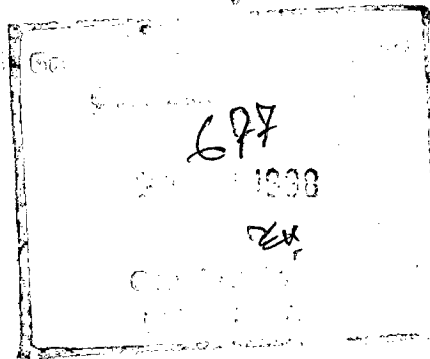
According to Mr Sarma, the order dated 15.3.1996 is liable to be reviewed as the Tribunal committed error apparent on the face of record in dismissing the Original Application upholding the view taken by the respondents that the prayer of the applicant was time barred instead of considering the entire records relevant to the issue. The applicant had made representations since 1972 and this fact cannot be ignored. Had this representation been taken into consideration, it could not have been held that the claim of the applicant was time barred. Moreover, the respondents had not denied that the applicant had submitted subsequent representations. Further, he submitted that the order dated 30.1.1995 does not contain any reason. It is settled law that orders issued without assigning any reason are not sustainable in law. The Tribunal committed an error apparent from records in upholding the order. Mr Pathak, on the other hand, supported the order dated 15.3.1996 and submitted that there is no ground for review. Moreover, the representation dated 11.1.1995 was not entertained but it was rejected in the threshold as it was prima facie belatedly submitted by the applicant.

3. I have heard learned counsel. The cause of action in O.A. 26 of 1995 arose out of the order dated 30.1.1995. This order was issued on the basis of the representation dated 16.1.1995. The order dated 15.3.1996 of this Tribunal has mainly confined to the order dated 30.1.1995. The applicant had submitted representation in 1972 as stated hereinabove and the respondents have not denied this fact. The implication of this representation on the reliefs sought for in the O.A. was not however considered in the order dated 15.3.1996. In the circumstances I am of the view

that this order is liable to review. Accordingly, the order dated 15.3.1996 is hereby recalled and the O.A. is restored to file for hearing afresh.

The Review Application is allowed. No order as to costs.

  
( G.L.SANGLYINE )  
ADMINISTRATIVE MEMBER



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

Review Application No. 13 /98  
in O.A. No. 26 of 1995.

IN THE MATTER OF :

An application under Section 22(3)(g)  
of the Administrative Tribunal Act,  
1985, for review of Judgment and  
Order dtd 15.3.96 passed in O.A.  
No. 26/95.

AND

IN THE MATTER OF :

Shri K.K. Sengupta ... Applicant.  
Vs.

Union of India & Ors. ... Respondents.

The humble petition on behalf of the  
above-named applicant -

Most Respectfully Sheweth :-

1. That the applicant being aggrieved by an order  
dtd 30.1.95 (Annexure 9 to the O.A.) rejecting his request  
for change of date of birth as time barred filed O.A. 26/95  
making a grievance against the same with further prayer for  
a direction to the respondents to correct the recorded date  
of birth in the service book as 28.2.41 in place of 1.3.37.

2. That in the O.A. it is the case of the applicant that his date of birth as recorded in the matriculation certificate was corrected by the Gauhati University authority and on that basis his recorded date of birth was required to be corrected in the service book. Accordingly, the applicant made an application dt 26.6.72 for necessary correction as regards his date of birth in the service book, to the then General Manager (Telecom) now redesignated as Chief General Manager (Telecom). Although the said application was submitted on 26.6.72 the respondents responded the same after 3 years vide Annexure '3' letter to the O.A. By the said letter, the matter was not closed rather the applicant was asked to explain the circumstances which stood on his way to make representation at an earlier date in-as-much-as the Gauhati University had corrected the entry as regards age in the matriculation certificate vide their letter dtd 27.2.71. The applicant vide his letter dtd 13.6.75 explained (Annexure 4 to the O.A.) the circumstances under which he could not submit any application before 26.6.72 immediately after the correction made by the Gauhati University authority on 27.2.71. The said representation dtd 13.6.75 is yet to be disposed of.

3. That the applicant under the aforesaid circumstances was under the bonafide believe that the authority concerned would take a decision in the matter on the basis of the clarification given by him in the year 1975. Thereafter having not received any response, the applicant submitted representation from time to time. In all his

Ctd....3

representation, he referred to the earlier representation including that of 1975. However, unfortunately, the C.G.M. (Telecom), Assam Circle, vide his letter dtd. 30.1.95 without communicating anything to the applicant directly, communicated its decision to the T.D.E., Silchar, that the request of the applicant cannot be entertained as it was time barred.

4. That the respondents filed their counter to which the applicant also filed his rejoinder. Instead of repeating the contentions made therein, the applicant craves leave of the Hon'ble Tribunal to refer and rely upon the statements made in the written statement as well as in the rejoinder.

5. That the Hon'ble Tribunal took up the matter for hearing and by its judgment and order dt 15.3.96 has been pleased to dismiss the O.A. The applicant has received a copy of the judgment on 3.4.96 and on perusal of the same he is of the bonafide opinion that there are grounds for review of the said judgment and order.

A copy of the judgment and order dt 15.3.96  
is annexed herewith as Annexure 'A'.

6. That the applicant is highly aggrieved by the said order dtd 15.3.96 and beg to prefer this review

Ctd....4

application on amongst others the following -

G R O U N D S.

i. For that the error apparent on the face of the records in holding that the representations of 1972, 1983, 1985 and 1988 were made to the General Manager whereas the representation dt 11.1.95 was made the Chief General Manager(Telecom) in-as-much-as the present C.G.M. earlier was know as G.M. and thus, the applicant made all his representations to the same authorities. On the other hand, even assuming but not admitting that the G.M. and C.G.M. are two different authorities, the respondents cannot absolve their responsibility from entertaining the representation and cannot avoid the same on the ground of ignorance as has been sought to be held by the Hon'ble Tribunal.

ii. For that the Hon'ble Tribunal committed manifest error of law as well as fact in holding that "apparently the applicant deliberately omitted referring to the position from 1972-75 while placing his case before GCM/Telecom, Assam Circle, Ulubari, Gauhati, respondent no. 3, vide his representation dt 11.1.95. He did not even enclosed <sup>with</sup> that the aforesaid representations dt 11.1.95, the copies of the representations of 1983, 1985 and 1988 mentioned therein and had mentioned them therein in vague and cryptic manner" (emphasis added). There was no occasion for the applicant to deliberately omit referring to the position of 1972 to 1975. There was also no occasion for the applicant to

enclose copies of the earlier representation <sup>with the one</sup> dt 11.1.95 and no fault could have been found on that account. There is also error apparent on the face of the record in holding that the representation of 1983, 1985 and 1988 have been mentioned in a vague and criptive manner. In this connection, the applicant states that he could not have done anything better than what he did for getting justice before the respondents. The Hon'ble Tribunal committed manifest error in shifting the responsibility to the applicant and protecting the responsibility of the respondents.

iii. For that the Hon'ble Tribunal committed manifest error of law as well as fact in holding that "in view of the above position, the respondents no. 3 cannot be balzmed for arriving at a conclusion that the request of the applicant was time barred". By such a view the Hon'ble Tribunal shifted the respons ibility to the applicant and thus has resulted error apparent on the face of the records in not highlighting anything as to how the applicant was respõnsible towards the conclusion arrived at by the respondent no. 3 in rejecting the claim of the applicant as being time barred. The Hon'ble Tribunal could not have been ignored the respon- sibility of 1972 and the queries made by the respondents in 1975 and the reply given by the applicant. A fact remains always a fact, more so, when the same is not denied by anybody. In the instant case, the fact of making representation in 1972 and the delay of 3 years on



the part of the respondents to respond to the same when they asked for explanation from the applicant vide their letter dtd 4.6.75 (Annexure 3) as to what prevented the applicant from submitting his representation earlier than 26.6.72<sup>is undisputed.</sup> The respondents took 3 years time in pointing out the delay of 1½ years on the part of the applicant. In view of the Annexure 3 letter dtd 4.6.75, the matter was kept alive by the respondents and unless and until the same is finalised by the respondents, the claim of the applicant could not have been branded as time barred and the Hon'ble Tribunal committed manifest error of law as well as fact in upholding the said impugned order.

iv. For that in view of the Annexure '3' letter dtd 4.6.75, the respondents cannot absolve their responsibility in furnishing a reply to the applicant. The Hon'ble Tribunal instead of appreciating the negligence on the part of the respondents has rather supported their action in not responding in time to the representations of the applicant. There is no denial of the fact that there was negligence on the part of the respondents in-as-much-as they merely sat over the matter after their letter dt 4.6.75 and the matter having not reached any finality, the respondent no. 3 could not have issued the impugned order rejecting the claim of the applicant as being time barred.

v. For that the Hon'ble Tribunal committed manifest error apparent on the face of the record in holding that it cannot be presumed that the representation of 1983,

Ctd....7

1985 and 1988 mentioned in the representation of the applicant dtd 11.1.95 representing the representations at Annexure 5, 6, and 7 of the O.A. in-as-much-as such a finding is based on presumption ~~withany~~ without any evidence on record.

vi. For that the Hon'ble Tribunal committed manifest error of law as well as fact in holding that the impugned order cannot be set aside on the ground that it is a non-speaking order. While holding so, the Hon'ble Tribunal has held that on the face of the representation dt 11.1.95, the impugned order is an apt order to be issued thereby once again shifting the responsibility to the applicant without casting any responsibility to the respondents. The Hon'ble Tribunal failed to appreciate that justice and fair-play demand that an authority must pass a speaking order, more particularly in view of the factual aspect of the matter since 1972 which with a little effort, respondent No. 3 could have found out and in case of any doubt the applicant could have been asked to clarify the doubts.

vii. For that there is apparent error in the face of the record in holding that there is no infirmity in ~~absent~~ in passing the impugned order in-as-much-as after admitting the case for hearing, the Hon'ble Tribunal ought not to have dismissed the O.A. on the ground of limitation.

viii. For that the Hon'ble Tribunal committed manifest error of law as well as fact in not taking into account the various contentions made in the O.A. as well as in the

rejoinder. The applicant in his O.A. made a grievance against the criptive order passed by the respondent No. 3 actual text of which was never communicated to the applicant but the Hon'ble Tribunal falling in line with the same has upheld the same totally ignoring the contributory negligence on the part of the respondents. Even if it is held that there is some negligence on the part of the ~~respondents~~ applicant, Plathora of decisions of the Apex Court as well as various other courts and Tribunals support the case of the applicant to the effect that the authority having not arrived at any finality in a matter after making certain queries cannot take the plea that the claim of the incumbent is time barred. The applicant craves leave of the Hon'ble Tribunal to cite those decisions at appropriate time.

ix. For that the Hon'ble Tribunal failed to appreciate that by dismissing the O.A. the very right of the applicant of being considered has also been taken away. Instead of dismissing the claim of the applicant as being time barred, the matter ought to have been remanded to the authority for a decision on merit which would have upheld substantial justice. It was with that view of the matter even the learned C.G.S.C. appearing for the respondents made a submission on that line of which the Hon'ble Tribunal duly took note of.

x. For that the Hon'ble Tribunal failed to appreciate that the respondents after setting over the matter for all these years without giving any finality to the matter could not have rejected the claim of the applicant as being time barred in as much as the respondents could not have turned round there own position as was depicted in 1975. In the

process, the principles of promisory estoppel, waiver, acquiescence and legitimate expectation have been violated. It is nobody's case that the applicant has represented his case for change of date of birth in the service book at the fag end of his career. The respondents themselves having made the query way back in 1975 to which the applicant duly replied and they having not arrived at any finality in the matter could not have rejected the claim of the applicant as being time barred.

xi. For that in my view of the matter, the impugned judgment and order is required to be reviewed and the O.A. be decided afresh on merit.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds in support of the instant review application at the time of hearing.

xii. That this review application has been filed bonafide and for ends of justice.


In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal would be pleased to admit this review application and upon hearing the parties and perusal

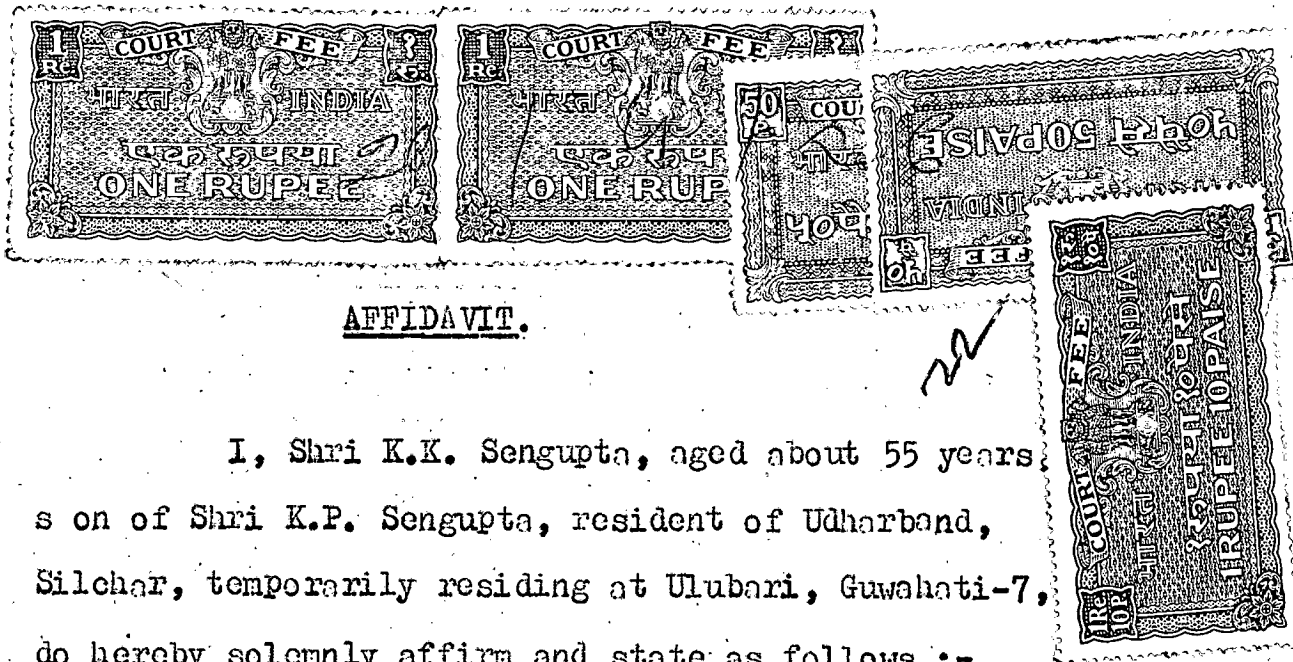
of records be pleased to set aside the judgment and order dt 15.3.96 passed || in O.A. no. 86/95 and/or be pleased to pass such further order/orders as the Hon'ble Tribunal may deem fit and proper.

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

CERTIFICATE :

I, Shri B.K. Sarma, Advocate, do hereby solemnly certified that the above grounds are good grounds of review and I undertake to support them at the time of hearing.

  
( B. K. Sarma )  
Advocate. 25.4.96



AFFIDAVIT.

I, Shri K.K. Sengupta, aged about 55 years, son of Shri K.P. Sengupta, resident of Udhharband, Silchar, temporarily residing at Ulubari, Guwahati-7, do hereby solemnly affirm and state as follows :-

1. That I am the applicant in O.A. No. 26/95 and also the applicant in the accompanying review application and as such, am fully acquainted with the facts and circumstances of the case.
2. That the statements made in paragraphs 1 to 5 are true to my knowledge and those made in paragraphs 6 are true to my information derived from the records of the case and the rests are my humble submission before this Hon'ble Court.

*Identified by  
Sri S. Sarna  
Advocate.*

*Kanti Kumar Sen Gupta*  
APPLICANT.



*Solemnly affirmed and declared before me  
by the deponent who is identified by  
Sri S. Sarna Advocate on this  
the 12 day of April, 1996*

*D. 28/4/96  
Judicial Magistrate.*

*Subd. Magistrate,  
1st Class, Guwahati.*

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.

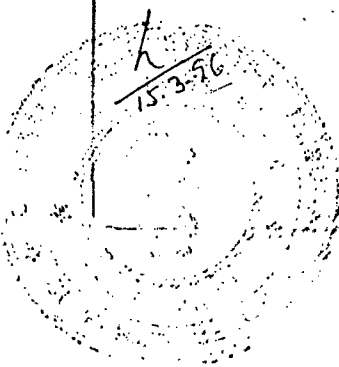
ORDER

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

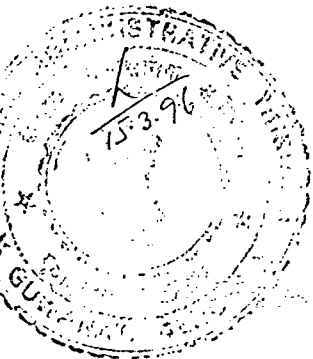
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certificate his age was 18 years 1 day as on 1.3.1955, that is, his date of birth was 1.3.1937. He claims that his age was erroneously recorded in the Matriculation certificate which should have been correctly recorded as 14 years 1 day as on 1.3.1955. 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 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

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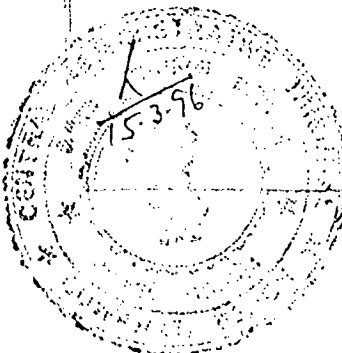




representation as far back as in 1972 but they kept silent and did not take any action on his representation since 1975 after the letter dated 4.6.75 was replied by him and have not communicated their decision. There cannot therefore be any ground of delay or laches attributable to him. The applicant 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 <sup>not</sup> 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

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- 15 -

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,

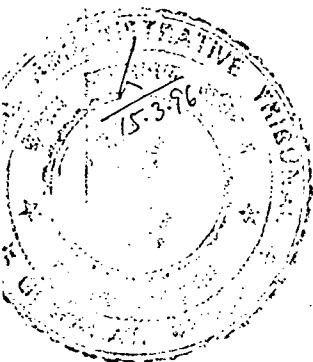
Sd/-

Dated at Silchar  
the 11.1.95.

(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,

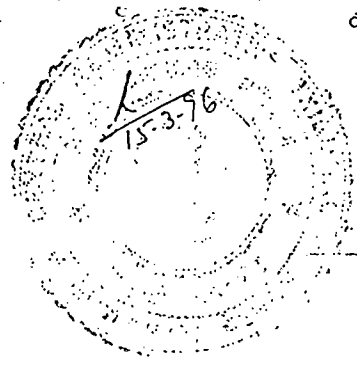
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Ulubari, Guwahati, respondent No.3, vide his representation dated 11.1.95. He did not even enclose with the aforesaid representation dated 11.1.95, the copies of the representations of 1983, 1985 and 1988 mentioned therein and had mentioned them therein 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

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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.

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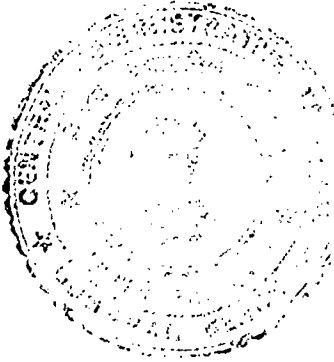


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4. In the light of the findings mentioned above arrived at by me, I am further of the view that other contentions raised in this application are not necessary to be considered for the purpose of its disposal.


The application is dismissed. No order as to costs.

Sd/- MEMBER (ADMIN)



Certified to be true Copy

प्रमाणित प्रतिलिपि

  
COURT OFFICER

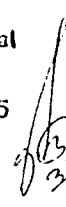
न्यायालय अधिकारी

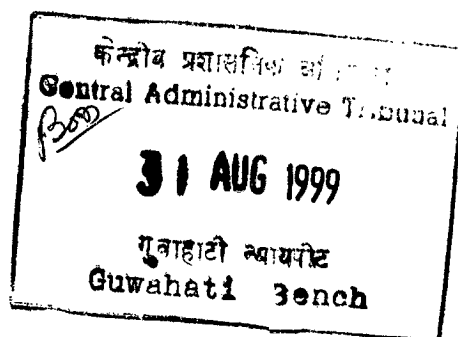
Central Administrative Tribunal

केन्द्रीय प्रशासनिक न्यायालय

Gowdham B. H. Gowdham S

गोव्दम बी. एच. गोव्दम एस

  
3/4/96



Filed by:  
31/8/99  
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(B. C. PATHAK)  
Addl. Central Govt. Secy. & Secy. to the  
Central Administrative Tribunal  
Guwahati Bench  
Guwahati.

In the Central Administrative Tribunal

Guwahati Bench ::: Guwahati.

R.A. NO. 13/98  
In O.A. No. 26/95.

Shri K.K. Sengupta  
..... Applicant.

-Vs-

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

(Affidavit-in-reply to Review Application )

I, Shri G.C. Sarma, Son of Late K.N. Sarma  
aged about 47 years, presently working as Asstt.  
Director (Legal) in the office of the C.G.M.T. Guwahati,  
being duly authorised and competent to swear-in this  
Affidavit, do hereby solemnly affirm and declare as  
follows :-

1. That the copy of the above R.A. No.13/98 has  
been served on the respondents and this Hon'ble Tribunal  
Tribunal directed the respondents to file written/statements  
/objection if any against the said review application in  
and accordingly this common written statements are filed  
for all the respondents.
2. That the statements made in the application  
which are not specifically admitted, are hereby denied  
by the respondents.

3. That the review application is barred by limitation and hence the same is liable to be dismissed. This Hon'ble Tribunal had passed the judgement and order on 15.3.96 and the review application has been made after the lapse of more than 2 years. The delay in filing the review application has not been explained and same has not been condoned by this Hon'ble Tribunal.
4. That the statements made in para 1, 2 and 3 the respondents state that these matters were raised in the O.A. No.26/95 and the respondents have nothing to comment.
5. That with regard to the statements in ground I and II the respondents state that the alleged representations of 1972, 1983, 1985 and 1988 were reportedly made to GMT, Shillong and the representation dated 11.1.95 was submitted to the CGMT, Guwahati, the GMT, Shillong (now CGMT, Shillong) and CGMT Guwahati are two different authorities each maintaining separate office as the head of the Telecom Circles. The representation dated 11.1.95 addressed to the CGMT, Guwahati was disposed of vide letter dated 30.1.95 (Annexure-9 in O.A.) by rejecting the representation holding it to be time barred. Moreover, the applicant failed to prove that he in fact submitted representation since 1972 onwards. The applicant has failed to give specific dates of such representations and he failed to support his claim by submitting copies. Hence such claims of the applicant can not sustain in law.

6. That with regard to the ground -II, the respondents state that the applicant could not support his case by submitting proof that he was alert and took steps for correction of date of birth after his joining in service in 1960. The ration in various decision of the Hon'ble Apex Court and the settled law relating to correction of date of birth is that such right extinguishers by lapse of time and no one can raise such issues at the fag end of one's service career.
7. That with regard to the ground No. IV of the review application the respondents state that it is abundantly clear that the applicant slept over his claim and rosed to the cause at a beletated stage with an intention to get some wrongful gain and hence his case was rejected by respondents.
8. That with regard to the grounds in para V the respondents state that the applicant failed to prove his case by supporting records/documents as claim in Annexure -7 of the application. Hence, the Hon'ble Tribunal rightly rejected the claim of the applicant.
9. That with regard to the grounds VI, VII and VIII the respondents respectfully submit that the Hon'ble Tribunal passed the reasoned order and decided the various contentions made in the original application.



10. That with regard to the ground IX, X and XI of the review application the answering respondents state that the matter of correction of date of birth by an employee during the tenure of service has been well settled by various decisions of various courts and including the Hon'ble Apex Court. Hence, the case of the applicant being covered by such decisions, he is not entitled to get relief as claimed by him.

11. That with regard to the statements made in paragraph 12 and the prayer portion of the review application the respondents state that the review applications has been filed malafide with ulterior motive for wrongful gains and as such the applicant is not entitled to get any relief whatsoever.

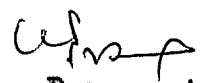
12. That the applicant has retired from service on ~~diff~~ attaining the age of superannuation on 28.2.95. His retirement benefit has been settled and the applicant is receipt of pension w.e.f. 1.3.95.

13. That in any view of the above facts and circumstances and the provisions of law, the applicant is not entitled to any relief and there is no ground whatsoever which merits review of the judgement dated 15.3.95 passed by this Hon'ble Tribunal in O.A. No. 26/95.


14. That the statements made in para 2 to 12 are true to my knowledge and I believe them to be true and correct, those made in para 1, 4 and 5 being matter of records, are true to my informations derived therefrom and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit in this 31<sup>st</sup> day of August, 1999 at Guwahati.

Identified by me  
Srinamani Sarma  
Advocate.

  
Deponent. 31/8/99

Solemnly affirmed and declared  
by the deponent, who is identified by Shri D. Sarma  
Advocate and signed on this 31<sup>st</sup>  
th day of August 1999 at  
Guwahati.

  
Advocate.  
( B. C. PATHAK )  
Addl. Secy. Govt. of  
Central Assam  
Guwahati.