

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3339 of 2001

New Delhi, this the *17th* day of September, 2002

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri Nirmal Kumar
S/o Shri Dal Chand Sharma
H.No.1/9523, Pratap Pura,
Rohtash Nagar,
Shahdara,
Delhi-110 032.

-APPLICANT

Shri R. R. Ahlawat, Proxy for
(By Advocate: Shri P.M. Ahlawat)

Versus

1. Union of India through
General Manager,
Baroda House,
New Delhi-110 001.
2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi-110 001.

-RESPONDENTS

By Advocate: Shri R.L. Dhawan, Counsel for respondent
No.1

Shri Rajinder Khatter, Counsel for
respondent Nos.2 and 3.

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

Applicant Nirmal Kumar has filed this OA seeking a direction to alter/rectify his date of birth as 2.10.1954 as recommended by respondent No.3.

2. The facts as alleged by the applicant in brief are that the applicant was engaged as a Substitute Khalasi w.e.f. 14.10.1972. Thereafter he was regularised in his service. The applicant further

h

alleges that he had submitted a typed duly verified attested copies of his original certificates showing his date of birth as 2.10.1954 but at the time of recording of his bio-data, the date of birth was entered as 2.10.1952 instead of 2.10.1954 erroneously by the then dealing assistant. The applicant thereafter made representations for rectification of the date of birth but his representation seems to have been rejected.

3. In order to seek alteration/rectification in his date date of birth, the applicant submits that as per the Railway Ministry's decision when a candidate declares his date of birth he should produce documentary evidence such as matriculation certificate or a Municipal Birth Certificate etc. and the department should have recorded the date of birth on the basis of the certificates submitted by the applicant.

4. The applicant also relies upon a judgment of the Hon'ble Supreme Court in Union of India and Others Vs. C. Rama Swamy and Others, 1997 (2) SC SLJ 118-1997 (4) JT 605 wherein it was held that the date of birth can be altered only if under sub-rule (4) it is established that the bona fide clerical mistake had been committed in accepting the date of birth thus the applicant prays that his OA be allowed and necessary directions be given to the respondents to alter his date of birth.

5. The respondents are contesting the OA. The respondents submitted that applicant is a literate person and is having qualification of higher secondary and III

fin

in refrigeration and Air conditioning but at the time of joining the railway department in 14.10.1972, he had signed the Service Book in English and had put his thumb and finger impression in his service book in token of its correctness. Besides that he was also posted in various posts and finally he is working as Section Engineer since 13.10.1995. During his initial entry in service his date of birth is recorded as 2.10.1952. The applicant never challenged the recording of the date of birth earlier, so he cannot be challenge the same now.

6. I have heard the learned counsel for the parties and gone through the records of the case.

7. The learned counsel for the applicant has put great reliance on the judgment in the case of U.O.I. Vs. C. Rama Swamy (Supra). On the contrary, the learned counsel for the respondents submitted that since the date of birth as recorded by the department in the service book of the applicant had been signed in token of his correctness, so the same cannot be challenged. I may further mention that the applicant is an literate person and is qualified and has the qualification of Higher Secondary and has even done his graduation also. So once the applicant has accepted the date of birth in the service book and also in his seniority list etc., he cannot be permitted to alter the same. The counsel for the respondent has also referred to judgment reported in 2202 (1) ATJ page 09 entitled as Dalip Kumar Das Vs. Union of India & Others wherein the Hon'ble Tribunal has observed as under:-



" Date of birth - Applicant seeking alteration in DOB on the basis of matriculation certificate - He accepted his DOB as mentioned in the service book and on various other documents i.e. medical certificate, seniority list etc. during his service - Not permitted to alter his DOB".

8. While deciding the OA, the Calcutta Bench had taken note of Rama Swamy's case and other relied upon documents and came to the conclusion that in view of the fact that the applicant had accepted the date of birth as recorded in the service and also in various other documents and he did not question the correctness of the same on earlier occasions, so the applicant cannot challenge the same now. The judgment given by the Calcutta Bench is on all fours to the present case of the applicant also. In this case also the applicant has signed the same in token of the correctness. Besides that various seniority lists have been issued which showed the date of birth as 2.10.1952 so he cannot at the fag end of his career asked for rectification of the date of birth to 2.10.1954. The applicant has failed to establish any bona fide mistake in recording his date of birth.

9. No other contention has been raised before me.

10. In view of the judgment of the Calcutta Bench in Dilip Kumar (Supra), the OA has no merits and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

Rakesh