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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2463/95

New Delhi this the 7th day of June, 96.

Hon'ble Shri R.K. Ahooja, Member(A).

Ms M. Yogambal,
D/o late Mr. V.S.M. Iyer,
R/o C-2/32, Pushpanjali Enclave,
Pitampura,
New Delhi.

...Applicant.

By Advocate Shri J.K. Bali.

Versus

Union of India, through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

...Respondent.

By Advocate Ms Veena Kalra, proxy counsel for Ms
Pinki Anand.

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Hon'ble Shri R.K. Ahooja, Member(A).

The applicant passed the 10th class before her joining the Northern Railway as Staff Nurse in the Central Hospital, New Delhi, on 6.4.1964. The certificate issued by the School for passing the 10th class showed her date of birth as 12.6.1937 and the same was entered in her service book as also duly countersigned by her. During the course of her service, she passed various professional examinations and then also took the Higher Secondary Examination in 1969. However, in the certificate of Higher Secondary, her date of birth was shown as 12.6.1938. In 1972, the applicant on selection was transferred to the Central Railways and a fresh service book was initiated,

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in which her date of birth was recorded as 12.6.1938. The applicant alleges that even though the respondent had all along accepted her date of birth as 12.6.1938 and had shown the same date in the various seniority lists issued in interregnum, they have issued the impugned order retiring her with effect from 30.6.1995 taking the date of birth as 12.6.1937 as per her 10th class certificate and not as mentioned in the Higher Secondary certificate.

2. The respondent in reply contends that after her date of birth was recorded as 12.6.1937 which was duly accepted by her at the time of her initial appointment in 1964, she has never made any representation or correspondence to the department regarding the change of her date of birth as 12.6.1937. As regards the entry of her date of birth as 12.6.1938 in her personal file with the Central Railway, the respondent contends that she had herself filled in the application form sent to the Railway Service Commission which resulted in a wrong entry being made in the second service book. According to the respondent, the applicant had never sought correction of date of birth in her school records and had given the same date at the time of her application for initial appointment and had also authenticated the entry in her personal file and hence, she could not at this stage seek to change ~~in~~ her date of birth.

3. I have heard the learned counsel on both sides. Shri J.K. Bali, learned counsel for the applicant, argued that while admittedly the school certificate

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Y showed her date of birth as 12.6.1937 and the same entry had been made in the application form for her initial appointment as well as in the service book, this entry ^{stood}~~be~~ corrected on the basis of the Higher Secondary certificate. He submitted that the correct entry had been made in the second service book when she, on selection, was transferred to the Central Railways and that the same date of birth had been shown in the seniority list, copy of which is annexed as Annexure A-11, and that the respondent could not at this stage order her superannuation with retrospective effect. In this context, he relied on the judgements of this Tribunal in S. Nagasundaram Vs. Union of India & Ors., 1991(17) ATC 833, D.G. Nagare Vs. Union of India & Ors., 1991(18) ATC 271 and Joginder Poddar Vs. Union of India, 1994(26) ATC 690, to show that the alteration once accepted could not be disowned at a later stage; the date of birth accepted for several years cannot be disowned by the government and the restoration of the original date after a long period without affording opportunity would be violative of principles of natural justice.

4. The learned counsel for the respondent controverted the claim of the applicant and submitted that the second service book was merely a continuation of the first service book and it was the entry made in the first service book which was material for the purpose of the date of superannuation. The applicant had ^{not}~~^~~ sought correction in her date of birth even though she knew fully well that she had authenticated

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h¹¹ date of birth as 12.6.1937. The learned counsel relied on the judgements of the Hon'ble Supreme Court in State of T.N. Vs. T.V. Venugopalan, 1994(6) SCC 302 and Secretary and Commissioner, Home Department and Ors. Vs. R. Kirubakaran, 1994 Supp (1) SCC 155, to argue that the Government servant cannot be allowed to challenge the date of birth recorded after entering service and countersigned by him and that the Court or the Tribunal should not order correction of date of birth unless there is a clear case on the basis of conclusive materials.

5. Having heard the counsel and after perusing the records on the file as well as the service books maintained by the Northern Railways and Central Railways, I am of the opinion that the applicant is entitled to the relief sought for. It is true and it is admitted by the applicant her-self that her date of birth 12.6.1937 was recorded in her 10th class certificate and the same had been entered in the service book opened at the time of her initial appointment in 1964. She claims that as she was aware of the mistake, she filled in the correct date of birth at the time of her Higher Secondary examination in the year 1969 and accordingly in the certificate of Higher Secondary, the date of birth mentioned therein was 12.6.1938. It is claimed by her and the same is not controverted by the respondent that she submitted a copy of the Higher Secondary certificate to the respondent by way of a proof for having acquired higher educational qualification, on her transfer to the Central Railways.

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His service book was opened there showing her date of birth as 12.6.1938. This service book was prepared in April, 1972. The copy of the seniority list annexed as Annexure A-11 also shows her date of birth as 12.6.1938. The respondent claims that it was for the applicant to seek correction of her date of birth at the appropriate time and not at the fag end of her service. I am inclined to agree with the learned counsel for the applicant that there was no question of applying for such a correction when the service book made in 1972 itself had carried out the changed date of birth. In Joginder Poddar Vs. Union of India (supra), it was held that so far as the making of an application for correction of date of birth is concerned, that is a matter in the realm of procedure. In an application, the desire for the change of the date of birth can be either express or implied. The Tribunal held that a request made by the petitioner for the entry of his matriculation certificate also contained an implied request for the correction of his age as per the certificate also. In the present case also, the applicant had admittedly sent her Higher Secondary certificate to the respondent for the purpose of taking the same on record for the entry of her educational qualification. Since the certificate showed her date of birth as 12.6.1938, it would be also an implied request for correction of her date of birth. The date of birth as claimed by the applicant ^{in the second service book} as also appearing in the seniority list implied an acceptance on the part of the respondent and ⁱⁿ the ratio of S. Nagasundaram Vs. Union

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of India & Anr. (Supra) ~~that~~ if the respondents wanted to correct the date of birth^{as} recorded in the first service book, then natural justice demanded that they should have issued a notice to the applicant.

6. The two cases cited above which have been relied upon by the learned counsel for the respondent do not affect the case of the applicant considering the facts involved. In State of T.N. Vs. T.V. Venugopalan (Supra), the Hon'ble Supreme Court had held that once the Government have rejected the claim of change of date of birth after considering various facts and circumstances, there was no scope of judicial review of such order of the Government and that the Tribunal could not reappreciate the evidence to reach a different conclusion as it was not a court of appeal. In the present case, the change in date of birth had already been accepted by the respondent because the service book of 1972 as well as the subsequent seniority list showed the date of birth of the applicant as recorded in the Higher Secondary certificate. In Secretary & Commissioner, Home Department & Ors. (Supra), the Hon'ble Supreme Court had held that the application for change of date of birth should be made within the time fixed by any rule or order and in the absence of such an order it should be made within a reasonable time and an application made only about a year before superannuation ought not to have been allowed by the Tribunal. Here again the ratio of the judgement does not apply to the present case since the

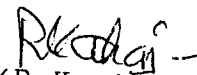
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Application for correction had been made by implication on the submission of the Higher Secondary certificate to the respondent and the entries made and authenticated in the second service book of 1972 by them. In my view, the clinching factor in favour of the applicant is the date of the impugned order. This order was issued on 6.12.1995 (Annexure A-1) retiring the applicant from service with retrospective effect on 30.6.1995 with the further proviso that the period of irregular retention in service beyond the age of superannuation, i.e. 30.6.1995, will be decided separately. Had the respondent proceeded on the basis of her date of birth as 12.6.1937, her date of superannuation on 30.6.1995 would have been automatic. Their failure to issue the order of superannuation at that time leads to the inescapable conclusion that the impugned order is an after thought and that the respondent was proceeding all along on the basis of her date of birth being 12.6.1938.

7. In the light of the above discussion, the application is allowed. The respondent is directed to continue to treat the applicant in service on the basis of her date of birth 12.6.1938. She will be entitled to all consequential benefits. No order as to costs.

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(R.K. Ahooja)
Member(A)