

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

D.A. No. 404/95

New Delhi, dated the 19th May, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri Chaman Lal Gupta,
S/o Shri Madho Ram,
310/5, Railway Colony,
Shakurbasti, Delhi.

(By Advocate: Shri S.K. Sawhney)

....

APPLICANT

VERSUS

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

2. The Divisional Railway Manager,
Northern Railway,
Chelmsford Road,
New Delhi
(By Advocate: Shri R.L. Dhawan)

RESPONDENTS

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri Chaman Lal Gupta Loco Inspector Diesel Shed, N. Railway, New Delhi has prayed for a direction to the Respondents not to retire him on 31.5.95 and instead to continue him till 31.5.97 on the ground that he will be attaining the age of superannuation i.e. 58 years on this date as per his date of birth ^{made} entry/at the time of joining service which is duly supported by his matric certificate.

2. The applicant contends that he joined the Northern Railway as diesel cleaner on 13.12.56 and gave his date of birth at the time of entering service as 15.5.39 duly supported by the matric certificate issued by the Punjab University for the examination held in March 1955. He contends this date of birth i.e. 15.3.39 was entered in his service record in his own hand writing at the time

Ar

(5)

entering Govt. service, and there had been no controversy at any stage till December 93 when the Respondents notified the date of his retirement on the notice board of his place of work on 31.5.95. The applicant states that he represented against the same, but the same was rejected vide Respondents' letter dated 13.3.95 (Annexure R1) compelling him to file this O.A.

3. The Respondents have challenged the O.A. and stated that as per the service documents (service record, leave account, seniority list issued from time to time, etc.) the recorded date of birth of the applicant is 15.5.37 and accordingly he is due for retirement on 31.5.95. Shri R.L. Dhawan states that in terms of Rule 225(4) of Indian Railway Estt. Code Vol. I the date of birth as recorded in the service document shall be held binding and no alteration of such shall be permissible subsequently. However, the competent authority may order alteration of the recorded date of birth, where a satisfactory explanation (which would not be entertained after completion of probation period of three years whichever is earlier) that the wrong date came to be entered, is furnished by the Railway servant concerned, together with the statement of any previous attempt made to have the record amended. The Respondents further submitted that an opportunity was given to the employees who were in service as on 31.12.71 to make representation before 31.7.73 for alteration of recorded date of birth, but the applicant did not avail of that opportunity although he had been appointed as far back as 13.12.56. They also state that he was shown his date of birth as 15.5.37 in the seniority lists issued from time to time and for the first time represented in July, 94 which is time barred. More over, had his date of birth been 15.5.39 he would not have been in the railway service on 13.12.56 being under the minimum age of 18 years. Furthermore, they point out that in his rejoinder affidavit filed by the

A

applicant on 11.1.71 in CMP No. 1505 of 1970 in LPA No. 205/70 as about 33 years which will correspond to a date of birth in 1937.

4. I have heard Shri S.K. Sawhney for the applicant and Shri R.L. Dhawan for the respondents.

5. Shri Sawhney has placed reliance on Rule 225 of the Railway Estt. Code Vol. I which provides that the date of birth as recorded in accordance with this rule shall be held to be binding and no alteration shall ordinarily be permitted subsequently, and further that while entering railway service one has to declare his date of birth, which would not differ from any declaration express or implied for any public purpose before entering railway service. Unfortunately the first page of the applicant's service book which normally contains the service particulars which are filled up by the applicant himself unless he is illiterate (which is not the case here) is missing and appears to have been torn out. Respondents' counsel Shri Dhawan has stated at the bar that departmental action against the Govt. functionary concerned with the maintenance of service records is being taken separately. We thus have to rely upon the other evidence available. The applicant has based his case upon the duplicate copy of the matric certificate issued in 1994 stating that the date of birth of one Shri Chaman Lal Saralia S/o Shri Madho Ram Saralia is 15.5.39. The original matriculation certificate has not been produced, and the explanation given is that it is not readily traceable. The G.A. itself has been filed by Chaman Lal Gupta and not Chaman Lal Saralia. Whether the applicant Chaman Lal Gupta is the same Chaman Lal Saralia is itself not free from doubt, although the applicant contends that Saralia is a sub-caste of Gupta.

6. In so far as the applicant being under age for Govt.

A

service in 1956 if his date of birth is taken as 15.5.39 is concerned Shri Sawhney invited my attention to ABE 167/92 at Annexure AA.1 and stated that the applicant has joined the Railway service as Diesel cleaner when the minimum age prescribed was between 16-18 and hence he was not under age in 1956. He has pointed out that the applicant has recorded his date of birth in the service book as 15.5.39 and cannot be penalised for any lapses on the part of a Govt. functionary as regards proper maintenance of Service Book, and therefore, the Respondents are required to treat his date of birth as per the matric certificate being 15.5.39. Certain rulings were also relied upon by Shri Sawhney including ATJ 1992(1) 1977 Dharam Singh Vs. UOI, ATJ 1993 (2) 539 A. Gajendran Vs. UOI, ATJ 1994 (1) 145 G. Bhatia Vs. UOI and SLR 1967 465 State of Orissa Vs. Binapani Deb.

7. I have given careful consideration to the rival contentions and perused the materials on the record.

8. As pointed out by the Respondents in their letter dated 13.3.95 the applicant represented against his recorded date of birth in Jly 94 and has based his case on a photocopy of a matric examination, 1955 certificate issued by the Punjab University on 1.3.94 in the name of one Chaman Lal Saralia. Whether that certificate in the name of Chaman Lal Saralia relates to the applicant, who calls himself as Chaman Lal Gupta, and is mentioned as Chaman Lal Gupta in the service records, seniority lists, etc. is itself not free from doubt. The available ^{material} in the applicant's service book shows his date of birth as recorded is 15.5.37 and as stated earlier the first page of that service book, showing the applicant's particulars in his own hand writing are missing. The successive seniority lists issued from time to time vis. on 21.7.82, 8.11.83, 25.5.84,

9.10.87, 19.11.90 and 10.6.93 show the applicant's date of birth as 15.5.37. The applicant has pointed out that the seniority lists is of concern only in so far as it reflects the correct seniority, and merely because the applicant's date of birth was shown as 15.5.37 in those seniority lists, cannot be held against him. This argument is specious. Even if the primary concern of a Govt. servant vis-a-vis is seniority list is to see that his name is placed at the correct position in that list, surely if in as many as six seniority lists the applicant's date of birth was shown as 15.5.37 which he considered incorrect, he would have moved for its correction well in time. However, the applicant did not do so. The affidavit filed by the applicant on 11.1.71 in which he states he is of 33 years which would also tend to weaken the applicant's case that he was born on 15.5.39.

9. What is further fatal to the applicant's contention, is the fact that in his CRs for the years ending 31.3.90, 31.3.91 and 31.3.92, in the date of birth column under portion marked "Personal Data" the date of birth shown is 15.5.37, and below that is the self-appraisal which has been made for each of those years by the applicant himself, which he has also signed, which supports the respondents stand that his date of birth was correctly recorded as 15.5.37.

10. It is clear that the applicant is claiming his date of birth as 15.5.39 and not 15.5.37 at the fag end of his career and has based his entire claim on a duplicate copy of a matrik certificate, issued in 1994 in the name of one Chaman Lal Saralia, in which it is stated that Chaman Lal Saralia S/o Shri Madho Ram Saralia was born on 15.5.39. No other material had been produced by the applicant to substantiate his claim. On the other hand there is overwhelming evidence to indicate that the applicant's date of birth was actually 15.5.37 which the applicant was also well aware of, right from the start of his official career, but he made no request for

9

correction in his date of birth at any stage earlier. Merely on the basis of that duplicate copy of a matric certificate issued in the name of one Chaman Lal Saralia produced by the applicant it cannot be said that the Respondents have acted arbitrarily, malafidely or illegally in rejecting the applicant's very belated attempt to have his date of birth changed. In the light of the position mentioned above the rulings cited by Shri Sawhney do not help the applicant.

11. Before concluding we may briefly advert to the Hon'ble Supreme Court judgment in UOI Vs. Harnam Singh 1993 SCC 2 375 wherein it has been held that those already in service prior to 1979 for a period of more than 5 years were obliged to seek alteration within a maximum period of 5 years from the date of coming into force of amended note 5 in FR 56(m) in 1979.

Alterations sought in 1991 by a Respondent, 35 years after his induction in 1956 during which period he had several occasions to verify his date of birth but he did not make any request for alteration, cannot be allowed for delay in laches.

12. In the present case also the applicant joined service in 1956 and is seeking alteration of his date of birth in the available Govt. records in 1994 i.e. after a lapse of 38 years. During this period his date of birth was recorded in various Govt. documents as 15.5.37 which he does not ~~deny seeing~~, but ^{in fill the gap end of his career} he raised no objection and under the circumstances, merely on the basis of a duplicate copy of matric certificate issued in 1994 in the name of one Chaman Lal Saralia ~~which~~ ^{when} the applicant claims to be, although in all the official documents he is called Chaman Lal Gupta or plain Chaman Lal, his prayer cannot succeed. It is for the applicant to have established his case that he indeed is Chaman Lal Saralia whose date of birth was 15.5.39, and that he

had no knowledge that in all the available Govt. records the date of birth was recorded as 15.5.37 till ^{the} this point of time he ^{actually} filed his representation to the Respondents. He has not succeeded in doing so, as would warrant any interference in this matter.

13. In the result this application fails and is dismissed.

No costs.

Antalige
(S.P. Adige)
Member (A)

GK