

## CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAATI BENCH

Original Application No.040/0073 of 2019

Date of Order: This the 08.03.2019

**THE HON'BLE SMTI MANJULA DAS, JUDICIAL MEMBER**  
**HON'BLE MR.N.NEHSIAL, ADMISTRATIVE MEMBER**

Sri Narapati Kalita  
 Son of Late Juguram Kalita  
 Resident of village\_ Kamarchuburi,  
 Tezpur, Bhartak Bihar, P.O.Tezpur  
 District-Sonitpur, Assam, PIN-784001.

..... Applicant

By Advocate: Mr.N.Bora

-AND-

1. The Union of India  
 Represented by the Secretary  
 To the Government of India,  
 Ministry of Communication,  
 Department of Telecom, New Delhi
2. The Bharat Sanchar Nigam Limited,  
 Represented by its Chief General Manger Telecom,  
 Assam Telecom Circle, BSNL Bhawan  
 Panbazar, Guwahati-781001.
3. The General Manager, Telecom District,  
 Tezpur, District-Sonitpur, Assam,  
 PIN-784001

4. The Assistant General Manager, (HR)  
Office of the Chief General Manager Telecom,  
BSNL Bhawan, Panbazar,  
Guwahati-781001.
5. The Sub-Divisional Engineer, (General)  
Office of the General Manager, Telecom District,  
Tezpur, District-Sonitpur, Assam,  
PIN-784001
6. The Sub-Divisional Engineer, (Vig),  
Office of the General Manager,  
Telecom District, BSNL,  
Tezpur, District-Sonitpur,  
Assam, PIN-784001
7. The Sub-Divisional Engineer,  
(HR & Administration),  
Office of the General Manager  
Telecom District, BSNL, Tezpur,  
District-Sonitpur  
Assam, PIN-784001
8. The sub-Divisional Engineer, (C&M),  
Office of the General Manager,  
Telecom District  
Tezpur, District-sonitpur,  
Assam, PIN-784001

9. The Divisional Engineer,(OP)  
Office of the General Manager,  
Telecom District,  
Tezpur, District-Sonitpur, Assam,  
PIN-784001

10 The Accounts Officer(Claims)  
Office of the General Manager,  
Telecom District, BSNL  
Tezpur, District-Sonitpur,  
Assam, PIN-784001

Respondents

### **ORDER (O R A L)**

#### **Per Mrs.Manjula Das, Member(J):**

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-“

8.1 Set aside and quashed the impugned explanation letter No.TZ/Vig/Wrong/DOB/2018-19/2 dated 11.10.2018 issued by the Sub-Divisional Engineer, (vig.), office of the General Manager, Telecom District, BSNL, Tezpur,(Annexure-A1).

8.2. Direct the respondent authorities not to initiate any departmental proceeding against the applicant.

8.3 Direct the respondent authorities to release the pension and other retirement benefits due to the applicant and further be pleased to direct the respondent authorities to release the provisional pension to the applicant forthwith."

2. The applicant was initially appointed as casual Mazdoor/part time casual Mazdoor under the Telecom District Engineer, Tezpur and service of the applicant was regularized on 01.02.1989 as temporary Regular Mazdoor. The applicant appeared in the qualifying screening test for the post of Phone Mechanic held on 25.06.1994 and after selection in the said test, the applicant was appointed as Phone Mechanic vide order dated 24.07.1996 and posted at Tezpur, Subsequently, the applicant opted to be absorbed in BSNL w.e.f. 01.10.2000. The service of the applicant was confirmed vide order dated 19.07.2000.

3. The applicant submitted his school leaving certificate before the respondent authority at the time of his entry into the service. The respondent authority in all service documents of the applicant recorded his date of birth as 01.02.1965.

4. Learned counsel further submitted that the respondent No.7 vide letter dated 11.06.2018 intimated that the applicant stands retired w.e.f. 31.01.2016 retrospectively on attaining superannuation and directed to struck off from the strength of his control w.e.f. 31.01.2016.

5. The applicant on 29.06.2018 submitted a representation praying for release of his pension. The respondent No.7 vide letter dated 24.07.2018 directed the applicant to refund Rs.14,39,408/-positively by 31.07.2018 being the overpayment of pay and allowances. Being aggrieved , the applicant approached before this Tribunal by filing O.A.No.260/2018 and this Tribunal vide order dated 07.08.2018, disposed of the said O.A directing the

respondents not to effect recovery of Rs.14,39,408/- from the applicant and further directed the applicant to submit the copy of the O.A. alongwith order of the Tribunal to the respondents and directed the respondents to consider the case of the applicant as per rules and take a decision after affording opportunity of hearing to the applicant. But the Respondent No.6 issued impugned notice dated 11.10.2018 asking the applicant to submit explanation and passed a speaking order dated 23.02.2019 observing that the material fact regarding date of birth of the applicant was illegally and fraudulently suppressed by entering the wrong date of birth in the Service Book as 01.02.1965 and accordingly the respondents are going to initiate proceeding against the responsible officers.

6. Learned counsel for the applicant further submitted that the applicant had not suppressed his date of birth before the respondent authority and the respondent authority has recorded his date of birth in all service

documents as 01.02.1965. The mistake has been committed by the respondents authority in recording the date of birth of the applicant and due to fault of the respondents, the applicant cannot be penalized. Learned counsel therefore, submitted that the impugned letter dated 11.10.2018 is illegal, arbitrary and not sustainable in law and the same is liable to be set aside and quashed and the respondents authorities may be directed to release the pension and other retirement benefits due to the applicant and to release the provisional pension to the applicant forthwith.

7. We have heard learned counsel for the applicant. From the records of O.A., it appears that the applicant is a Group 'C' employee. He submitted his service particulars which were being recorded by the respondent authorities in his Service Book. Thus, there may be a bonafide mistake but there is no such materials to prove that the applicant fraudulently suppressed in writing in his service particulars. Hence, we do not find any logic to decide the issue of

suppression or any fraudulent act on the part of the applicant. More so, there is also lapse on the part of the respondents for keeping the matter for such a long time till his retirement by overlooking the correct age of the applicant. As such, the action of the respondent authority cannot be said to be justified. Accordingly, the respondent authorities are directed to release the pension of the applicant as admissible under the law along with all the consequential benefit within a period of three months from the date of receipt of this order.

8. O.A. stands disposed of accordingly. There will be no order as to costs.

(N.NEIH SIAL)  
MEMBER(A)

(MANJULA DAS)  
MEMBER(J)

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