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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 574/94

New Delhi, dated the 31st August, 1995

HON'BLE MR. J.P. SHARMA, MEMBER (J)

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

Shri K.C. Tyagi,
S/o Shri Ram Chand Tyagi,
R/o 38A/3, Siri Ram Road Rly.
Colony,
Civil Lines, Delhi-110044.
(By Advocate: Shri B.S. Maines)

.... APPLICANT

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi.
3. The Senior Divisional Electrical Engineer (TRE), Northern Railway, D.R.M.'s Office, State Entry Road, New Delhi.

.... RESPONDENTS

(By Advocate: Shri B.K. Aggarwal)

JUDGMENT

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

In this application Shri K.C. Tyagi, Ex-Electrical Driver, Northern Railway, New Delhi has impugned the order dated 23.7.93 (Ann. A.1) removing him from service.

2. The applicant's case is that he was appointed as a Loco Cleaner on 5.4.58, and at the time of his appointment, his date of birth was recorded in his service records as 20.7.37 on the basis of the documents produced by him. He states that all the official records bore the very same date of birth namely 20.7.37 and as he belonged to the safety category he was subject to periodical medical examination every three years.

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up to the age of 45 and annually thereafter. In all these medical memo, which were issued for medical examination of the applicant, the date of birth was recorded as 20.7.37 (Ann.A.2). He states that in Dec. 1989 the Respondents once again directed him to file an affidavit regarding his service particulars, which he duly submitted, in which his date of birth was shown as 20.7.37 (Ann. A.3). He states that while he was working as Electrical Driver Gr.A the Respondents served a Memo charge sheet for minor penalty dated 8.12.92 alleging that he had furnished a wrong information in respect of his date of birth. He denied the charges, upon which a departmental inquiry was instituted. The applicant states that he appeared before the E.O. and submitted a representation to make available certain additional documents as maintained in the Edu. Board at Allahabad, as well as the original records containing his date of birth as maintained in the Gram panchayat as well as in the various schools where the applicant had his education, but these documents were not supplied, and certain defence witnesses whose production he had prayed for were also not called for, because the Enquiry Officer was biased against him. The applicant states that the E.O. made available phot copies of three relevant documents, but other relevant documents were not produced, and the request for production of defence witnesses was also not acceded to, indicating that the E.O. was in gross haste to conclude the

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the case, with reference to preconceived and foregone conclusions. The applicant states that his request for change of E.O. was also rejected, and his repeated requests for production of the addl. relevant documents as well as the defence witnesses was ignored. When the applicant made a written request to the E.O. concerned to fix the inquiry on 16.7.93, this request was turned down. While these disciplinary proceedings were in progress the Respondents issued a letter on 12.5.93 seeking to retire him on 31.7.93 (Ann.A.23) upon which the applicant filed O.A. 1421 of 1993 on 12.7.93, and the Tribunal granted him interim relief against the retirement of the applicant, and after the counter affidavit and the rejoinder were filed the O.A. was fixed for final hearing. The applicant alleges that since the Respondents came to know that the case of his date of birth (O.A. 1421/93) was to be decided on 28.7.93, ~~so~~ a conspiracy was hatched with the E.O. to submit his findings expeditiously, but before the final disposal of that O.A. Thereafter the enquiry officer rushed through the proceedings, without caring to give reasonable opportunity to the applicant. The applicant further asserts that the E.O. conducted the proceedings on day-to-day basis, which handicapped him, because the new defence helper who was engaged by him did not have sufficient time to study the case, and the applicant's request for time was rejected. He states that the E.O. recorded his statement on 7.7.93, prior to which the E.O. rejected the applicant's protests that he had not been supplied with additional ^{reasonable} documents, and had not been given opportunity to

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defend himself, closing the inquiry without examining the defence witnesses. He further states that the E.O. directed the applicant to submit his defence brief within three days, and when the defence helper submitted a request to the E.O. to give atleast three more days time to prepare the defence statement, even that request was rejected and extension of time of only one day was allowed. It is further stated that although the Inquiry Officer had given time to the applicant to file the defence brief up to 13.7.93 the E.O. did not even wait upto that time and submitted his report to the disciplinary authority on 13.7.93 itself, and the disciplinary authority, also acting in gross haste, issued the show cause notice to the applicant on 13.7.93 itself without application of mind. It is asserted that the malafide action of the Inquiry Officer as well as the disciplinary authority ^{is} further proved by the fact that the the Railway Board's standing instructions allowing atleast 15 days time to the charged officer to make a representation in regard to the inquiry report was also rejected. It is further stated that on receipt of the aforesaid show cause notice the applicant submitted a representation to the E.O. to give atleast two weeks time to submit his representation against the proposed punishment, but the same was rejected, and the impugned order dated 23.7.93 was passed removing the applicant from service, to pre-empt the Tribunal's decision in O.A. 1421/93. The applicant states that he filed an immediate appeal against the impugned order, and in the meantime the judgment dated 12.8.93 was delivered in O.A. 1421/93, by which the order dated 12.5.93

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was quashed and set-aside and the Respondents were directed to allow the applicant to retire him on the basis of date of birth declared by the applicant at the time of his appointment i.e. 20.7.37.

3. The applicant states that after the said judgment was delivered, he represented to the appellate authority to quash the impugned order of removal from service. He states that he ~~prayed~~ for a personal hearing, and he explained the case to the ADR (II), who appeared satisfied that the injustice has been done to the applicant, but in spite of that the applicant's appeal was rejected by the appellate authority vide order dated 11.2.94 (Ann. A.39), compelling him to file this O.A.

4. The Respondents in their reply have contested the O.A. They denied that the applicant's date of birth was recorded as 20.7.37 in the service records. They state that since the original service records were not available, the applicant's case was taken up in the PN Meeting, where it was decided to reconstruct his service records, for which he was asked to furnish collateral evidence, supported by verified copies of his high school certificates. The applicant declared his date of birth as 20.7.37 supported by the high school certificates issued by the Intermediate Educational Council, Allahabad. As the date of birth shown in the earlier seniority list, when the applicant was working as shunter was 20.7.35 and as the high school certificate produced by the

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applicant showed his date of birth as 20.7.37 / that too contained over writings, a doubt arose about the applicant's actual date of birth and the matter was taken up with the Educational Council, Allahabad.

(What the Intermediate Educational Council actually reported has, however, not been ^{clearly} stated in the reply).

The Respondents further stated that the applicant did not furnish any other material to show that his date of birth was 20.7.37 and could not produce any certificate to establish that the charges were false.

They state that his original service records contains his date of birth entry as 20.7.35 as is evident from the seniority list of shunters but subsequently he gave his date of birth as 20.7.37, and in support of the same he gave his high school certificate in original which was found forged and contained overwriting. They state that the applicant's claim i.e. his date of birth 20.7.37 was given only in 1988 and onwards, when he came to know his original service records were not available. They state that the onus was upon him to prove his date of birth as 20.7.37, which he failed to discharge. The certificate supplied by him in support of his contention, contained erasures and over-writings and he failed to produce ~~another~~ certificate or even a duplicate certificate, from the UP Board, Allahabad. Merely asking the Inquiry Officer to call the Secretary of the Board alongwith his official records did not absolve the applicant of his obligation to prove his case. The Respondents have denied that there was

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any malafide intention on the part of the E.O. in refusing the request of the applicant for production of additional documents, as the same according to them ~~was~~^{was} not relevant for the purposes of the inquiry. They state that the entire purpose of the applicant in calling for these documents was to delay the inquiry proceedings as he filed the O.A. in the Tribunal. They state that admittedly the defence helper has taken copies of all the relied upon documents, and other documents such as leave record, medical memo, etc. were not relevant. They further state that the applicant's original appointment letter was in his original custody which was never produced intentionally. They state that he was given full opportunity to defend his case but failed to produce the high school certificate other than the one which was already in the Respondents' custody which contained erasures and over-writings, and except for claiming that his name was wrongly written in the certificate he did not deny the contents of the ~~other~~¹ certificate either. The Respondents have denied that he was given only three days time to prepare his defence statement. They state that he was given time up to 13.7.93 and on not receiving the applicant's defence statement, the Inquiry Officer submitted his report on 13.7.93. They state that his application is fit to be dismissed.

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5. We have heard Shri B.S. Mainoo for the applicant and Shri B.K. Aggarwal for the respondents. We have also perused the material on record and considered the matter carefully.

6. Admittedly by Memo. dated 8.12.92 (Annexure-A4) the applicant was charge sheeted on the ground that while functioning as Engine Driver he was asked to submit a declaration in respect of his particulars and he submitted a wrong information in respect of his date of birth. The applicant mentioned his date of birth to be 20.7.37 while in the seniority list the same was mentioned as 20.7.35. The applicant submitted a photocopy of his educational qualification certificate No. 11235 issued by the Secretary, Board of High School and Intermediate Education U.P. showing his date of birth to be 20.7.37, but the said certificate was alleged to be manipulated, and the applicant had by committing this misconduct and thereby attempting to mislead the Railway Administration contravened Rule 3(i)(iii) Railway Service Conduct Rules. The list of documents by which the charges were to be sustained, were listed as

- i) Declaration submitted by the applicant;
- ii) photocopy of Educational qualification Certificate No. 11235;
- iii) Secretary, Intermediate Education Council, Allahabad's letter dated 27.7.92,

and the witness by whom the charge was proposed to be sustained was

- i) Shri Trilesh Singh, D.P.I./N.O.L.S.

The relevant departmental proceedings record

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produced for our inspection by the respondent shows that the charge sheet was served upon the applicant, and one Shri Hari Ram Singh, Retired CTI was permitted to be his defence counsel. The applicant sought for and was granted permission to take extracts of the relied upon documents vide letter dt. 24.1.93. In Feb. 93, Shri B.S. Ahuja, STFO, New Delhi was appointed as Enquiry Officer. On 15.3.93 he requested that somebody else be appointed as E.O. owing to pressure of work but the same was rejected. There is a letter from the DRM Office dt. 24.5.93 addressed to the E.O., to complete the enquiry latest by 28.5.93 to enable sufficient time to review as the applicant has to retire on 31.7.93. On 20.5.93, in reply to the E.O.'s letter dated 14.5.93, photo copy of (i) the declaration submitted by the applicant; (ii) certificate No. 11235 of the High School issued by the Board of High School and Intermediate Education, U.P. and (iii) the letter dated 27.7.92 issued by the Secretary, IEC, Allahabad U.P. were made available to the E.O. The E.O. directed the applicant to be present in the enquiry on 25.5.93, and the applicant appeared on that date. However, he filed a copy of the letter of the defence helper stating that he was busy up to 10.6.93 and prayed for enquiry to be fixed only thereafter. On 26.5.93 itself the applicant was informed that if his defence helper was a busy man, the applicant should nominate some other helper because this was not an unavoidable ground for postponing the enquiry. The applicant was informed that the next date fixed was 28.5.1993 and if he failed to appear on that date, the case would proceed ex parte. On 28.5.1993, the applicant appeared and referred to his earlier letter.

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He was informed vide letter dated 28.5.93 that the next date fixed would be 3.6.93 and the enquiry would proceed on a continuous basis thereafter, and if he failed to appear with the defence helper, the case would proceed ex parte. Thereupon, the applicant in his letter to Senior D.E.O. wrote that despite his request that the enquiry be postponed to after 10.6.93 owing to his defence helper being busy, the E.O. had fixed an earlier date i.e. 3.6.93 from which it appears that the E.O. was biased and prayed for the change of the Enquiry Officer. This prayer was rejected by the D.R.M Office's letter dated 1.6.93. On 3.6.93, the applicant appeared for the enquiry but complained of vomiting and diarrhoea and the enquiry was, therefore, postponed. He was given the next date as 10.6.93 and meanwhile was directed to submit a Railway Medical Officer's certificate of treatment/sickness personally or by some messenger positively by 4.6.93 but from the E.O.'s letter dated 8.6.93, it appears that the applicant failed to produce any such certificate that he was sick. The Enquiry Officer concluded that the applicant was trying to delay the proceedings and was informed that he should appear on 10.6.93 positively along with his defence helper, failing which the enquiry would proceed ex parte. There is ^{however} a certificate dated 8.6.1993 from the Medical Officer, Northern Railway stating that the applicant was unfit to perform his duties from 3.6.93. There is another letter dated 11.6.93 from the same Medical Officer stating that the applicant had given

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a wrong statement that there was no departmental enquiry pending against him. However, she now declared him fit for duty vide that letter dated 11.6.93. The applicant was informed that next date fixed was 16.6.93 but there is an endorsement stating that the defence helper's son refused to accept it, and stated that defence helper had gone to attend a marriage. On 17.6.93, the E.O. asked the Medical Officer that if the applicant had given a written statement that there was no departmental enquiry pending against him, a photo stat copy of the same may be sent, to which the Memo was replied that on the reverse side of the unfitness/fitness certificate, the applicant had signed under the seal that there was no enquiry pending against him. In the mean time it appears that the applicant was placed on the sick list and had not reported for duties till 17.6.93. The next date fixed was 25.6.93.

7. On 22.6.93, the E.O. informed the applicant that the enquiry would commence on 25.6.93 and would continue on a day to day basis till its completion and asked the applicant to present himself on that date.

8. From the applicant's defence helper's letter dated 25.6.93 (Annexure A.7) it appears that before commencement, he sought for

- i) the relevant records of the Allahabad Board to ascertain whether the person mentioned in the Secretary, IEC's letter as Shri Krishan Chander with date of birth as 20.7.93 was the same person as the applicant whose name was Kishan Chand Tyagi;
- ii) the Gram panchayat birth records

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iii) the Primary School Records.

9. At the bottom of that letter is a statement that the E.O. appeared to be very keen to decide the case as early as possible and the intention of the administration therefore appeared male fide, because there were many other such inquiries which were pending for over 3-5 years. The statement went on to state that the applicant found he may not get justice, and prayed for grant of all facilities in the interest of justice. On the same day by another letter (Ann. A.8) the applicant sought production as defence witness of some dealing clerks, one Shri Ram Lal who is said to have inspected the statement of the applicant's Date of Birth, as well as the Secretary, Board of High School & Intermediate Education, U.P. or his staff along with the relevant records. In reply the E.O. in his letter dated 25.6.93 (Ann. A.11) enclosed photocopies of the three relied upon documents, rejected the allegation contained in the defence helper's letter dated 25.6.93 and further stated that the applicant's earlier request for change in E.O. had been rejected by the competent authority vide his letter dated 1.6.93. The applicant was informed that the E.O. proposed to proceed with the inquiry and was requested to participate with his defence helper. In reply the defence helper by his letter dated 25.6.93 (Ann. A.9) stated that he was willing to cooperate, but he was not being allowed to examine the addl.

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documents, and he was not competent to decide on the allegations which could be decided only by (unclear) and they (the defence helper and the applicant) therefore had no faith in the E.O. whose attitude was not judicious and fair. They therefore said that they would not be attending the E.O.'s court as they did not expect to get justice. A letter in similar vein was also written by the applicant himself to the E.O. on 26.6.93 (Ann. A.10), but meanwhile on 25.6.93 itself the E.O. in his letter to the defence helper (Ann. A.12) stated that if/ ^{at the} _{it was} ^{sought for} necessary, the additional documents ~~described~~ would be produced, shown, or verified during the ^{inquiry} _{ground} and should not be taken as a ~~pretext~~ to delay the same. Again by letter dated 26.6.93 (Annexure-A13), the applicant was informed that his representation for change of Enquiry Officer had been rejected by the competent authority, and the Enquiry Officer was now going to proceed with the inquiry. Regarding, the additional documents, the E.O. invited attention to his letter of 25.6.93 and again requested the applicant to participate in the enquiry with his defence helper. Again by his letter dated 28.6.93 (Ann. A.14) the applicant sought for production of the addl. documents, and by his letter of even date addressed to the Sr. D.E.E. also complained to him about the E.O.'s conduct in not making available the addl. documents before the start of the inquiry. In that letter he stated that the E.O. appeared ⁱⁿ adamant upon removing the applicant from service and sought for change in the E.O. In reply by
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letter dated 29.6.93 (Ann. A.17) the applicant was informed that his request for change in E.O. had been rejected by the competent authority and his demand for addl. documents was also ruled out. The applicant was further informed that he was welcome to produce any sort of documents or witnesses in his defence, and was advised even now to participate in the inquiry, failing which the E.O. would proceed ex-parte. In response, the applicant's defence helper by his letter dated 29.6.93 (Ann. A.18) stated that the ruling out of the demand for addl. documents was contrary to rules and without them the inquiry could not proceed. He said that he would submit the list of witnesses to be produced for the inquiry on 1.7.93 as he was busy in a court case on 30.6.93. He requested that the inquiry be fixed on 1.7.93. This was rejected by the E.O. in his letter dated 29.6.93 (2.30 p.m.) who stated that proceeding could not be delayed any more and this was the last chance being given to the applicant and if he wanted to participate in the inquiry, he should participate right now. In reply the applicant in his letter also dated 29.6.93 (Ann. A.16) stated that he could not submit his proper defence without the addl. documents and referred to the E.O.'s earlier offer to make available the addl. documents, without which justice would be denied to him. It was therefore requested that the proceedings should not be started, and it should not be taken as an effort to delay the inquiry.

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103. On 1.7.93 the inquiry appeared to have finally got underway. The applicant appeared and stated that he was attending under protest (Ann. A.20) and on the same day asked for certain additional documents (Ann. A.21). By another letter of even date (Ann. A.22) he again sought for various documents including original copy of his matriculation certificate which he said he had submitted at the time of his appointment; his 'B' card; his leave account together with various other records. He again sought for the summoning of various persons as defence witnesses. On 2.7.93 P.W. 1 Shri Trilochan Singh was examined who stated that he had been given letter dated 23.6.92 to get the D.O.B verified which was shown as 20.7.37 in the original High School Certificate, 1954 bearing Serial No. 11235 issued in favour of Kishan Chand Tyagi S/o Ramchandra Tyagi, by Board of High School and Intermediate Education, Allahabad, U.P. and they ^{had} verified the D.O.B as 20.7.35 instead of 20.7.35 (this obviously appear to be a misprint for 20.7.37) with regards to S/Shri Krishan Chand Tyagi S/o Shri Ramchandra Tyagi vide their letter 27.7.92. In his cross-examination, he stated that it was a fact that the applicant had submitted wrong information, claiming Date of Birth to be 20.7.37 instead of 20.7.35 and that while he had claimed his D.O.B. to be 20.7.37, the Edu Board, Allahabad had verified his D.O.B. to be 20.7.35. On 5.7.93 the applicant's prayer for change

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in his defence helper was allowed, and he was examined and cross-examined on 7.7.93, in which he stated that he had submitted the matriculation certificate in original to the administration at the time of seeking employment as proof of his age and qualifications, and denied having tampered with the same. On 8.7.93 Shri Ramkishan Sr. Clerk produced the applicant's matric certificate in original together with seniority list dated 8.11.83 and the declaration submitted by the applicant dated 11.11.91 together with the Secretary, I.E.C's letter dated 27.7.92. Also on that date, Shri Ram Singh, Head Clerk produced the declaration given by the applicant for receiving pass/P10 for the year 1993 wherein the applicant appears to have mentioned his age as 57 years, which was overwritten on 54 years, and D.O.B mentioned as 20.7.35 as per P-5 and on the other side is mentioned as 20.7.37 and is signed by the applicant. Both Ramkishan as well as Ram Singh were examined and cross-examined. By order dated 8.7.93 the E.O. ruled out demand ^{for} examination of other documents, and of defence witnesses, and directed the applicant to submit his defence statement within three days i.e. by 12.7.93. The applicant while receiving one copy signed the same under protest with the remarks that by not calling the remaining defence witnesses, reasonable opportunity had been denied to him. Meanwhile the defence helper in his letter dated 12.7.93 stated that the applicant had fallen ill, vide Northern Rly. Medical certificate dated 10.7.93, and sought three days more.

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to file and submit the defence statement. The E.O. by his order dt. 12.7.93 allowed extension of time by one day only i.e. upto 13.7.93. On that date itself the E.O. submitted his inquiry report holding the applicant guilty of the charge. In his report the E.O. after noting that the applicant had not submitted his defence statement, and recounting the various incidents of non-cooperation on the part in the smooth conduct of the inquiry, noted that on 8.7.93 the applicant had been directed to submit his statement within three days but a prayer was made to extend the said period by three days. Keeping in view of the extreme urgency, to finalise the inquiry, the request was not found feasible and only one day's extension was allowed. While discussing the evidence that had emerged in the Departmental Enquiry, the E.O. noted that in the absence of the applicant's service register, reliance had to be placed on the seniority list, circulated vide letter dated 8.11.83, in which the applicant's date of birth was mentioned as July, 1935. The original certificate of 1954 which was submitted by the applicant in 1992 showed the name of the applicant as Shri Kishan Chand Tyagi S/o Shri Ram Chand Tyagi, whereas the letter of the Secretary, Education Board, Allahabad dated 27.7.92 showed the applicant's name as Krishan Chand S/o Shri Ram Chand Tyagi, but the slight difference in spelling could be a clerical error on the part of the Education Board, Allahabad. While verifying the correctness of the certificate the particulars such as roll No., Sh. No., father's name and the division/grade were similar. In the Education Board's letter dated 27.7.92, it had been clearly stated that the applicant's date of birth was 20.7.35 and not 20.7.37 as claimed by the applicant. Further, from the photo copy of

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the original matri. certificate it appeared that the said original matri. certificate contained over-writings and had been tampered with. However, the E.O. pointed out that as per the declaration given by the applicant for issue of pass/p70 in early 1993 the applicant had mentioned his date of birth both as 20.7.1935 as well as 20.7.1937. As the applicant had not produced any documentary or oral evidence to rebut satisfactorily, the information supplied by the Education Board, Allahabad, the allegations stood proved against him.

11. A copy of the inquiry report was served upon the applicant vide letter dated 13.7.93 and he was asked to submit representation if any within 7 days, but as he failed to make any representation within that period, the disciplinary authority agreeing with the E.O.'s report by his order dated 23.7.1993 passed the impugned punishment of removal from service. The applicant thereupon filed an appeal on 23.8.1993 which was rejected by the appellate authority by means of a speaking order dated 11.2.1994 (Annexure A.39).

12. It must be mentioned here that in the mean time, by order dated 12.5.1993 the respondents had sought to retire the applicant w.e.f. 31.7.1993 upon his reaching the age of superannuation based on his date of birth as 20.7.1935. The applicant filed O.A. No. 1421/93 against that order which was heard and disposed of by judgment dated 12.8.1993 (Annexure A.33). In that judgment it has been noted that the point for consideration

in that O.A. was whether the respondents could unilaterally alter the date of birth without issuing a show cause notice to the applicant, as was done in that case. The Bench held that the respondents could not do so, and quashed the order dated 12.5.93 and directed the respondents to allow the applicant to retire on the basis of the date of birth declared by him at the time of his appointment i.e. 20.7.37. This judgment does not mention the departmental proceeding, which it discusses as being pending but not the impugned order dated 23.7.93 which forms the subject matter of the present O.A.

13. Sri Mainee has filed written submissions in respect of the points argued by him during hearing which are taken on record and are discussed in final order.

14. The first ground taken is that the charge sheet becomes illegal after the Tribunal's judgment dated 12.8.93 in O.A. 1421/93. This ground has no merit because while in the O.E. the charge sheet relates to manipulating the educational qualification certificate by the applicant to mislead the administration into believing that the applicant's date of birth was 20.7.37 when it was actually 20.7.35, and thus committing misconduct unworthy of a railway servant, the point for consideration in the O.A. as articulated by the Bench itself in its judgment was whether the respondents could unilaterally alter the applicant's date of birth without giving him an opportunity to show cause.

15. The next ground taken is the allegation of bias on the part of the E.O. Reference has been made to the refusal to supply the additional documents and produce the additional witnesses, and the refusal to extend time even by one day on 29.6.93, and by three days for filing the defence statement on 12.7.93 and granting only one day instead for the same. It has been emphasised that the applicant had been apprehending bias right from the start of the enquiry, and had been praying for change of the E.O., but the same was summarily rejected and even the additional witnesses/documents earlier promised were subsequently not allowed to be called for. Reliance in this connection had been placed on the Hon'ble Supreme Court's decision in Indrani Bai Vs. W.I ATC 1994 (27) page 755 and SLJ 1994 (2) SC 125. The applicant has however failed to substantiate the allegation of bias on the part of the E.O. No reason have been given as to why the E.O. should have been biased towards the applicant. There is not even a whisper of any past enmity or inimical behaviour of the E.O. towards the applicant. The E.O. was no doubt anxious to conclude the inquiry as soon as possible and in any case well before 31.7.93 to enable the applicant's case to be reviewed before he superannuated on 31.7.93 if required, but this by itself does not establish bias. ^{1 that bias if alleged has not only} It is now well settled to be specifically pleaded and supported by cogent reasons, but the person against whom bias is alleged has to be impleaded as a party to enable him to reply to the charges. In the present case this has not been done by the applicant, and this ground therefore also fails.

16. The next ground taken is that there was a denial of extension of time, which vitiated the entire proceedings. Reliance in this connection is placed on ATJ 1994 (II)204 Janab Ali Vs. UOI. As mentioned earlier there is no doubt that the E.O wanted to complete the enquiry as quickly as possible, but that was because the applicant's date of birth was taken as 20.7.35 and he would have retired on 31.7.93. The E.O. wanted to complete the D.E. well before that so that the case could be reviewed if necessary and orders passed before that date. On the other hand it is clear from a recital of the above facts that the applicant was trying to prolong the D.E. as much as possible because he had obtained a stay order not to retire him on the basis of respondents' letter dated 12.5.93 in O.A. 1421/93. In fact his undated letter addressed to the Sr. D.E.E. at ^{Annexure} ~~respondent~~ No.2 to the respondents reply requesting for the D.E. to be kept pending till the disposal of his O.A. 1421/93, ^{and} supports this view. As the present D.E. was not under challenge in O.A. 1421/93 the respondents were not legally bound to keep it pending and as no stay orders were passed in the present O.A. the respondents went ahead with it, and cannot be faulted if they sought to conclude the D.E. before 31.7.93 by denying the applicant opportunity to prolong it unjustifiably. Further more the applicant has not established how he was prejudiced by the extension of time not being granted. Unless prejudice is established, the ruling in Janab Ali's case would not help the applicant. This ground therefore also fails.

17. The next ground taken is that relevant documents namely the Panchayat record and the Primary School records were not supplied. As correctly pointed out by the appellate authority, these documents were not in the custody of the respondents, they were not relied upon by the respondents and even otherwise the relevancy

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of these additional documents was not shown. In the face of the matriculation certificate in which overwriting is alleged, the panchayat record and the primary school records lose much of their value. In any case if the applicant relied upon that panchayat record or the primary school record. It was for him to have produced them or to disprove the charge by producing either the record of the Allahabad Board itself or getting a fresh certificate from them, or a duplicate certificate from them, but he did none of these things. Hence the rulings relied upon Shri Maine including AIR 1961 SC 1623 State of M.P. Vs. Chintamani; 1967 SLR (SC) 759 Trilok Nath Vs. UOI and AIR 1986 SC 2118 K.N. Pirat Vs. UOI do not help the applicant and hence this ground also fails.

18. The next ground taken is that the additional witnesses were not examined. It is clear that the applicant was informed that he could summon whomsoever he desired as a defence witness, but he did not avail of that offer. No doubt, he prayed for the summoning of various persons as addl. witnesses, but if he wanted them to testify on his behalf it was open for him to summon them as his defence witnesses. The respondents did not rely upon their testimony to prove the prosecution case, and in any event the relevancy of their evidence was never indicated. In this connection, it was the contents of the matric certificate which was alleged to contain overwritings and no oral evidence could have been given to defeat its contents unless there was a latent ambiguity in it. Its contents could have been defeated only by a fresh certificate or a duplicate copy, ^{q/f} in which the applicant failed to produce. No fraud, undue influence, misrepresentation, coercion, or fiduciary relationship has been alleged either, to defeat its contents. Hence this ground also fails.

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19. The next ground taken is that the onus was on the prosecution to prove the charge which they failed to discharge. From a bare perusal of the photo copy of the matri. certificate No. 11235 on record it is clear that there have been overwritings made in the date of birth of Krishan Chand Tyagi S/o Shri Ram Chander Tyagi changing 20.7.35 to 20.7.37. The Secretary, Middle School Board, Allahabad's letter dated 27.7.92 states categorically with respect to certificate No. 11235 that the date of birth of Krishan Chand Tyagi S/o Shri Ram Chander Tyagi is 20.7.35 and not 20.7.37 and from the photo copy of the certificate it appears that the original ceritificate was tampered with by making overwritings. There is a strong presumption of correctness in all official acts done, and there is therefore a strong presumption of correctness in the contents of letter dated 27.7.92. In the face of this the onus shifted on the applicant to show that he had not tampered with the original matri. certificate, which he could have discharged by getting a certificate from the Allahabad Board, or a duplicate of the original matri. certificate. He did neither and thus failed to discharge the onus which had shifted upon him. This argument therefore also fails.

20. In this connection Shri Mainee has urged that the question of filing the duplicate copy does not arise because the Tribunal cannot go into the truth or correctness of the charge, and has the power of judicial review only. Reliance in this connection has been placed on the case Transport Commissioner, Madras Vs. A. Radhakrishna Murthy SC SLJ 1995 (1) 147. The applicant's case

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is that there is no evidence to bring home the charge against him that he tampered with the matric. certificate in original and changed his date of birth from 20.7.935 to 20.7.37, and therefore the findings of the E.O. are perverse. In the face of the materials against him, he could have, discharged his onus, by producing relevant material in rebuttal which he did not do so and hence the findings of the E.O. cannot be said to be based on no evidence. Hence the ruling cited above also does not help him.

21. Before concluding one other point may be referred to. Shri Mainee has argued that under Rule 9 Railway Servants (D&A) Rules, after making available a copy of the E.O.'s report atleast 15 days time should have been given to the applicant to make his written representation/ submission to the Disciplinary Authority, which was not done. In the present case, the E.O.'s report dated 13.7.93 was issued on 14.7.93 calling upon the applicant to file reply if any within 7 days and the Disciplinary Authority not receiving any reply passed orders on 23.7.93 i.e. after 9 days. It cannot be said that merely because the entire period of 15 days was not allowed to elapse before the Disciplinary Authority passed orders on 23.7.93 an infirmity so glaring has been committed in the Departmental Enquiry which vitiate the entire departmental proceedings, in the absence of any material to show that prejudice was thereby caused to the applicant.

21. In the light of the foregoing analysis we are not persuaded to accept the view that the conduct of the departmental proceedings against

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the applicant warrants our interference at this stage, more particularly when we note that even if accept the applicant's own version that his D.O.B is 20.7.37 he would have retired on 31.7.95. We note however that consequent to accepting the Enquiry Officer's findings the disciplinary authority has removed the applicant from service and this order has been upheld by the ~~appropriate~~ ^{elate A} authority. The consequences of this order will be to deny the applicant whatever pensionary benefits he might otherwise have earned consequent to his retirement. Admittedly the applicant joined service in 1958 and did put in over 35 years service at the end of which, in these extremely hard days, he will earn not even any pensionary benefits. We note that but for the Departmental Enquiry the applicant would have retired on superannuation consequent to the respondents letter dated 12.5.93 and earned his pensionary benefits. Keeping these facts in view, if the applicant were to make a fresh representation to the respondents we ~~have~~ ^{leave} it open to them to consider whether a punishment lesser than the extreme one of removal from service, would meet the ends of justice, and at the same time not deny the applicant all his retirement benefits at the end of a career spanning well over 35 years.

23. We dispose of the O.A. accordingly.
No costs.

Adige
(S.R. ADIGE)
Member (A)

Sharma
(J.P. SHARMA)
Member (J)

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