

1600

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 166/96

R.A/C.P No. ....

E.P/M.A No. ....

1. Orders Sheet. O.A-166/96 ..... Pg. 1 ..... to 4 .....
2. Judgment/Order dtd. 16/4/97 ..... Pg. 1 ..... to 10 ..... Dismissed
3. Judgment & Order dtd. .... Received from H.C/Supreme Court
4. O.A. .... 166/96 ..... Pg. 1 ..... to 29 .....
5. E.P/M.P. .... NIL ..... Pg. .... to .....
6. R.A/C.P. .... NIL ..... Pg. .... to .....
7. W.S. ..... Pg. 1 ..... to 19 .....
8. Rejoinder ..... Pg. .... to .....
9. Reply ..... Pg. .... to .....
10. Any other Papers ..... Pg. .... to .....
11. Memo of Appearance .....
12. Additional Affidavit .....
13. Written Arguments .....
14. Amendment Reply by Respondents .....
15. Amendment Reply filed by the Applicant .....
16. Counter Reply .....

SECTION OFFICER (Judl.)

No. 166/96

Mr. B. K. Das

Applicant(s)

VS

Union of India & ors.

Respondent(s)

Mr. G. K. Bhattacharya, G. N. Das

Advocates for the applicant(s)

Mrs. N. Devi, Mr. P. Sarma

Mr. J. L. Sarkar, R. C.

Advocates for the Respondent(s)

S. Sengupta, R. C.

Office Notes

Date

Courts' Orders

21-8-96

Learned counsel Mr. G. N. Das

for the applicant. Learned counsel Mr. J. L. Sarkar for the respondents.

Heard counsel of the parties for Admission. Mr. Sarkar objects to the admission of the application on the ground of limitation. Application is admitted subject to consideration of delay and limitation at the time of final hearing.

Issue notice on the respondents by registered post. List for written statement and further order on 27-9-96.

Member

lm

m/21/8

This application is in form and within time C. F. of Rs. 50/- deposited vide IPO:BB No. 3467/11 Dated 1.7.96

*S. Seema*  
Dy. Registrar, 19/8/96

Two copies is require for courts. Received one copy. M/19/8/96.

No index sheet is provided.

22.8.96

One copy of Service Enquiry Ps. 5/ has been deposit No. 699 Dt. 22/8.

27.9.96

Learned Railway Counsel, Mr J.L. Sarkar is present, but submits that his name may be deleted as Mr S. Sengupta, learned Railway Counsel, who has submitted Vakalatnama in this case will conduct the case henceforth. Allowed. Office is directed to delete the name of Mr J.L. Sarkar and record the name of Mr S. Sengupta.

Written statement has not been submitted. List for written statement and further orders on 15.11.96 as requested by Mr Sengupta.

Member

Dt. 23.8.96.

6.9.96

Notice duly served on respect No. 1, 2, 4, 3, 6.

nkm m/30/9

24-9-96

Mr. S. Sengupta filed  
vacated name on b/h  
of R.G.

15.11.96

None for the applicants. Learned  
counsel Mr S. Sengupta for the respondents  
submits for time to submit the written state-  
ment.

List for written statement  
and further orders on 11.12.96.

*[Signature]*  
Member

nkm

*[Signature]*  
15/11

w/ statement has not been  
filed.

26/9

11.12.96

Mr.G.N.Das for the applicant.

Mr. S.Sengupta for the respondents.

Mr. Sengupta submits for short  
adjournment to file written statement.

List for written statement and for  
further orders on 30.12.1996.

*[Signature]*  
Member

trd

*[Signature]*  
14/12

w/ statement has not been  
filed.

14/11

written state ment has  
not been filed.

*[Signature]*  
10.12

30.12.96

Learned counsel Mr S. Sengupta for the  
respondents prays for further time to file  
written statement.

List for written statement and further  
orders on 16.1.1997.

*[Signature]*  
Member

15-1-97

1) Notice duly served on  
Respondant NO- 1, 2, 3,  
4 & G.

nkm

2) written statement has  
not been filed.

16.1.97

Mr. M.Chanda submits that Mr. G.N.Das  
cannot be present due to his personal  
difficulties.

Mr. S.Sengupta for the respondents submits  
that he may be allowed further time to submit  
written statement.

List for written statement and further  
orders on 29.1.1997.

*[Signature]*  
Member

trd

*[Signature]*  
17/11

w/ statement has not been  
filed.

26/12

3

O.A. 166/96

28/1/97

29-1-97

Learned counsel Mr.G.N.Das for the applicant. Railway counsel Mr.S. Sengupta submits written statement a copy of which has been served on Mr.G.N.Das. Case is ready for hearing.

List for hearing on 19-2-97.

NO Written Statement has been Submitted.

m/ 28/1

be complete.

m/ 30/1

lm  
m/ 30/1

*[Signature]*  
Member

19.2.97

Mr G.N. Das, learned counsel for the applicant, is present. None for the respondents. Mr M. Chanda mentions on behalf of learned Railway Counsel, Mr S. Sengupta.

List for hearing on 5.3.97.

4-2-97

D/S filed by the Respondents.

nkm  
m/ 19/2

*[Signature]*  
Member

18.2.97

5.3.97

1) Written statement has been submitted on behalf of the respondents.

Mr G.N.Das for the applicant. Mr S.Sengupta for the respondents.

On the prayer of Mr Das hearing adjourned to 19.3.1997.

2) Memo of appearance has not been filed.

m/ 18/2

pg  
m/ 6/3

*[Signature]*  
Member

1) W/S statement - has been filed.  
2) no appearance has been filed.

19-3-97

Mr.G.N.Das for the applicant. Mr. Mr.S.Sengupta Railway counsel for the respondents. Counsel of both sides have completed their submission. Hearing concluded. Judgment reserved.

*[Signature]*  
Member

lm  
m/ 20/3

(4)

OA 166/96

16.4.97

None for the applicant. Mr S. Ven-  
gupta, learned Railway advocate for  
the respondents.

Judgment and order pronounced.  
Application is dismissed. No order  
as to costs.

Received  
Copy of judgment  
for respondent.  
No. 1007.  
Sukomal Dasgupta.  
25/4/97  
R.A. Ghoshal

  
Member

27.4.97

Copy of the judgment  
has been sent to the  
D/section for issuing  
the same to the  
parties through Regd.  
with A/D.

pg  
for  
13/4/97

vt  
Issued vide  
D.No. 1592 to 1597  
of 5.5.97  
sh.



A

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.166 of 1996.

Date of Order : This the 16th Day of April, 1997.

Shri G.L.Sanglyine, Administrative Member

Shri Birendra Kumar Das,  
Head Coaching Clerk,  
Guwahati Railway Station,  
N.F.Railway, Guwahati.

. . . Applicant

By Advocate Shri G.N.Das.

-Versus-

1. Union of India  
represented by the General Manager,  
N.F.Railway, Maligaon,  
Guwahati-11.
  2. General Manager,  
N.F.Railway, Maligaon,  
Guwahati.
  3. General Manager(P)  
N.F.Railway, Maligaon,  
Guwahati.
  4. Divisional Railway Manager(P)  
N.F.Railway,  
Lumding, Nagaon, Assam.
  5. Station Manager,  
Guwahati Railway Station,  
N.F.Railway, Guwahati-1.
  6. Deputy C.P.O. (IR)  
N.F.Railway, Head Quarter,  
Maligaon, Guwahati.
- . . . Respondents

By Shri S.Sengupta, Railway counsel.

ORDER

G.L.SANGLYINE, ADMINISTRATIVE MEMBER

The Matriculation certificate dated 10.8.1957 (Annexure-II) shows that before it was corrected the age of the applicant Birendra Kumar Das was 17 years 6 months as on 1.3.1957. The applicant entered the service of the Railways, according to him, on 18.9.1963 on the basis of this Matriculation certificate. He had recorded his date of birth in the opening page of his service book, Annexure-1 to the written statement, as 1.9.1939. This was attested by him on 17.9.1963.

contd..2

2. According to the applicant subsequently he found his horoscope in 1971 and according to this horoscope his date of birth should have been 21.1.1943. Consequently, he requested the Registrar, Gauhati University to change his age recorded in his Matriculation certificate. The University changed his age and on 1.9.1971 recorded on the certificate that the age of the applicant was 14 years 1 month 10 days as on 1.3.1957. Consequent to the change recorded by the University, the applicant submitted representation, according to him on 3.10.1975 to the D.S(P), Lumding, N.F.Railway praying for correction of his age recorded in his service records. Thereafter the applicant submitted representation to the DRM(P), Lmg, N.F.Railway on 24.6.1981 reminding him of the letter dated 3.10.1975. On 1.5.1984 he also submitted representation to the Chief Personal, Officer, Maligaon, N.F.Railway requesting for correction of his age without referring to any previous correspondances. Again on 2.3.1987 he sent another letter to the DRM(P), Lumding, N.F.Railway referring to his letter dated 3.10.1975, 24.6.1981 and 5.2.1983. The DRM(P), Lumding vide his letter No.ES-236-B(T) dated 10.8.1988 (Annexure-VIII) replied with reference to the letter dated 1.5.1984 and 2.3.1987 above rejecting the prayer of the applicant on the grounds

- (i) that opportunity to represent for rectification of any mistake in their recorded date of birth was allowed to employees upto 31.7.1973 and
- (ii) that the applicant got his age corrected by the University in 1971 but he did not apply for correction before 31.7.1973 but had come forward only in the year 1984, as such at that <sup>nt</sup>date the prayer of the applicant cannot be acceded to.

Again on 22.9.1995 the applicant raised the issue. This time before the General Manager, N.F.Railway, Maligaon. Reminders were sent by the applicant and ultimately the Divisional Railway Manager(P), Lunding intimated to the applicant vide letter No.E/III-Gr.2(T) dated 5.8.1996 the rejection of the General Manager(P) as contained in his letter No.195G/4/2(T) dated 1/2-7-96. The reasons given are :

(i) That the applicant had entered in the first page of his service book his date of birth as 1.9.1939 in his own handwriting and duly attested by him.

(ii) The applicant had got his age corrected by the University on 1.9.1971 and he was in service as on 3.12.1971 but had failed to apply for alteration of his date of birth within the stipulated date 31.7.1973 fixed by the Railway Board.

For the aforesaid reasons the General Manager could not accept the request of the applicant at this stage. Hence this application.

3. Mr S.Sengupta, learned counsel for the respondents submitted that the instant O.A. submitted by the applicant is barred by limitation of time in terms of Section 21(1) (b) of the Administrative Tribunals Act 1985. The applicant had made representation in the past and this was rejected by order dated 10.8.1988. He cannot be allowed to avail the opportunity to come before this Tribunal on the basis of the second rejection dated 5.8.1996. Mr G.N.Das, learned counsel for the applicant, on the other hand, has resisted the objection of Mr Sengupta. According to Mr Das the Railway had issued a Circular No.E/71/C(c) dated 29.7.1988 directing that case of alteration of date of birth will

be decided only by the Chief Personnel Officer. The Order No.ES-236-B(T) dated 10.8.1988 issued by the Divisional Railway Manager(P), Lunding is without jurisdiction and, therefore, it cannot be taken into consideration for determination of limitation. The date of limitation is to be counted only from 5.8.1996 on which date the Divisional Railway Manager(P), Lunding issued the impugned letter conveying the decision of the General Manager(P), Maligaon. I have heard learned counsel and also perused the records. In his letter dated 22.9.1995 addressed to the General Manager, N.F.Railway, Maligaon, the applicant had specifically drawn his attention to the rejection made by the Divisional Railway Manager vide his letter No.ES-236-B(T) dated 10.8.1988. Despite this fact the General Manager had entertained the prayer of the applicant and rejected the same with grounds as stated above in place of simply rejecting the prayer of the applicant on the ground that it was earlier rejected already. Under the circumstances, I consider that this present O.A. of the applicant arose out of the order dated 1/2-7-96 of the General Manager(P), N.F.Railway, Maligaon and therefore it is in time.

4. Mr G.N.Das has submitted that the prayer of the applicant was rejected arbitrarily as having not been submitted before 31.7.1973 without going into the merit of the case of the applicant and without recording reason. According to him the fixation of 31.7.1973 as a cut off date is by itself arbitrary. It is his submission that the applicant could not have come forward before 31.7.1973 as the corrected Matriculation certificate was received by him only in March 1974. Further, the rejection has resulted in reduction of the period of service of the applicant but this rejection was made without

hearing the applicant which is bad in law. Mr Sengupta appearing for the respondents has submitted that the circular of the Railway Board fixing 31.7.1973 as a cut off date for the purpose of submission of requests for alteration of date of birth by the railway employees who were in service as on 3.12.1971 has the force of law. The applicant was in service as on 3.12.1971 but he had not come forward with a request for alteration of his date of birth before the cut off date. Even after the correction of his date of birth in the Matriculation certificate the applicant had not submitted any request immediately but he had, according to records of the respondents, submitted his request only on 1.5.1984. He submits that the Hon'ble Supreme Court had held that such belated request should not be entertained. Mr Sengupta further submitted that the corrected date of birth of the applicant is not binding on the respondents as the Railway was not made a party to such a correction. The Railway recognises only the date of birth of the applicant as declared by him at the time of entry into the service under the Railways. The Railway had not reduced the period of service of the applicant based on the date of birth declared by him at the time of his entry in service and accepted by the Railways which forms part of the terms of contract of service of the applicant with the Railways. Therefore, according to him, there is no justification in the contention of the applicant that he was not given opportunity of being heard before his prayer was rejected as there is no reduction from the accepted position. He has also submitted that it is not correct to say that no reason was recorded in rejecting the prayer of the applicant as reasons have already been recorded in the respective orders rejecting the prayer of the applicant for alteration

of his date of birth. The learned counsel Mr G.N.Das has referred to 1990(3) SLJ 266, AIR 1993 SC 2647, 1995(1) GLJ 295 and AIR 1969 SC 1269 while making his submission. Mr S. Sengupta similarly referred to AIR 1993 SC Pt.2 page 1367 and 1969 Labour and Industrial Cases 1017 in his submission. These decisions will be referred to later on if they are considered necessary for disposal of this application.

5. The first question to be considered in this case is whether the applicant had come in time before the competent authorities of the respondents to seek alteration of his recorded date of birth. The Railway had sought to amend the Indian Railway Establishment Code Vol.I to the effect that requests for alteration of date of birth of employees should not be entertained after completion of the period of probation or 3 years service whichever is earlier. However, in order to alleviate hardship of employees who were working as on 3.12.1971 time was extended for them to submit the requests for alteration of date of birth, if any, upto 31.7.1973 vide letter No.E(NG)II-70 BR/1 dated 4.8.72. The contention of Mr Das that the fixing of the cut off date 31.7.73 is arbitrary ~~and~~<sup>is</sup> unacceptable as the applicant has not in this C.A sought to quash this order dated 4.8.72. His other contention that the applicant could seek for alteration of his date of birth after 31.7.73 in view of the letter No. E/71/O(c) dated 29.7.88 issued by the General Manager, N.F. Railway to the effect that alteration of date of birth would be decided personally by the Chief Personnel Officer only with speaking order is also unacceptable because this letter does not extend the cut off date of 31.7.1973 fixed by the respondents for those employees who were in the Railway

service as on 3.12.1971. The applicant was in service as on 3.12.1971. As far as he is concerned delay or laches on his part has to be reckoned with reference to the cut off date 31.7.1973. Reckoning such there is a delay. The reason given by the applicant is that this cut off date is not applicable to him as he could not come before the Railway authorities for alteration of his date of birth before 31.7.73 as the copy of his corrected Matriculation Certificate was received by him only in March 1974. Even if it is accepted that he had received the copy of the corrected certificate only in March 1974, there is no reason assigned by the applicant to the delay in submission of his request for alteration of his recorded date of birth between March 1974 and 3.10.1975, the date on which, according to him, he submitted the first request. After 3.10.75 he woke up only on 24.6.1981 to remind the respondents about his request and thereafter he reminded them only occasionally after gaps of long years. His representation dated 1.5.84 was rejected by the respondents on 10.8.1988. But the applicant did not take up his case again until 22.9.95. No reason for such delay has been given by the applicant except making vague and unsupported statement that he regularly visited the office of General Manager(P), N.F.Railway, Maligaon many times seeking for justice but he was being told that the matter was being looked into. In Union of India Vs. Harnam Singh reported in AIR 1993 SC Part-2 P.1367 the Hon'ble Supreme Court has held :

"It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

In Secretary & Commissioner, Home Department and others vs. R.Kirubakaran reported in AIR 1993 SC 2647 the Hon'ble Supreme Court has held :

"While disposing of any such application, the Court or the Tribunal, has first to examine, whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the Court or Tribunal has to examine, why such application was not made within a reasonable time after joining the service."

The applicant had in his possession the corrected copy of the Matriculation certificate as in March 1974 as stated by him in this application. But he had submitted the request, according to him, only on 3.10.1975 and had not pursued his case seriously and regularly thereafter as would be seen from the facts available on records as narrated above. Thus despite possessing the evidence in the form of a corrected Matriculation certificate the applicant had without sufficient reason failed to make his request before the authorities of the respondents within reasonable time. Therefore, the instant application of the applicant has to fail on the ground of delay and laches on his part to approach the authorities of the respondents within reasonable time and in the absence of any reason justifying such delay and laches.

6. On perusal of the impugned order I find that the contention of the applicant that no reason was assigned to the rejection of his prayer and that the respondents had not gone into the merit of his case is unacceptable. The order dated 1.7.1996 issued by the General Manager(P), N.F. Railway shows that one of the reasons why the request for

alteration of the recorded date of birth could not be accepted at the time is because though the correction was made by the University on 1.9.1971 the applicant, who was in service as on 3.12.1971, had failed to submit his request before 31.7.1973. Thus the thrust of the rejection is that the applicant had made belated claim. The reasoning of the respondents may be wrong or without merit but it cannot be said that the respondents had not applied their mind or recorded their reasons while rejecting the request of the applicant. Accordingly, the contention in this regard is dismissed.

7. The period of continuation of the applicant in service is determined by the date of birth declared by him at the time of entry in service and recorded in his service record and accepted by the employer. The applicant has a right to continue in service during this period. The period of service of the applicant determined on this basis had not been curtailed by the rejection of his prayer to allow alteration of his recorded date of birth. Therefore, his right has not been affected. Mr Sengupta has referred to the judgment of the Hon'ble Calcutta High Court reported in 1969 Lab. I.C. 1017 in V.G.Rav vs. General Manager, South Eastern Railway and others in which in para 11 it was held :

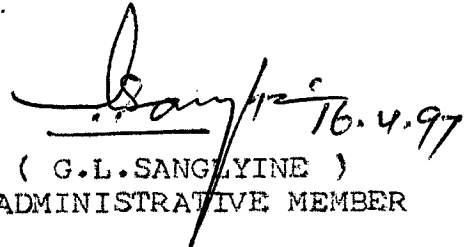
"If the Railway had been made a party defendant, the respondents would have been bound, under the general law, to give effect to the inter partes judgment, irrespective of what was provided for in the Service Rules. But that has not been done by the petitioner. The respondents cannot, therefore, be compelled to give effect to the declaration made at annexure 'B'."

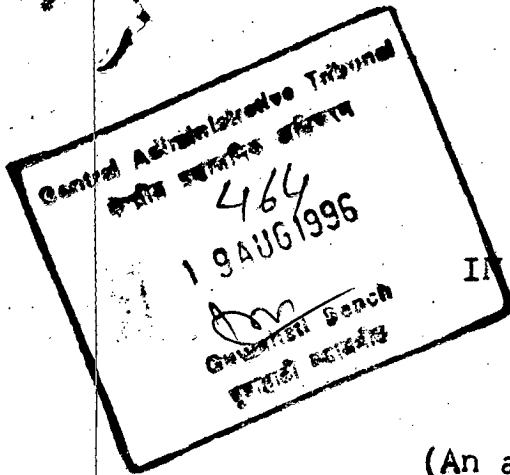
This Tribunal had held in the order dated 26.7.1996 in O.A.No.162/95 in Madhusudhan Roy Choudhury vs. Union of

India & Ors. and in the three other cases mentioned therein that the alteration of date of birth made by the University on the request of an employee after such employee entered service is not binding on the employer when the employer was not made a party by the employee before the University. The respondents had not been made party to the alteration of age in the Matriculation certificate in the present case. In the light of the above I am of the view that the plea of the applicant that civil consequence is involved in the rejection of his prayer and as such, the order is bad in law as it was issued without affording opportunity of being heard to him is unacceptable as no right vested on the applicant has been taken away by the rejection.

In the result, the application is dismissed.

No order as to costs.

  
( G.L.SANGLYINE )  
ADMINISTRATIVE MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :  
GUWAHATI BENCH.

Filed by: Nelima Devi  
Advocate  
19.8.96  
Birendra Kumar Das

(An application U/s 19 of the Administrative  
Tribunals Act, 1985).

O.A. NO. 166 196.

Shri Birendra Kumar Das.

...Applicant..

-Versus-

Union of India and others.

...Respondents..

1: PARTICULARS OF THE APPLICANT :

- i) Shri Birendra Kumar Das.
- ii) Son of Late Golok Ch.Das.
- iii) Aged about 53 years.
- iv) Head Coaching Clerk,  
Guwahati Railway Station  
N.F.Railway, Guwahati.

2: PARTICULARS OF THE RESPONDENTS:

- 1) Union of India represented by the General Manager,  
N.F.Railway , Maligaon , Guwahati-11.
- 2) General Manager,  
N.F.Railway, Maligaon,  
Guwahati .

Contd...

Recd  
J.D. Das  
19/8/96

- 3) General Manager (P)  
N.F. Railways, Maligaon  
Guwahati , Assam.
- 4) Divisional Railway  
Manager (P) , N.F. Railways,  
Lumding , Nagaon, Assam .
- 5) Station Manager ,  
Guwahati Railway Station,  
N.F. Railway , Guwahati-1.
- 6) Deputy C.P.O. (IR)  
N.F. Railway , Head Quarter , Maligaon .

3: THE APPLICATION IS MADE AGAINST THE FOLLOWING ORDER :

Order No. E/III-GR.2(T) dated 5.8.96 passed by the Respondent No.4 rejecting the prayer of the applicant for correction of the D.O.B. in the Service Book on the basis of the D.O.B. as corrected by the Gauhati University authorities.

4: JURISDICTION OF THE TRIBUNAL :

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

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

Contd..

6: FACTS OF THE CASE :

1) That the applicant duly passed the Matriculation examination in 1957 of the Gauhati University . The applicant comes from a poor and respectable family of Barpeta. The applicant initially joined the Railway service as Tally Clerk on 18.9.63 and was posted to Guwahati Railway Station. Thereafter , he was promoted to the rank of Senior Coaching Clerk on 9.2.82 and posted as such to the Guwahati Railway Station. In appreciation of good service records, the applicant was promoted to the rank of Head Coaching Clerk and he resumed his duties on 7.1.87 at Guwahati Railway Station where he has been serving as such till now . Since the date of joining service , the applicant has been serving sincerely and honestly and to the best of his ability. There was no occasion when he incurred the displeasure of his superiors at any point of time. In fact , in recognition of good service records, the authorities granted him advance increments in 1974. He was also granted a money reward of Rs.200/- "for his high sense of duty at the critical moment on 4.3.80 at Gauhati Station which saved the prestige of the Railway Administration " .

A copy of the office memorandum No.C/Misc/80 dated 30.6.80 /5.7.80 granting the money reward is annexed herewith and marked as Annexure- I.

2) That the Matriculation certificate Nb.375 dated 10.8.57 issued by the Registrar, Gauhati University

Contd..

Birendra Kumar Das

in favour of the applicant recorded the age of the applicant as 17 years 6 months on the First of March, 1957 (date of birth being 1.9.39 ) and accordingly the date of birth of the applicant was recorded in the Service Book as 1.9.39.

3) That, thereafter, while the applicant was serving as Tally Clerk at Gauhati Railway Station, his mother, Menaka Bala Das (who died in July ,1985 ) showed him his horoscope in early 1971 . The applicant went through his own horoscope and found that his date of birth was recorded as 21.1.43 . The applicant, immediately submitted an application to the Registrar, Gauhati University enclosing the Matriculation certificate in original and the horoscope and praying for the correction of the age recorded in the certificate. The University authorities, after proper verification of facts, became satisfied and the applicant's age was duly corrected as 14 (fourteen) years 1 (one) month 10 (ten) days instead of 17 years 6 months on the First of March, 1957 and the relevant corrections were duly initialled on 1.9.71 by the Registrar with his official seal. The applicant received the corrected certificate only in March 1974 .

A copy of the said certificate is annexed herewith and marked as Annexure- II.

4) That the applicant , on 3.10.75, submitted a representation to the then Divisional Superintendent (P), N.F. Railway , Luming through the Station Superintendent , Guwahati Railway Station praying for correction of the date

Contd..

Birendra Kumar Das

of birth recorded in the service sheet of the applicant in view of his age since corrected by the Gauhati University authorities and a copy of the corrected certificate was also enclosed. The representation was duly received by the Station Superintendent, Gauhati Railway Station and forwarded the same to the then Divisional Superintendent (P), Luming.

A copy of the representation dated 3.10.75 is annexed herewith and marked as Annexure-III.

5) That the representation was kept pending by the Respondent No.4 for no apparent reason. The applicant used to visit the office of the Respondent No.4 every now and then and he was told by the office that his representation was being processed for consideration and disposal. As there was no response as to the fate of the representation dated 3.10.75, the applicant, on 24.6.81, submitted a reminder representation to the then Divisional Railway Manager (P), N.F. Railway, Luming with reference to his earlier representation praying for necessary correction of his age in the Service Sheet. A certified copy of the Matriculation certificate was also annexed therein.

A copy of the reminder representation dated 24.6.81 is annexed herewith and marked as Annexure-IV.

6) That, inspite of reminders and personal contacts, the applicant became surprised as to why the Respondent No.4 was not inclined to consider the representation of the

Contd..

Birendra Kumar Das

applicant so long . On 1.5.84 , the applicant submitted a representation to the Chief Personnel Officer , N.F. Railway , Maligaon through proper channel praying for consideration and disposal of the representation filed by the applicant regarding correction of his age in the Service Book. It was surprising that all efforts made by the applicant failed to elicit any reply from the authority . The applicant , on 2.3.87, again submitted a reminder representation to the Respondent No.4 referring to his earlier representation / reminders and praying for his attention to consider and to dispose of the representation pending so long.

Copies of the reminders dated 1.5.84 and 2.3.87 are annexed herewith and marked as Annexure-V and VI respectively.

7) That the applicant begs to state that the General Manager (P) , N.F.Railway , Guwahati (Respondent No.3) vide his office memorandum No.E/71/O(C) dated 29.07.88, issued a circular to all concerned including D.R.M.,Luding to the effect that the cases regarding alteration of date of birth would be decided personally by the Chief Personnel Officer and not by any authority lower in rank than the Chief Personnel Officer . The circular further stipulated that, while disposing of the cases of alteration of date of birth, there will be a speaking order from the Chief Personnel Officer in each and every case whether accepting or rejecting the prayer of the staff concerned .

A copy of the circular dated 29.07.88 is annexed herewith and marked as Annexure-VII.

8) That inspite of the above circular, the Respondent No.4, by his office memorandum No.ES-236-B (T) dated 10.8.88, informed the applicant that the staff were given an opportunity to represent for rectification or any mistake in their recorded date of birth upto 31.7.73 and no second opportunity was given after 31.7.73 vide CPO/MLG'S No.Rect/391 dated 2.9.72 and accordingly the E/71/O(C) prayer of the applicant was summarily rejected completely ignoring the circular dated 29.7.88. It would be pertinent to mention here that the Respondent No.4, being an authority lower in rank than the Chief Personnel Officer, had no authority to reject the prayer of the applicant in terms of the circular dated 29.07.88 (Annexure-VII.) as this power was vested only in the Chief Personnel Officer, Maligaon. The Respondent No.4 not only flouted the circular (Annexure-VII) issued by the competent authority but also exceeded his jurisdiction in the matter.

A copy of the memorandum dated 10.8.88 is annexed herewith and marked as Annexure-VIII.

9) That the applicant has tried his best to obtain a copy of circular no. CPO/MLG No.Rect/391 dated E/71/O(C) 2.9.72 fixing 31.7.73 as the cut off date for correction of age but inspite of his best efforts, he could not collect the same and as such he craves leave <sup>of</sup> ~~before~~ this Hon'ble Tribunal to direct the respondent to produce the same.

Contd..

10) That the applicant was regularly visiting the office of the Respondent No.3 at Maligaon seeking justice but he was being told that his case was being looked into . Finding no prospect of getting relief, the applicant, on 22.9.95, submitted a prayer to the General Manager , N.F. R railway ,Maligaon (Respondent No.2) explaining the facts and circumstances under which the Respondent No.4 illegally rejected the prayer of the applicant and praying for consideration.

A copy of the prayer dated 22.9.95 is annexed herewith and marked as Annexure-IX.

11) That the applicant became surprised that the Respondent No.2 was also not inclined to do justice to him and no decision was conveyed to him . The applicant had submitted reminders dated 09.11.95 and 2.4.96 to the Respondent No.2 but surprisingly no intimation was given to the applicant as to the fate of his appeal .

Copies of the reminders dated 09.11.95 and 02.04.96 are annexed herewith and marked as Annexure-X and XI respectively.

12) That the applicant became completely frustrated when he found that nobody was interested to look into the grievance of the applicant . On 28.5.96, the applicant went to N.F. Railway Head Quarters at Maligaon and sought an interview with the Deputy C.P. (IR) but he, instead of personally hearing the grievance of the applicant,

Contd..

sent back the interview slip with the note in his own handwriting to the effect that "your case is being processed. You will be informed in due course".

A copy of the interview slip dated 28.5.96 containing the note is annexed herewith and marked as Annexure-XII.

13) That, on 15.6.96, the applicant submitted another appeal to the Respondent No.2 stating the entire facts and praying for consideration of his case before he proceeded on voluntary retirement.

A copy of the appeal dated 15.6.96 is annexed herewith and marked as Annexure-XIII.

14) That the applicant has now received a communication No. E/III/Gr.2(T) dated 5.8.96 from the Respondent No.4 whereby the prayer of the applicant has been rejected on the ground that he failed to apply for necessary correction of his date of birth by 31.7.73, the cut off date fixed by the Railway Board .

A copy of the letter dated 5.8.96 is annexed herewith and marked as Annexure-XIV.

15) That, being highly aggrieved, the applicant is approaching this Hon'ble Tribunal for <sup>appropriate</sup> ~~appointed~~ relief.

7 : DETAILS OF REMEDIES EXHAUSTED :

The applicant submitted representations to the authorities for correction of his date of birth but it was arbitrarily rejected.

contd..

8 : The applicant further declares that he has not previously filed any application/writ petition or suit regarding the matter in respect of which this application has been made before any Court of law or any other authority or any other Bench of this Hon'ble Tribunal and no such application /writ petition or suit is pending .

9 : RELIEF SOUGHT AND GROUNDS :-

I) For that the impugned order rejecting the prayer the applicant for correction of his date of birth has been arbitrarily and unilaterally <sup>passed</sup> ~~rejected~~ without any basis and as such the impugned order is bad in law and liable to be set aside.

II) For that the applicant has a vested right to get his date of birth corrected in his service book and this right flows from the right he continues in service until he reaches the age of superannuation. The authority has committed a great illegality by rejecting the prayer of applicant for correction of his date of birth specially when the Gauhati University authority has corrected his age recorded in his Matriculation Certificate and as such the impugned order is bad in law and is liable to be set aside.

III) For that, it is a settled principle of law that the age, <sup>recorded</sup> ~~recovered~~ in Matriculation certificate should invariably be accepted as conclusive proof of date of birth and correction of age in the Matriculation certificate

contd...

done by the University authority should also be the sole basis or conclusive proof for making correction in date of birth in service book. The authority committed an illegality by rejecting the prayer of the applicant in violation of the settled principle of law and as such the impugned order is bad in law and liable to be set aside.

IV) For that it is incumbent on the part of the authorities to consider the representation praying for correction of date of birth specially when curtailment of the age of the applicant in the service book involved civil consequences and there should have been a proper enquiry and an opportunity of being heard ought to have been given to the applicant before arbitrarily rejecting the his prayer and that not having been done, /action of the authority cannot stand the test of law as it contravenes the principles of natural justice and as such the impugned order is bad in law and liable to be set aside.

V) For that, the impugned order has the effect of a penalty and as the procedure laid down for imposing penalty has not been followed, the impugned order is bad in law and liable to be set aside.

VI) For that the cut off date fixed by the Railway authorities does not have the <sup>sanction</sup> ~~action~~ of law and as such the impugned order rejecting the prayer of the

contd....

applicant on the basis of the cut off date, is not sustainable in law and as such it deserved to be set aside.

VII) For that the applicant prayed to the authority for correction of his age as per his Matriculation certificate as far back as on 3.10.75 and the authority sat over the matter and belatedly informed him that since he did not apply for correction before 31.7.73, his prayer could not be agreed to as per Rules as he had applied only in the year 1984 when, in fact, the applicant ~~was~~ applied for as far back as on 3.10.75 and as such the impugned order passed without any application of mind is bad in law and liable to be set aside.

VIII) For that, though the authority rejected the prayer of the applicant only on the ground that he did not apply for alteration before 31.7.73, the purported cut off date and that no opportunity was given after 31.7.73 . From circular dated 29.7.88 (Annexure-VII), it will be apparent that the authority even in 1988 were taking up cases for alteration of date of birth <sup>and</sup> as such the impugned order is bad in law and liable to be set aside.

IX) For that the University Authority, after properly considering the matter, had changed the date of birth earlier recorded and the Respondent authority ought to have considered the case of the applicant on merits instead of rejecting on the basis of some

contd....

instructions which do not have the force of law and are contradictory and as such the impugned order is bad in law and liable to be set aside.

X) For that the purported date 31.7.73 has no relevance whatsoever to the service career of the applicant and the same is an imaginary and artificial date and the ground for rejection of the applicant's prayer is liable to be set aside on this ground alone.

XI) For that in any view of the matter, the impugned order is bad in law and liable to be set aside.

10 : PRAYER

It is, therefore, prayed that your Lordship would be pleased to admit this application, called for the entire records of the case, asked the opposite parties to show cause as to why the impugned order (Annexure-XIII) should not be set aside and after perusing the causes shown, if any and hearing the parties, set aside the impugned order and direct the date of birth of the applicant be corrected in terms of the date of birth as corrected by the Gauhati University authority and/or pass any other order/orders as your Lordships deem fit and proper so as to grant relief to the applicant.

XIV

contd..

- 11 . INTERIM ORDER :  
NIL.
- 12 . Does not arise.
- 13 . Postal order No. 8-09-346711 dated 17-8-96  
issued by the post office at Gauhati enclosed.

contd..

Birendra Kumar Das.

VERIFICATION

I, Shri Birendra Kr. Das, son of Late Golok Das, aged about 53 years, at present serving as Head Coaching Clerk at Gauhati Railway, do, hereby, verify that the contents of the paragraphs 1, 2, 3, 4, 5, 6, 7 are true to my knowledge and these <sup>8, 9, 10, 11, 12</sup> made in paragraphs .... 13 are believed to be true on legal advice and that I have not suppressed any material fact.

place - Gauhati  
Dt. 19.8.96.

Birendra Kumar Das  
Signature.

...

Sanction

DAO/LMG has accorded sanction of Cash award amount of Rs. Two hundred) only in favour of Shri Birendra Kumar Das, CC/CHY for his high sense of duty at Gauhati station on 4.3.80 at Gauhati station which is in the purview of the Railway Administration.

Sd/- P. R. Sarkar,  
Divisional Railway Manager  
N. F. Railway, Itanagar.

No. C/11

dt. 30.6.80

Copy for

To :-  
57  
CHY/LMG alongwith one spare copy of the memorandum. Necessary pay order for Rs. 200/- as cash award may be issued in favour of Shri Birendra Kumar Das, CC/CHY to be paid in presence of AOS/St./CHY under intimation to this office.

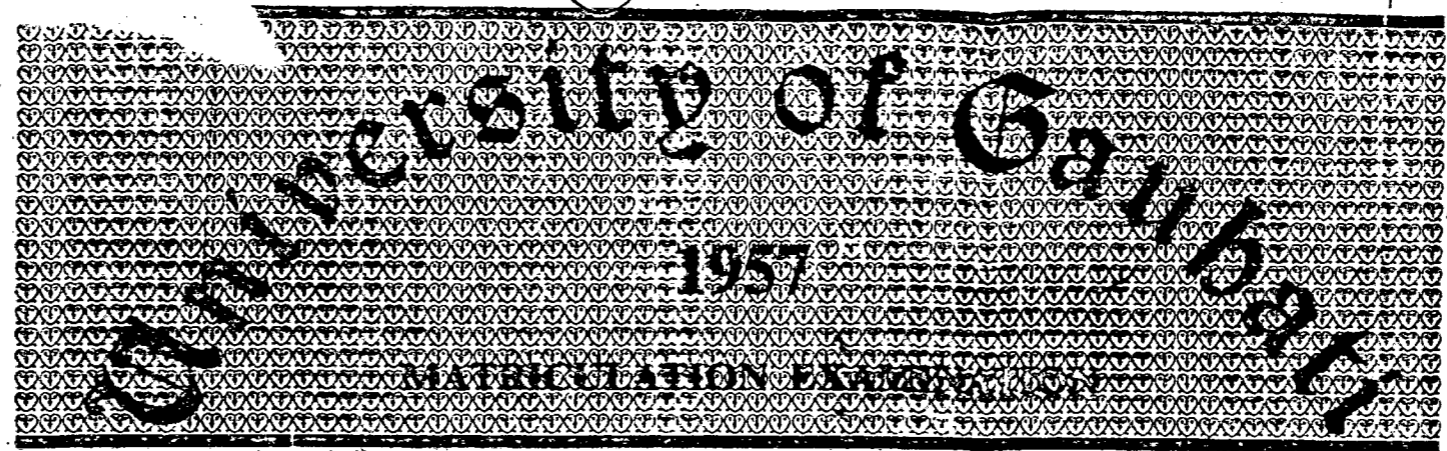
2. Shri Birendra Kumar Das, CC/CHY through AOS/St./CHY for information.

3. AOS/St./CHY for information in reference to his L/no. Com/CHY/880 of 16.3.80

4. DAO/LMG for information please.

for Div. Rly. Manager (Comml)  
N. F. Railway, Itanagar.

Attested by:  
Sarkar, Adv.



I certify that Birendra Kumar Das

Roll Bar No. P 121 aged 14 (fourteen) 1 (one) 10 (ten) years 6 months 2 days in the

First of March, 1957, duly passed the Matriculation Examination, 1957

of this University, and was placed in the Third Division.

GAUHATI REGISTRAR, 1.9.57. GAUHATI REGISTRAR, 1.9.57. GAUHATI REGISTRAR, 1.9.57.

Accepted by  
Barman Adm

GAUHATI, ASSAM

The 10th August, 1957



Registrar

~~Signature~~

A-I  
34

To  
The D.S. (P) Lunding NER Ly,  
Through the SS / Gankati Rly. Station,  
Date:- 3. 10. 75  
RE:- Connection of Service age.

Sir,

I beg to submit that the age entered in my Matriculation certificate was wrong and consequently the age entered into my service file is also wrong. My original Matriculation certificate was corrected by Gankati university in the year 1971 and I beg to submit herewith a certified (True) copy of the corrected certificate for necessary correction in my service file and for this act of kindness I shall ever pray.

Yours faithfully,  
Birendra Kr. Das  
R.C.C.  
Gankati Rly. Station  
dt. 3.10.75

Encl: one true copy of  
matriculation certificate.

10/10/75  
सहायक निरीक्षक, गुवागटि  
STATION SUPDT. GAURA

Attested by  
Shreeves. adr

To

The DRM(P) LMG NF Rly.

Dated Gauhati the 24th June '81

Sub:- Correction of Service age.Ref:- My letter No. NIL. dt 3.10.75.

Respected sir,

I wrote a letter to <sup>the</sup> then DS (P) LMG NF Rly. on 3.10.75. But up till now I have not got any any paper from the then said DS (P) office Lunglei. Now I beg to submit that <sup>the</sup> age entered in my Matriculation certificate was wrong and consequently the age entered into my service file is also wrong. My original Matriculation Certificate was corrected by Gauhati University in the year 1971 and I beg to submit ~~here~~ herewith a certified (True) copy of the corrected certificate for necessary correction in my service file and for this act of kindness I shall ~~ever~~ ever pray.

Yours faithfully,

Biren Chandra Das.

Jr. CC LMG.

24.6.81

Accepted by  
*[Signature]*  
 Adm.

~~Admission~~ (20)

Annexure - V

Regd. A/D

36

The Chief Personal Officer, Maligaon,  
N.F. Railway,  
Maligaon.

O.S. 84  
dt. 10-4-84.

Through proper channel .

Sub<sup>C</sup> correction of service age.

Sir,

I beg to submit that the age entered in my Matriculation Certificate was wrong and consequently the age entered into my service file is also wrong. My original Matriculation certificate was corrected by the Gauhati University in the year 1971 and I beg to submit herewith a Photostat copy of the corrected certificate for necessary correction in my service file and for this act of kindness I shall ever pray.

Forwarded to  
DRM (P) Inq  
for N/A Pleas  
24/11/84

Station Superintendent  
Gauhati

Encls: one photostat copy of the certificate.

Yours faithfully,

BK 21/11/84

Birendra Kr. Das,  
Sr.C.C.  
Gauhati Rly. Station,

Attested by  
*[Signature]* Adm.

(21)

Administrative <sup>VI</sup> ~~Adm.~~ (SIDD)

27

To

The DRM(x) Lunding N.P.Rly.

Through proper channel

Dated 2.3.87

Sub :- Correction of Service Age.

Respected Sir,

That sir, my representation of the above subject dt. 3.10.75, 24.6.81 5.2.83. up till now the file is not moving .

So, I beg to draw your kind attention to the matter and pray that it would receive your kind and favourable order.

Yours faithfully,

*BKD*

( Birendra Kumar Das )

2.3.87.

Attested by  
*[Signature]*  
Adm. Adv.

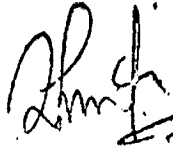
No. E/71/0 (3)

Office of the  
General Manager, Maligaon,  
N. F. Railway, Guwahati-11,  
Dated 29.07.1988.

To  
ALL HODs,  
ALL Dns,  
All Distt. & Asstt. Officers in  
Independent charge,  
ALL SPOs/APOs in Hdqrs, OSD/IR, Dy.CPO/G, Dy.CPO/NG,  
NF Railway.

Reg: Alteration of date of birth.

It has been decided that cases regarding alteration of date of birth will be decided personally by the Chief Personnel Officer and not by any authority lower than Chief Personnel Officer. While disposing the cases of alteration of date of birth, there will be a speaking order from Chief Personnel Officer in each and every case whether accepting or rejecting the prayer of the staff concerned.

  
(SPS Jain) 29/07/88  
Chief Personnel Officer (Admn),  
NF Railway, Maligaon.

Copy to: 1. President, NFPEU/Maligaon - 25 spare copies.

2. General Secretary/NFPEU/Maligaon - 25 spare copies.

For information.

Attested by  
General Adv.

ANNEXURE - VIII

A-VIII

23

~~A Annexure~~ (3)

N. F. Railway.

No. ES-236-B(T).

IRM(P)'s office  
Luding, dated 10-8-88.

To  
Shri Birendra Kr. Das, Ad-hoc HCC/GHY  
through SS/GHY.

Sub :- Your appeal dt. 1-5-84 & 2-3-87  
for correction of service age.

With reference to your appeal quoted above, you are informed that staff were given an opportunity to re-present for rectification of any mistake in their recorded date of birth upto 31-7-73 and no second opportunity was given after 31-7-73 vide CPO/MLG's no. Root/391 dt. 2-9-72  
P/71/0(C)

Further it appears from your appeal that you got the correction made from Gauhati University so far back as 1971. So, you could have easily applied earlier i.e. by 31-7-73 for the correction of your recorded date of birth but you did not do so by 31-7-73 rather you applied only in the year 1984. Hence at this distant date your contention for change of date of birth cannot be agreed to as per extant rules. So, the date of birth already recorded as per your original certificate at the time of initial appointment stands good.

*[Signature]*  
10.8.88  
for Divl. Railway Manager (P)  
N.F. Railway, Luding.

dn/8888

Attested by  
*[Signature]* Adl.

To  
The General Manager,  
N.F. Railway  
Maligaon.  
Date 22.9.95

Subj:- ALTERATION OF DATE OF BIRTH.

Respected sir,

With due respect and humble submission I beg to state as follows:-

1. That sir, the age entered in my Matriculation Certificate was wrong and consequently the age entered into my service file is also wrong. Accordingly I made an appeal before Divisional Railway Manager (P) Luning, N.F. Railway and the said appeal was rejected by Divisional Railway Manager vide his letter No. ES-236-B(T) dt. 10.8.88. In this connection a Photo-Stat copy is enclosed herewith and same is marked as Annexure 'A'.
2. That sir, I would like to refer to a Circular issued by Chief Personal Officer and in this Circular it has been clearly stated that application for correction of date of birth shall be dealt 'Personally' by Chief Personal Officer. A copy of the said circular is enclosed herewith and the same is marked as Annexure 'B'.

Now I beg to submit that the age entered in my Matriculation Certificate was wrong and <sup>consequently</sup> subsequently the age entered into my service file is also wrong. My original Matriculation Certificate was corrected by the Guwahati University in the year 1971 and I beg to submit herewith a certified photo-stat copy of the corrected certificate for necessary correction in my service file and for this act of kindness I shall ever pray.

① Encls:- 3 (Three) copies.

Yours faithfully,

Birendra Kumar Das

( Birendra Kumar Das.)  
Head Coaching Clerk;

GUWAHATI RAILWAY STATION.

Attested by  
[Signature]

ANNEXURE - X u

Sri A. N. Sinha  
General Manager  
N.E. Rly. Maligaon.

Respected Sir,

In continuation my <sup>appeal</sup> ~~letter~~ No. NIL  
dt. 22.9.95 I submitted <sup>the same</sup> ~~an appeal~~ under Registered No  
3790 dt. 22.9.95, but I fear my appeal has not  
yet received your kind attention.

So, I beg to draw your kind  
attention to the matter and pray that it would receive  
your kind and favourable order.

In this connection ~~some copy~~  
~~sent~~ a copy of that letter ~~is~~ enclosed herewith  
for your perusal.

With deep regards,

Yours faithfully,  
B. K. Das.  
Head Coaching Clerk  
Guwahati Rly. Station.

Attested by  
Sarwan. Adv.

Regd. A/D

A-XI  
4/2

To  
The General Manager,  
NF Railway, Maligaon.  
Dated Guwahati the 2nd April - 1996.

Respected Sir,

My appeal dt 22.9.95 and  
reminder dt. 9.11.95 have not yet received your  
kind attention.

After long 6 (six) months from the  
appeal dated 22.9.95 and after <sup>4</sup> (four) months  
from the date of my reminder dt 9.11.95,  
I am not aware of the officer action on  
my appeal nor have I been officially informed  
about my appeal till to-day for reasons  
best known to the administration.

In this connection photo-stall copies  
of appeal and reminder are attached herewith  
and <sup>the same are</sup> marked as Annexure "A" and "B".

I, therefore, request you to call  
all my papers from the concerned officer for  
early disposal of the case and for this act of  
your kindness I shall ever grateful to you.

Yours faithfully,

Birendra Kr. Das.  
Head Coaching Clerk  
Guwahati Railway Station

1 Encb:- 2 (Two) copies.  
Annexure A and B.  
d. 02.4.96

Attested by  
Somen, Adv.

ANEXURE - A - XII

To  
The Dy. CPO (IR) NFRLY  
MLG.  
dt 28.5.76

Respected Sir,

Interview solicited.

B.K. Das  
Vice. President / NFRLO  
Landing Camp at  
Ganguly Tr.

~~Mr. Das~~  
~~was present~~  
~~in the~~  
~~informed~~  
~~in due course~~  
~~of the~~  
~~action~~

Attested by  
Sachin. Adh

A-111  
44

TO  
321  
A. N. SINHA  
General Manager  
N.F. Railway Maligaon.  
Dt. 15.6.96.

Respected sir,

I made lot of representation before you under Regd. A/D dated 22.9.96, 9.11.95 and 02.4.96, but I am not aware of the Officer action on my appeal nor have I been officially informed about any my appeal till to-day for reasons best known to the administration. I met your Secretary too for expedite my case.

On 28.5.96 I gave due slip to Dy. CPO (IR) Maligaon but he put the following remarks on my <sup>due</sup> slip "your case is being processed. You will be informed in due course".

In connection a photo-stamp copy of a slip is attached here with. After long 9 (Nine) months from the appeal dt. 22.9.95 only I have got the above mentioned remarks from Dy. CPO (IR) Maligaon.

I would, therefore, earnestly request you to look into into the matter and instruct ~~the officer~~ <sup>the Dy. CPO (IR) Maligaon</sup> to expedite the case at an early date as you are going to leave this Railway on voluntary retirement by 30th June 1996. So, I pray to God your healthy and prosperous life will remain for ever.

Yours faithfully,

Rivendra K. Das  
Head Coaching Clerk/  
Gumhati Rly. Station.  
B.G. Parcel office 15/6/96

① Encl. - 1 (one).

Attested by:  
*[Signature]*, Adv.

N. F. Railway.

Office of the  
Divl. Railway Manager (P)  
Lumding.

No. E/III-Gr.2(T)

Dated 5-08-1996.

To  
Shri Birendra Kr. Das, HCC/GHY  
Through SS/GHY.

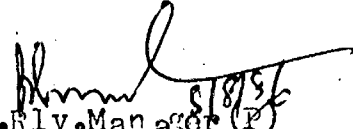
Sub :- Alteration of recorded date of birth  
of Shri B.K. Das, HCC/GHY.

Ref :- GM(P)/MLG's letter No. 195G/4/2(T)  
dt. 01/02-07-96.

In terms of GM(P)/MLG's letter quoted above, this is to inform you that the date of birth was entered in the first page of your service book as 1-9-39 in your own handwriting and you have signed the first page.

Further, you got your age corrected from Guwahati University on 1-9-71 but failed to apply for the said alteration of date of birth by 31-7-73 i.e. the cut off date fixed by the Board for all those staff who were in service as on 31.12.71.

So, your request for alteration of date of birth at this stage, therefore, cannot be accepted.

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


Copy forwarded to GM(P)/MLG for information in reference to his letter cited above please.

Copy forwarded to APO/GHY for information please.

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

.....

dobnath/5896

Attested by  
  
Adv.

Filed in Court  
on 29.1.97  
Court Master

30  
46  
COF  
30 JAN 1997  
Gowahati Bench  
সুপ্রিম কোর্ট

By Chief Personnel Officer (MOP)  
No. 70/96, Jangal-781011.  
M. P. Miy., Guwahati-781011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH.

IN THE MATTER OF:

O.A.No.166 of 1996.

Sri Birendra Kumar Das ... Applicant.

-Versus-

Union of India & Ors. ... Respondents.

- A N D -

IN THE MATTER OF:

Written Statement for and on behalf  
of the respondents.

The answering respondents sheweth as under respectfully :-

1. That the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That save and except the statements which are specifically admitted herein below all other averments made in the application are emphatically denied herewith. Further, the statements of the applicant which are not borne on records are also denied and the applicant is put to strictest proof thereof.
3. That the applicant has got no valid cause of action for filing this application.
4. That with regard to the statements made in paragraph 5 of the application it is submitted that the application is barred by limitation and the contention of the applicant is not admitted. The case is already hit under the provisions of Section 21(1)(b) of the Administrative Tribunal Act, 1985, even if the contentions of the applicant in support of filing the present case is taken into consideration. Moreover, at such a distant date the appli-

Received  
copy  
Bill  
(G.N. Das)  
Ad root  
28/1/97

3

Chief Personnel Officer (MG)  
प. ए. ए. ऑफिस, गुवाहाटी-781011.  
G. P. O., Guwahati-781011.

application cannot be entertained under any circumstances. On many occasions in the past, the applicant was clearly intimated by the Railway Administration rejecting his belated and untenable prayer for change of his recorded date of birth which was put by him in the service record under his own signature while entering into the railway service initially. The Applicant's pleas (of receipt of DRM/P's letter No. E/III-Gr.2 Certificate (T) dt. 5.8.96 and change of age in Matriculation/in 1971 or so) in support of filing the present application in August '96 after lapse of about 33 years from the date of entering in the Rly. service, are not acceptable as will clearly reveal from the nature and fact of the case.

5. That it is submitted that the present Application is the outcome of his after-thought and aimed to derive, undue and unlawful benefits, in the way of extension of service period and other consequential benefits in pursuance of that, which are not admissible under rules.

6. That with regard to averments of the Applicant in paragraphs 6(1) and 6(2) of the Application the answering respondents state that the Applicant, who is a literate staff, was appointed on the railways on the basis of his application for appointment submitted by him along with all required documents including the certified copies of the Matriculation Certificate (which showed his age as 17 years 6 months on 1st. of March, 1957 and according to which the date of birth as 1.9.39) in response to the Employment Notification for such posts and at the time of entering into the railway service in the year 1963 he also declared his date of birth is 1.9.1939 and recorded this date in the opening page of his service Book under his own signature and thumb impressions and this particulars of date of birth has also been reflected in his various service records so long including the seniority lists published by the railway Administration from time to time without any objection/representation

32

44

Chief Personnel Officer  
Railway  
F. R. V. Gurnahall-781011

so long until he came up with new stories as described in the body of the Application. It is also not admitted that his service was all along unblemished one.

A copy of the opening page of his Service Book showing his date of birth as 1.9.39 is annexed hereto as Annexure-I. The particulars of his service are matters of record and all these statements which are not borne on records are denied and the Applicant is put to strict proof thereof.

7. That with regard to the statements of the Applicant in paragraph 6(3) of the Application it is to state that all the stories forwarded by the Applicant through this para regarding finding out one horoscope and <sup>later</sup> developments are not within the knowledge of the respondents and are denied. Further these versions cannot be accepted for the purpose of change of date of birth. There are ~~sufficient~~ specific rules and Code provisions enacted under the Authority of Article 309 of the Constitution of India specifying the cases when and in what type of cases such request for change of date of birth of any employee can be entertained and in what type of cases such proposals of staff should be outright rejected. There are clear rules that the horoscope should not be accepted as an evidence in support of declaration of age i.e. the date of birth for the purpose of railway service. If any change of age/date of birth has been effected to the original Matriculation Certificate of the Applicant in pursuance to his subsequent submission of another document like Horoscope, the railway administration has got no concern in such matter. Moreover, the Railway Admn. is not concerned to what happened at the University level and Rly. Admn- was not made any party in the case while submitting any fresh application to the University Authorities for correction of his recorded date of birth. In any case such correction of age having been done by the University authority without any knowledge of the railway Admn. after the applicant joined in the Rly. service in the year 1963 on the basis of the original Matriculation certificate

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Personnel Officer (N.F.R.)  
N.F.R. Railway  
Cuttack-751011  
N.F.R.V. Cuttack-751011

produced before the Rly. Administration by the Applicant showed his age on 1st of March, 1957 as 17 years 6 months date of birth as 1.9.39), and the Rly. Admn. not being a party to such correction, the same is not binding on the Railways. Moreover, from the own statement of the applicant it is seen that he could know about the existence of the horoscope only in early 1971 in which the date of birth was recorded ~~xxx~~ as 21.1.1943 and that ~~the~~ immediately produced the Matriculation certificate along with the horoscope for correction of the age to the University Authority and the University Authority corrected the age as 14 years 1 month 10 days instead of 17 years 6 months on 1st. of March, 1957 and though the correction was made on 1.9.71 by the University authorities he received the corrected certificate only in March, 1974, and in paragraph 4 of the Application he states that he submitted a representation addressed to the Divisional Superintendent(P), N.F. Railway/Lumding only on 3.10.1975 for correction of the date of birth recorded in the service sheet enclosing the copy of the corrected Matriculation Certificate.

8. That leaving aside the other legal aspects of the case and the target date 31.7.73 as was fixed by the Railway Board as last date for submission of requests for change of the recorded date of birth, it is submitted that, there is no scope for acceding to the request of the Applicant for change of recorded date of birth, at this stage, if the following aspects are gone through which suffers for want of satisfactory explanation for the time gap in between each of the steps on the part of the Applicant:

- 1) even after finding out the alleged horoscope in 1971 when he saw that the recorded date of birth differed, he abstained from informing this aspect to the Rly Admn. immediately and informed (as per his statement) <sup>same</sup> on 3.10.75 (though according to records no such application was received in the office);

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C. Sankar  
Railway Personnel Officer (N.F.)  
P. O. No. 781011, Guwahati-781011.  
P. F. No. 781011

ii) if the certificate was corrected by the University authorities on 1.9.71, then there should have been no cause for receiving the corrected certificate from the University only in March, 1974 and the Application is quite silent on this point;

iii) even if the corrected Matric certificate was received by the applicant in March, 1974 then there were considerable delay in informing Railway Admn. about such correction in the original of the Matriculation Certificate and also in the submission of the necessary application/requests to the Railway authorities for change of service records. But as per the averments of the Applicant he made such request only in October, 1975 i.e. after more than 1 year 6 months from the date of receipt of the corrected certificate.

All the above aspects have been kept shrouded and will definitely show that there have been complete laches etc. on the part of the Applicant to take all actions diligently, if at all such statements are to be taken as true, and hence on such statements no correction of date of birth can be permitted as per rules.

9. That with regard to the averments of the Applicant in paragraph 6(4) of the Application it is to state that no such representations for change of date of birth as alleged to have been submitted by the Applicant on 3.10.75 or 24.6.81 appears to have been received by the Respondents/the then Divisional Supdt.(P)/N.F.Railway/Lumding or DRM/P/N.F.Rly/Lumding and no such applications are on record. Rather in the reply given to the applicant by the Divl.Rly.Manager/P/N.F.Rly/Lumding under letter No.ES-236-B(T) dt.10.8.84 issued in response to Applicant's appeals dt.1.5.84 and 2.3.87 (annexed as Annexure-VIII to the application) it was made clear to the applicant that the applicant applied for change of date of birth only in the year 1984. All other statements of the applicant in this paragraph to the contrary are denied and the applicant is put to strict proof thereof.

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Chief Personnel Officer (NG)  
90, P.O. P.S., Jharkhand-781011.  
Cuttack, Orissa.  
G.W. No. 781011

(c) It is very surprising that the applicant has again raised the issue of change of date of birth again before this Hon'ble Tribunal on 21.8.96 by filing this application when the CPO/N.F.Rly's decision about rejection of his request for change of date of birth was already forwarded to him on 5.8.96 vide above quoted letter of DRM/P/Lunding./ N.F.Rly, besides other letters issued to the applicant in consonance to the extant rules and code provisions etc. (Rule 225 of Indian Rlys Establishment Code Vol.I,1985 Editio-n etc.) in connection with the change of date of birth of the Rly.employees.

(d) It is also reiterated that, in view of what have been submitted herein above, all the actions taken by the Rly. Admn. as regards change of date of birth of the applicant were quite in order and the allegations of floating the circular(Annexure VII to the application) or exceeding the jurisdiction etc., as alleged, are denied. All other allegations of the applicant as made in this para are also denied emphatically and there has been nothing irregularity in the rejection of the request of the applicant which was not entertainable as per rules as these were filed after the target date fixed under rules, which specifically provides interalia that requests for alteration of date of birth submitted after 31.7.73 should not be entertained after completion of 3 years service

11. That with regard to the statements made by the applicant in paragraph 6(9) of the application to the effect that he could not collect, even upto the date of filing of the application i.e. in August'1996, the copy of the circular No.Rect/39 dt.2.9.72 E/71/O(c) by which the cut off date as 31.7.73, within which the applica-tion/request could be filed for alteration of date of birth was fixed, is quite unbelievable and unacceptable especially in view of the fact that - (i) in the Rly.Admn's letter No.ES-236-(T) dt.10.8.88 issued to the applicant(Annexure-VIII to the appli-

to the application) through which the applicant was clearly informed as to why his request for change of date of birth were recorded in his service book in the year 1963 could not be acceded at this distant date, a reference to this letter of CPO/Maligaon No. Rect/391 dt. 2.9.72 (through which the cut-off date 31.7.73 was fixed by the Rly. Board as a last chance for filing request for change of date of birth on valid grounds) was also quoted as one of the authority in support of non-entertainment of his request. and (ii) the despatch particulars as recorded on the office copy of the CPO's circular dated 2.9.72 in question (Annexed as Annexure 2 to this written statement which bears various endorsement) clearly shows that the circular was given wide publicity for information etc. amongst all Rly. employees including their organised Union. In view of above also, the applicant under no circumstances can take help of the plea forwarded by him to evade the target date fixed by the Rly. Board for entertainment of such application for change of date of birth.

All the averments of the applicant to the contrary are denied and the applicant is put to strictest proof of his assertions.

12. That with regard to averments made at paragraphs 6(10), 6(11) and 6(12) of the application it is denied that the applicant was a regular visitor in the office of the Respondent No.3. (i.e. General Manager(P)) for seeking justice or he was being told by the office that the case was being processed for consideration and disposal or his prayer for alteration of date of birth was illegally rejected. In fact, the applicant was already intimated as early as on 10.8.88 (Annexure VIII to the application) by the Rly. Administration that his application for change of date of birth was not only filed beyond the target date but also was not entertainable as per extant rules in the circumstances narrated by the applicant.

It is further mentioned herein that except the writing of Dy. Chief Personnel Officer/IR as mentioned in paragraph 6(12)

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 Dy. Chief Personnel Officer (IR)  
 P. O. Secy, Jangal-731011.  
 M. F. Rly. Cuxwball, 731011.

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 G. S. ...  
 By: Genl Personnel Officer (M)

of the application (Annexure XII to the application), there is no other document which may show that the applicant visited the GM(P)/Maligaon's office for this purpose on earlier dates or any other letters were issued to him or any assurance was given to him after expiry of the limitation period. It will also be evident from the Annexure XII that he wanted interview as vice-president of a recognised Union.

Further, there was no cause for his visiting GM(P)'s office without prior appointment especially when the necessary replies to his representations were given to him and he was not called by the Rly. Admn. to visit GM/P/N.F.Rly/Maligaon's office for this purpose.

13. That with regard to paragraph 7 of the application it is stated that it is not correct that the representation of the applicant submitted for correction of his recorded date of birth was arbitrarily rejected. It is submitted that the rejection was done on valid grounds and lawfully and as per rules.

14. That with regard to averments made at para 9 of the application the following are submitted in seriatim.

(I) It is denied that the impugned order is bad in law or liable to be set aside or passed arbitrarily or unilaterally. The provision of Law and rules as laid down in the India Rly. Establishment Code Vol. I and also the Rly. Boards instructions and circulars on the subject are quite clear in this respect and there is no question of entertainment of such applications/requests for change of date of birth filed after 31.7.73 in any case and no question of CPO's personal consideration/orders also arises in such cases when submission of such applications/requests after lapse of specified period/date has been barred by clear provisions in rules/laws and rules clearly provides that such requests should not be entertained.



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C. Chatterjee  
By: Chief Personnel Officer (NDA)  
10, 3/10 Room, Jangal-751011,  
B. P. Bldg., Gurgaon-122001.

of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned together with the statement of any previous attempts made to have the record amended.

Railway Ministry's decision - (a) . . . . .

.... Horoscope should not be accepted as an evidence in support of <sup>the</sup> declaration of age ... .. "

(ii) All the contentions of the applicant as put forward in this sub-para (ii) are denied. The question of vested right in the instant case and circumstances does not arise especially when the conditions precedent to correction of date of birth etc. were not adhered to by the applicant and he did not fulfil the primary conditions for effecting such change of date of birth or submission of prayers for such changes. His right to continue in service can only be related to his recorded date of birth which he himself declared while entering into the railway service and recorded in the opening page of his service book under his own signature and hand writing and rule 225 (4)-RI clearly provides such provisions. Further, the Rly. Admn. was never consulted or intimated or made a party while submitting any application to the University for change of date of birth on the authority of the alleged horoscope and the railway rules clearly provides that no date of birth can be based on horoscope, and, the correction to his Matriculation certificate was carried out after he joined service in the railway.

(iii) That the contentions of the applicant in this sub-para are quite incorrect, against clear provisions of rules and law on the subject and hence denied. It is reiterated that no illegality was committed as alleged.

(iv) The contentions of the applicant as expressed in this sub-para are quite incorrect and hence denied. It cannot involve civil consequence especially when no right was acquired by the applicant and it involved no penal

consequences and the rules clearly provides ~~to~~ not to entertain any application filed after expiry of 31.7.83. <sup>U1</sup> <sup>52</sup> <sup>Chief Personnel Officer (M)</sup> <sup>to the Rly. Admn. 731011.</sup> <sup>Chief Personnel Officer (M)</sup> <sup>to the Rly. Admn. 731011.</sup> no change is permissible on the basis of horoscope. The question of giving hearing or holding any ~~comp-~~ confronted enquiry does not arise in the circumstances of the case and as per rules and procedures and laws in vogue <sup>and</sup> as the party acquired no right to have the date of birth altered and there were laches on his part. Such rejections have already stood the test of law in various 'precedents' and the contention of the applicant on this point is emphatically denied. No principle of natural justice have also been violated in this case since his right to continue in service as per his date of birth declared by him at the time of entering into service and accepted by the Rly. Admn. has not been affected.

(v) That the question of penalty or penal consequence does not arise as no existing right of him has been infringed and it does not involve in the alteration of his existing service conditions or rights.

(vi) The contentions of the applicant as put forward in this sub-para is quite wrong and hence denied. The cut-off date has acquired the force of law as it has been brought into effect by the rule making authorities on the basis and authority of Article 309 of the Constitution of India.

(vii) The contentions of the applicant is incorrect and hence denied. There has been proper application of mind is rejection of his illegal and belated requests for changes of date of birth. It was made clear to the applicant that he applied to the Rly. Admn. for the first time only in the year 1984 and not before. In any case, it is a fact that no such alleged application dated

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Chaitin  
Chief Personnel Officer (NO)  
U. P. Rly., Lucknow-731011  
U. P. Rly., Lucknow-731011

prior to 31.7.73 was available on record and his contention for change of Matric certificate age was based on horoscope which was produced by him to the University Authorities about 8 years from the date of joining the service and as per his own statement he received such corrected Matric certificate in the year 1974 i.e. after 3 years from the date of submission of application to University authorities (the cause of same remains unexplained) when the target date fixed by law already expired on 31.7.73 and also from the fact that it was not ~~correct~~ incumbent on the Railway Admn. ~~XXXX~~ to accede to his request for the changes of date of birth even if submitted within target date 31.7.73 unless the conditions precedent to carry out such changes are fulfilled and the merit of the case deserves so. There has been proper application of mind on the part of the authority in disposal of the case.

viii) It is quite in correct to say that his application was rejected only on the ground that the same was submitted after 31.7.73 i.e. purported cut-off date as alleged. In fact his case did not merit for change of date despite the fact that submission of such belated application for changes are not entertainable as per rules etc. All other allegations are denied and the applicant is put to strictest proof thereof.

ix) It is not in the knowledge of the Rly. Administration as to on what basis such changes in date of birth has been effected by the University after about 15 years of passing the Matriculation examination and the Rly. Admn. was not made a party in such correction and the Rly. Admn. has got no concern about the actions taken in the University office.

x) That the date 31.7.73 is not an imaginary or artificial date as it is based on reasonable grounds and fixed to avoid hardship of the deserving railway employees in the way of rigid application of the extant rules as can be seen from the Railway Board's circular concerned.

xi) That the rejection(impugned) order is valid, legal, proper and passed after proper application of mind and merit of the case and by proper and competent officials

14. That the application suffers from laches on the part of the Applicant and suffers from <sup>legal and</sup> ~~material~~ defects.

15. That the Applicant has not furnished sufficient satisfactory explanation for delays and all other actions taken by him at such a distant date.

16. That under the facts and circumstances stated above, the instant application is not maintainable and is liable to be dismissed.

VERIFICATION

I, Shri C. Saikia, son of Shri B.K. Saikia

aged about 32 years by occupation service at present working as Dy. Chief Personnel Officer of the N.F. Railway Administration, Maligaon, do hereby solemnly affirm and state that the statements made in paragraphs 1 and 2 are true to my knowledge, those made in paragraphs 6, 9, 10(a), & 10(b) are true to my information being matters of records and the rest are my humble submissions before this Hon'ble Tribunal.

*C. Saikia*  
-97  
By. Chief Personnel Officer (N.F.)

DEPUTY CHIEF PERSONNEL OFFICER,  
NORTHEAST FRONTIER RAILWAY: MALIGAON.  
FOR AND ON BEHALF OF UNION OF INDIA.






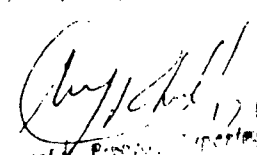
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By. Chief Personnel Officer (N.F.)  
पु. सी. रेलवे, गुवाहाटी-781011.  
B. P. Riv., Gauhati-781011

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-13-

Annexure-1  
11/11

# SERVICE BOOK (OPENING PAGE)

- Name in full (Block Capitals) **SHRI BIRENDRA KUMAR DAS.**
- Father's Name **Late. Golak Chandra Das.**
- Nationality/Caste/Religion **Indian. Kast. Hinduism.**
- Domicile as established
- Residence (in full) **C/o. Khagendra Nath Das. B. A., B.T., B. Music.  
viii: Bilarfari Hatii. P.O. Barpeta. Dist: Kamrup (Assam)**
- Date of birth **1.9.1939 (First September nineteen hundred and thirty nine).**
- Place of birth **Barpeta** District **Kamrup.**
- Educational qualification **Matriculate**
- Personal mark for identification ① **One scar mark about 3/4" x 1/4" on the left side of lower lip.**  
② **One cut mark 1/2" x 1/8" on the Right knee.**
- Left hand thumb and finger impression
- Little finger  Ring finger 
- Thumb 
- Middle finger  Fore finger 
- Height **5' Feet** **10" inches**
- Signature of the Government Servant. **Birendra Kumar Das.**  
**17-4-63.**
- Signature and designation of the Head of the office or other Attesting Officer.   
**17/4/63.**

Note: - The entries on this page should be renewed or re-attested at least every five years, and the signature in lines 12 and 13 should be dated.  
Finger prints need not be taken afresh every five years under this rule.

16

U/Key 9

Office of the  
Chief Personnel Officer  
Maligaon.Rect/ 391  
No. E/71/0 (C)

Dated: 2. 9. -1972.

To: All Heads of Department.  
 DSs/KIR-APDJ-LMG, DVS/TSK.  
 DAO, ASO, Asstt. Audit Officer/KIR,  
 DME (D), XEN/BC, Batt. Commander No. 4,  
 Controlling Officer, Rly. School, ACOS (D)/SGUJ,  
 Dy. CE, Area Officer, DCOS (NB), SAO (PC), DMO/NJP.  
 AME/TDH, APS/KGN, WM, DEE (W), CMT, PTS, ACOS/NBQ,  
 Acctt/KGN, Audit Officer (W)/NBQ, Controlling Officer,  
 Rly. School, ASO (TC)/DOI, DAO, Supdt/ZTS, Controlling  
 Officer, Rly. School, Asstt. Audit Officer, ASO/APDJ,  
 ATS, DAMO/RPAN, XEN (WS Cell), ABE (WS), DSTE (CTC)/BNGN,  
 DCOS/BLST, Medical Supdt., XEN (Br), SOR (AW), DSTE (MW),  
 DCOS, Controlling Officer, Rly. School, AEN (IC), AEE,  
 ASO, SMO (H), ASO (Fire), Marine Supdt., ASTE (WS)/PNO,  
 Area Officer/NGC, Batt. Commander No. 5/MXN,  
 Batt. Commander No. 7 & 1, Controlling Officer,  
 Rly. School, DAO, Asstt. Audit Officer/LMG, AEN (STP)/NHK,  
 Controlling Officer, Rly. School, ATS, DAMO/BPB,  
 DMO, AEE, ACOS/DBRT, WM, Sr. Acctt/DBWS, DEN/LMG at DBRT.  
 General Secretary, N.F.R.E.M/Pandu. 1 with 25 spare  
 General Secretary, N.F.R.M.U/Pandu. 1 copies.

Subject:- Procedure for recording date of birth  
 on entering Railway Service and its  
 alteration.

No. 148 ----

A copy of Railway Board's letter No. E(NG)II-70, BR/1  
 dated 4-8-72 on the above subject is forwarded for  
 information and guidance. Board's earlier letter dated  
 3-12-71 was circulated under this office letter  
 No. Rect/370  
E/71/0(C) dated 18-1-72.

This is also being published in the Fortnightly Gazette.

*(Signature)* 17/12/72  
 for CHIEF PERSONNEL OFFICER.

(Copy of Railway Board's letter No. E(NG)II-70 BR/1  
 dated 4-8-72).

Subject:- Procedure for recording date of birth  
 on entering Railway service and its  
 alteration. ---

Attention is invited to advance correction slip No.  
 (C) t. ....

17/12/72  
 17/8/72



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H. F. Railway

Wb  
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Annexure-3  
62

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

No. 195G/4/2(T)

Dated: 01-07-96

To  
DRM (P) / Lunding,  
H. F. Railway.

Sub: Alteration of recorded date of birth  
of Sh. B.K. Das, Hd. CC/GHY.

Ref: Your letter No. ES/236-B(T) dated 18-12-95.

Reference above, the above case of Sh. B.K. Das,  
Hd. CC/GHY for alteration of date of birth has been examined.

Sh. Birendra Kumar Das is a literate staff. The  
date of birth was entered in the first page of his service  
book as 1-9-39 in his own handwriting and he has signed the  
first page.

He got his age corrected from Guwahati University  
on 1-9-71 but failed to apply for the said alteration of  
date of birth by 31-7-73 i.e. the cut off date fixed by  
the Board for all these staff who were in service as on  
3-12-71.

The request for his alteration of date of birth at  
this stage, therefore, can not be accepted.

This issues with the approval of CPO/IT Railway.

Please inform the staff concerned accordingly.

Please advise staff  
concerned.

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8796  
DPO

*[Signature]*  
for General Manager (P)

*[Signature]*  
8/7/96

Office of the  
Divl. Railway Manager (P) L3  
Luding.

No. R/III-Gr.2(T)

Dated 5-08-1996.

To  
Shri Birendra Kr. Das, HCC/GHY  
Through SS/GHY.

Sub :- Alteration of recorded date of birth  
of Shri B.K. Das, HCC/GHY.

Ref :- GM(P)/MLG's letter No. 1950/4/2(T)  
dt. 01/02-07-96.

"In terms of GM(P)/MLG's letter quoted above, this is to inform you that the date of birth was entered in the first page of your Service book as 1-9-39 in your own handwriting and you have signed the first page.

"Further, you got your age corrected from Guwahati University on 1-9-71 but failed to apply for the said alteration of date of birth by 31-7-73 i.e. the cut off date fixed by the Board for all those staff who were in service as on 31-12-71.

So, your request for alteration of date of birth at this stage, therefore, cannot be accepted.

for Divl. Rly. Manager (P)  
W. P. Rly., Luding.

Copy forwarded to GM(P)/MLG for information in reference to his letter cited above please.

Copy forwarded to APO/GHY for information please.

*Shri...*  
for Divl. Rly. Manager (P)  
W. P. Rly., Luding.

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debn eth/5896

*Copy lying in  
the File "Outgoing  
Transfer Cases"  
ASame*