

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

OA 2062/1999

New Delhi, this the 13th day of February 2002

(15)

Hon'ble Shri Govindan S. Tampi, Member (A)

Sh Ajit Kumar Patni,
JE-II
Northern Railway under
Senior Section Engineer (C&W)
Delhi Railway Station, Delhi

.....Applicant

(By Sh. S.K. Sawhney, Advocate)

Versus

1. Union of India through
General Manager, Northern Railway,
Baroda House ,
New Delhi
2. Divisional Railway Manager,
Northern Railway, Chelmsford Road,
New Delhi.
3. Assistant Personnel Officer,
Northern Railway,
New Delhi.

.....Respondents

(By Sh. B.S. Jain, Advocate)

O R D E R

The relief sought for by Shri Ajit Kumar Patni, the applicant, in this case are as below:

- i) Quash the illegal order dated 14.3.96 Annexure A2A in respect of applicant,
- ii) Direct the respondents to continue the applicant in service after 1.5.1998 till he attains the age of superannuation on the basis of his date of birth as 25.7.1942.
- iii) grant any other relief that this Hon'ble Tribunal may deem fit and,
- iv) award costs of this application.

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2. Heard S/Shri S K Sawhney and Shri B S Jain, learned counsel for the applicant and respondents respectively.

3. The applicant who had joined as a Khalasi on 11.1.61 is presently working as JE-II. The applicant's date of birth was shown as 25.7.1942 in the School Leaving Certificate produced by him at the time of his entry in service. In number of official documents issued thereafter also this was the date shown. However, on 14.3.96 the respondents issued a letter stating that he was due to retire on 30.4.98 and on inspecting his record he found that his Date of Birth was shown as 3.4.1940 instead of 25.7.1942. In terms of Rule 25 of IREC Vol. I in the case of literate staff the date of birth shall be entered in the record of service in the Railway by the Railway servant's own hand writing but from the inspection of the records it is seen that the date of birth was not written in his hand writing. His representation dated 8.11.96 and 30.4.98 requesting for rectification of the mistake did not find favour with the respondents. The action of the respondents in not permitting him to continue in service on the basis of his correct date of birth i.e. 25.7.1942 was incorrect as it had been the date declared by him at the time of entry in the service followed by a number of official documents showing the same date. The incorrect entry of 3.4.1940 shown as his date of birth was not in his hand-writing. The above pleas were very forcefully argued by Shri Sawhney learned counsel who also referred to the copies of the documents like medical identity card,

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CWS/NDLS(Chg.) dated 18.4.82 and 17.12.87, leave account etc. on all of which his date of birth shown as 25. 7.1942.

4. Fiercely contesting the above and endorsing the pleas made by the respondents, Sh. B S Jain learned counsel appearing on their behalf states that at the time of his appointment the applicant's date of birth was declared as 3.4.1940, in official records duly signed by him. Therefore he was due to be retired on 30.4.1998, on completion of 58 years of service which was correctly done. It was only after the date of retirement of the applicant the age of superannuation was raised from 58 to 60 years. When notice was issued on 14.3.96 including name of applicant in the list of persons who were to retire between 1.1.97 and 30.1.1999, applicant made a representation on 30.4.1998 showing his date of birth as 25.7.19942. The enquiry conducted by Welfare Inspector of the respondents office showed that the School which reportedly had issued his Certificate i.e. Jain Higher Secondary School, Qutub Road Delhi did not exist. In spite of being repeatedly asked the applicant ^{did} not file his original certificate. He also did not give any reply to the above letters. The applicant in fact, did not have a case, according to the respondents. It is further pointed out that the OA was not maintainable, being hit by estoppel as the applicant himself had verified his date of birth and affirmed it and he cannot seek any change there-of unless it was shown to be a bonafide mistake, duly supported by the original High School Certificate. The applicant was correctly retired on 30.4.1998. His Date of birth was 3.4.1940 and therefore documents shown by the applicant are not relevant. Only the entry shown is in the Service book

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was authentic, ^{and if checked} ~~which showed~~ the date of birth as 3.4.1940.

Shri Jain also referred to judgements of the Hon'ble Supreme Court in the case of UOI Vs C. Ramashwamy & Others [1997 SCC(L&S) 1158] holding that " The date of birth as recorded in the service book , in the case of a pre-4th December 1971 entrant and the date of birth as declared by an officer in the application for recruitment, in the case of post-4th December, 1971 entrant, has to be accepted as correct by the Central Government and this can be altered only if it is established under Rule 16-A(4) that there was a bona fide clerical mistake in accepting the date of birth". Further, the onus to prove that recorded date of birth was wrong lay on the applicant, as decided by the Hon'ble Supreme Court in the case of Secretary and Commissioner Home Department and Others Vs. R. Kirubakaran (1994) 26 ATC 828.

5. I have carefully considered the matter. The applicant in this case claims that his date of birth is 25.7.1942 as against 30.4.1940 shown in Service record True it is that in a number of documents states i.e. Medical Identity Cards and others the date is shown as 25.7.1942 but in the service book the same is entered as 30.4.1940. The applicant has produced a copy of the School Leaving Certificate but the enquiries made by the respondents showed that the School which issued the said certificate did not exist. It is also seen that in the Service Book the applicant had signed below the entry where is date of birth shown as 30.4.1940. Unless he is able to disprove the same by production of the original certificate from the School showing his date of birth 25.7.1942 he has no case.

The applicant has not been able to do it. The Hon'ble Supreme court has in the case of Union of India Vs. C. Rama Swamy [1997 SCC (L&C) 1158] has held as below:

" The date of birth as recorded in the service book , in the case of a pre-4th December 1971 entrant and the date of birth as declared by an officer in the application for recruitment, in the case of post-4th December, 1971 entrant, has to be accepted as correct by the Central Government and this can be altered only if it is established under Rule 16-A(4) that there was a bona fide clerical mistake in accepting the date of birth".

6. There is nothing to show that the entry of the Date of Birth of the applicant as 30.4.1940 was a clerical mistake. Similarly in Secy & Commissioner Home Department and others Vs R.Kirubakaran's case the observations of the Hon'ble Apex Court are that it was for the applicant to prove the wrong reporting of his date of birth, in the Service Book. Relevant portion of the judgement states as under:

" An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years below him for their respective promotions are affected in this process. This is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible . Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount onus is on the applicant, to prove the wrong recording of his date of birth, in his service book."

6. The applicant had not proved so. In the absence of any specific evidence supported by authentic documents the applicant cannot hope to get any modification of his date of birth. In the circumstances the respondents' action in retiring the individual on 30.4.98, reckoning the date of birth of the applicant as 30.4.1940 cannot be found fault with. Therefore the plea raised by the learned counsel for the applicant and the decisions relied upon by him cannot help his cause.

7. The applicant has not succeeded in making a case for Tribunal's interference. The O.A. being devoid of merit fails and is accordingly dismissed. No costs.

(Govindan B. Tampi)
Member (A)

Patwal/