

Central Administrative Tribunal
Principal Bench: New Delhi

OA 858/97

New Delhi this the 6th day of June 1997.

Hon'ble Mr N. Sahu, Member (A)

Shri Yogesh Chander Sareen
S/o Shri Karan Chand
Typist
Type Section
D.R.M. Office
Northern Railway
State Entry Road
New Delhi.

...Applicant.

(By advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.

...Respondents.

(By advocate: Mrs B. Sunita Rao)

ORDER

Hon'ble Mr N. Sahu, Member (A)

The applicant was initially engaged as Khalasi on 12.10.1961. He was officiating as a Typist from the year 1973. He and his colleagues claimed regularisation as Typists, seniority and other benefits before this Tribunal in OA 1488/89. In terms of directions given by the Tribunal, the applicant was regularised w.e.f. 1981. After the judgement of the Tribunal, respondents issued a seniority list of Typists on 14.6.1993. According to the applicant, he first became aware of his date of birth claimed to be wrongly shown as 15.4.1939 in the seniority list published which is annexed as Annexure A2-A to the OA. He claims that the date of birth as indicated in the seniority list was not his actual date of birth. The applicant passed his matriculation examination in the year 1958 in second division and

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his date of birth was recorded in the matriculation certificate as 2.6.1940. A photocopy of the certificate is Annexure A-3. In view of this, applicant made a representation to the Divisional Personnel Officer (D.P.O.) on 9.7.1993 with the request to rectify the mistake. Finding no response, he made another representation dated 23.5.1994 to Senior D.P.O., followed by representations dated 5.7.94 and 1.2.96. Thereafter, respondent No.2 issued an order dated 30.8.96 rejecting the applicant's request. He filed an appeal to respondent No.1, The General Manager, Northern Railway on 6.12.1996 and requested for correction in his date of birth. The General Manager examined the entire case records and rejected his claim.

2. Respondent No.1 addressed a letter to The Registrar, Punjab University to confirm the veracity of his date of birth in the matriculation certificate. He deputed Shri G.K.Sharma, Senior Personnel Inspector for the purpose. The Registrar, Punjab University sent his reply by letter dated 26.3.97 which confirmed the date of birth of the applicant recorded in the matriculation certificate as 2.6.1940. Inspite of this information, the applicant's grievance is that he was retired from service on 30.4.97. Applicant's claim for change in his date of birth is based on following material:

Prakash Singh

(i) Respondents did not intimate to him about the entry of his date of birth as 15.4.1939 at any time before the publication of the seniority list on 14.6.93. Railway rules require that the service record should be shown to a railway employee once every five years and signatures be obtained in token of the person having seen the service book. This was not done. Therefore, till 14.6.93, the applicant was in the dark;

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(ii) The General Manager, Northern Railway had initiated an enquiry regarding correctness of his DoB in the matriculation certificate from Punjab University. He was informed that his date of birth was 2.6.1940 as recorded in the matriculation certificate. Having initiated the enquiry, the General Manager should have taken the matter to its logical conclusion. It is established that the government servant has a right to continue in service till he reaches the age of superannuation. The matriculation certificate is an authentic and unimpeachable evidence about the date of birth. It is recognised by all authorities that the matriculation certificate is an authentic source of date of birth. This evidence cannot be ignored.

(iii) The executive instructions which prescribe a period for making an application for alteration of date of birth cannot overrule the provisions of Rule-I, 143 & 145 of the I.R.E.C. (Indian Railway Establishment Code).

(iv) The request for correction of the date of birth was examined on merits and any error in the service records cannot alter the date of birth. The entry in the service records has to be compared with the entry in a basic document like a matriculation certificate. The date of birth as recorded in matriculation certificate should be taken into account even if it leads to a correction.

Karan Singh

(v) Rejection of documentary evidence on some perceived executive instructions is unreasonable.

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(vi) It is stated that the applicant filed a representation for change in his date of birth immediately after publication of the seniority list on 14.6.93 which was three and half years prior to the retirement. Therefore, this case cannot be compared with case of claims for change of date of birth on the eve of superannuation.

3. Learned counsel for the respondents stated that the appeal was rejected and he was retired from service on 30.4.96. The applicant never filed any objection against the wrong mentioning of his date of birth in 1993 and after a long gap of three years, he submitted a representation which was rejected by an order dated 30.8.96. The applicant is a literate person and it cannot be believed that he was not vigilant about the correctness of his date of birth. His date of birth as 15.4.1939 was within his knowledge and he never raised any objection during the past 36 years of his service. It is not possible to check the authenticity of the matriculation certificate issued by the Punjab University stating the date of birth as 2.6.1940 at this late stage. The next important point made by the respondents' counsel is that there is a personal file as well as service book of the applicant. With the connivance of the staff dealing with the personnel records, the applicant's personal file was misplaced and missing. With regard to his service book, the said document was intact and was available for inspection upto 19.7.1996. It was only thereafter that certain pages of the service book were tampered with and certain pages were removed and truncated service book is available even now. For this mischief, suitable disciplinary action has been initiated against suspected officials.

answering

4. With regard to the date of birth of the applicant, it is stated that in every document available with the Railway Board, the date of birth has been shown as 15.4.1939. Learned counsel for the respondents has cited following decision in support of his claim:

"That the onus is on the applicant to prove his date of birth which was wrongly recorded and he should produce irrefutable proof relating to his DoB well within time and any delay in seeking alteration of DoB cannot be condoned." 1996 (7) SCC 421. Other authorities cited by him are: 1995 (4) SCC 172; 1995 (2) SCC 82. In this case, the claim for correction in recorded date of birth was made after 36 long years of joining service.

5. I have carefully considered the rival submissions. I have also perused the original records placed before me during arguments. I have seen the service book and other documents. As soon as the applicant submitted his representation (there is a dispute as to when the representation was made and I will not enter into this controversy), on 19.7.96, the DPO noted that "according to his service records, date of birth of Shri Yogesh Chander Sareen is 15.4.1939 which was duly signed by him". The said DPO recorded that the applicant's original personal file was not available. He further recorded that in the year 1973, the employee along with others was given an opportunity to claim alterations in the date of birth, but the applicant never raised any objection. The DPO also stated that as per the entry available in his service book, the date of birth was 15.4.1939 whereas as per his matriculation certificate it was 2.6.1940. The DPO recorded as under:

Keval Singh

(1)

"I have seen his service book. Shri Yogesh Chander Sareen has signed his date of birth as 15.4.1939 in token of accepting the same."

6. It is true that his personal file is not available but in this regard there is genuine apprehension that the said personal file was deliberately misplaced. As per the Board's instructions, "now it is not the time for seeking change in the DoB when he is due for retirement next year." Senior DPO has stated that being a literate person, he should have respond to the call for change in his date of birth in 1973 itself. In addition to this, learned counsel for the respondents has brought to my notice the original leave accounts of the applicant maintained from the beginning of his service. In page after page, the DoB of the applicant was recorded as 15.4.1939. Two inferences follow from these original documents: First, the DoB of the applicant was recorded as 15.4.1939 in the service book and in token therof the applicant verified, signed and accepted the same. Although relevant portion of the service book was torn yet till July 1996 when the officials inspected the service book, the relevant portion was existing. They have themselves seen and recorded in the notes that they had seen the entry about his DoB and the signature of the applicant. Right from 1961, the leave account of the applicant was maintained and in page after page, DoB was recorded as 15.4.1939. Although the applicant never signed the leave accounts at any stage, yet I believe that he would have seen the leave accounts himself because earning of leave, utilising leave and finding out balance of leave is an important pastime of every government servant and I presume that the applicant must have seen his leave accounts maintained and if he had done so, he would have noticed his DoB recorded as 15.4.1939.

Kansal

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7. Following inferences are drawn:

(i) From 12.10.1961, the Railway records for 35 years had been constantly noting the DoB of the applicant as 15.4.1939.

(ii) Applicant knew that his DoB in his service book was 15.4.1939.

(iii) Even from the leave accounts which I presume he must have inspected, he would have gathered that his DoB has been mentioned as 15.4.1939. Even if it is assumed that the representation was made in 1993 and not in 1996, the fact remains that for 35 years, the applicant never challenged the DoB which he knew was 15.4.1939.

8. The unwritten law of limitation on request to alter the DoB is now very well settled by repeated pronouncements of the Supreme Court. UOI & Ors Vs. Harnam Singh 1993 SCC (L&S) p. 375 is the leading case on the subject. The Supreme Court had occasion to interpret note 6 to F.R. 56 (m) and held that even where no period of limitation is fixed, the request must be made within a reasonable time and according to the Apex Court, a limitation of 5 years from the date of entry into office would be a reasonable time. The above view of the Supreme Court was reiterated in State of Tamil Nadu V. T.V. Venugopal 1994 SCC (L&S) 1385 wherein after referring to its earlier decision on the issue, the Supreme Court also indicated the limited scope of review in this matter. In V.R. Kirupakaran's case, JT 1993 (5) SC 404, the Supreme Court has deprecated the tendency of an employee to seek alteration of DoB on the eve of superannuation

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and cautioned Courts and Tribunals not to grant the relief unless application is filed within time and unless material produced is conclusive in nature.

9. As far as railway employees are concerned, as pointed out by the DPO, the applicant was called in the year 1973 itself to make out a claim for alteration in his DoB. At that time, the applicant never raised any objection. I am satisfied that the applicant was aware throughout his service career that his DoB was recorded as 15.4.1939, and that he never submitted representation for alteration of the same within 5 years of his entry into service as per Supreme Court's decision in Harnam Singh' case. To be more precise, it was held that a period of five years has been fixed from the date of entry into government service for those who entered service after 15.12.1979 and in respect of those who were in service before 15.12.1979, alteration of DoB has to be sought within a reasonable time and in any event not later than 5 years after the amendment came into force i.e. from 5.12.1979. The applicant did not seek a change either within October 1966 or before December 1984.

10. In my view, therefore, the contention that for the first time the applicant came to know about his DoB only in July 1993 cannot be believed. In view of the above discussion, any fresh evidence at this stage seeking alteration of his date of birth cannot be admitted. OA is dismissed.

Chanasimha Sahu
(N. Sahu)
Member (A)

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