

**(2016) 05 GAU CK 0047**  
**In the Gauhati High Court**  
**Case No : WP(C) No. 2555 of 2014.**

**Brahmaputra Board and Others - Petitioners @HASH Md. Taizuddin  
Ahmed**

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**Date of Decision :** 12-05-2016

**Acts Referred:**

**Citation :** (2017) 1 GauLR 544 : (2016) LIC 4517

**Hon'ble Judges :** Ajit Singh, CJ. and Suman Shyam, J.

**Bench :** Division Bench

**Advocate :** Mr. S.C. Keyal, learned Assistant Solicitor General of India, for the Petitioners; Mr. B. Ullah, Learned Counsel, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mr. Ajit Singh, C.J. - By this petition filed under Article 227 of the Constitution, the petitioners have prayed for quashing of order dated 4.9.2013, whereby the Central Administrative Tribunal, Guwahati Bench, has allowed respondent's O.A. No. 275 of 2012.

2. The Executive Engineer, Dehang Investigation Division No. II, Pasighat vide order dated 2.2.1981, appointed four muster roll labours to officiate as work charged khalasi for two months from the date of joining. The respondent was one such appointees and he joined on 3.2.1981. Later, his term of appointment was extended from time to time by different orders. He was finally appointed as office peon vide order dated 1.7.1983. and at that time, he was "under matriculate" Also, on the basis of declaration made by the respondent, his date of birth in the service book was recorded. On 8.12.1983, the respondent even authenticated these entries by putting his signature and finger impression in the service book on 8.12.1983. This he did in the presence of Executive Engineer, Dehang Investigation Division No. II Pasighat. It is not disputed that on the basis of date of birth as 1.2.1956 respondent was to retire on 31.1.2016.

3. Later, in the year 1985, the respondent passed High School Certificate Examination (Compartmental) from the Board of Secondary Education, Assam.

In the certificate issued to that effect his date of birth is shown as 1.3.1964. Armed with this certificate, the respondent applied before the then Executive Engineer, Siang to alter the entry of his date of birth in the service book as 1.3.1964 in place of 1.2.1956. and on 15.11.1985, the Executive Engineer altered the entry of date of birth of respondent as 1.3.1964.

4. Petitioner No. 2 - Under Secretary (E) vide communication dated 2.9.2003, in response to letter of petitioner No. 4 - Executive Engineer informed him that the date of birth of respondent cannot be altered and the first entry made in the service book as 1.2.1956 shall alone be accepted. Petitioner No. 4, in turn, informed the respondent vide letter dated 23.7.2012 about the said decision of petitioner No. 2.

5. Aggrieved, the respondent filed OA No. 275 of 2012 before the Tribunal for a direction to quash communication dated 2.9.2003 issued by petitioner No. 2 as well as letter dated 23.7.2012 of petitioner No. 4. The respondent also prayed for a direction against the petitioners to record his date of birth in the service book as 1.3.1964. In reply, the petitioners defended the decision of treating the date of birth of respondent as 1.2.1956 and not 1.3.1964. The petitioners also averred that the Executive Engineer on his own had no authority to alter the original first entry of respondent's date of birth in the service book. The petitioners even pleaded that at the time of appointment, respondent was "under matriculate" and it was on his declaration that his date of birth was 1.2.1956, entry to this effect, was made in the service book. The petitioners further pleaded that as per revised date of birth of respondent, his age at the time of joining service, would be 16 years 11 months 02 days, meaning thereby, he was "under age" and could not have been appointed.

6. The Tribunal, essentially relying upon the matriculate certificate of respondent and the seniority list published, agreed with him and allowed his petition. The Tribunal by the impugned order has directed the petitioners to treat the date of birth of respondent as 1.3.1964, which was revised by the Executive Engineer in the year 1985.

7. As seen above, the respondent was appointed vide order dated 3.2.1981 and he joined on 3.2.1981. At that time, the respondent was not even matriculate. and on the declaration made by respondent, his date of birth in the service book was recorded as 1.2.1956. Therefore, if the contention of respondent that his date of birth is 1.3.1964, in that event, he could not have been appointed in service in the year 1981 as he was much less than 18 years. The respondent cannot be allowed to take advantage of his falsehood at both ends ? one at the time of appointment and the other at the time of retirement.

8. Fundamental Rules 56 deals with date of birth and age of retirement. Note 6 of Fundamental Rules 56 reads as under:

"NOTE 6. ? The date of on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with

reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if?

(a) A request in this regard is made within five years of his entry into Government service;

(b) It is clearly established that a genuine bona fide mistake has occurred; and

(c) The date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

9. A bare reading of the above quoted Note makes it clear that the date of birth on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority. The Note also says that the date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except with the sanction of a Ministry, Department of Central Government or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving and that too on specific conditions. In the case at hand, the date of birth of respondent, recorded at the time of appointment and accepted by the authority, has been altered, merely for asking, by the Executive Engineer, without any sanction, as contemplated in the Note. Therefore, the alteration of date of birth in the service book of respondent from 1.2.1956 to 1.3.1964 is apparently without any authority and hence illegal.

10. For these reasons, we are of the considered view that the Tribunal erred in directing the petitioners to treat the date of birth of respondent in the service book as 1.3.1964 in place of 1.2.1956. We accordingly quash the order dated 4.9.2013 of the Tribunal. We, however, direct that since the respondent has served on the basis of impugned order for almost four months, the petitioners shall not recover the salary which has already been paid to him during that period.

11. The petition is allowed, but without any order as to costs.