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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.976/94

New Delhi, this the 30th September, 1994

Hon'ble Shri J.P. Sharma, Member(J)

Shri Jagpat Misra,
s/o Shri Raghuraj Misra,
aged about 55 years,
working as Scale Porter (Under CTI)
attached with Magistrate Squad,
Central Railway Station,
Faridabad and
R/o 80/63, Panchkuian Road,
Karol Bagh,
New Delhi.

... Applicant

Shri O.P. Gupta, Advocate

Vs.

1. Union of India
through General Manager,
Central Railway,
Bombay VT.
2. Divisional Railway Manager,
Central Railway,
Divisional Railway Manager's office,
Jhansi. ... Respondents

Shri H.K. Ganguani, Advocate

ORDER

Hon'ble Shri J.P. Sharma, Member(J)

The applicant was appointed in Central Railway, Jhansi Division on 2.9.58 as Hamal. His grievance is that his date of birth is 15.7.1939 but it was wrongly recorded by the Respondents as 15.7.1936 as a result of which the applicant has been retired from service on 31.1.1994. He filed this application in May, 1994 and prayed for the grant of reliefs that rejection of his prayer for correction of date of birth by the order dated 10.2.94 is illegal and applicant is entitled to the correction of his date of birth as 15.7.1939 and as such entitled to continue in service upto 31.7.1997.

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2. The Respondents contested this application by filing a reply stating that the applicant after rendering 36 years of service has filed a representation for correction of his date of birth at the fag end of his career which shows the malafide intention on the part of the applicant. The representation made by the applicant was thoroughly examined and has been rightly rejected by the impugned order dated 10.2.94.

3. Heard the learned counsel of the parties at length and perused the records.

4. The applicant was not granted any interim relief when the application was taken up by the Bench on 18.5.94. He retired from the service from Railway on 31.7.1994. The learned counsel for the applicant contended that the applicant is illiterate and when he applied for sanction of advance from the G.P.F. then he learnt that his date of birth recorded in the service record is 15.7.1936. He therefore submitted a representation alongwith an affidavit and a certificate of the Janam Maran Register but the same was not accepted and has been rejected by a non speaking order. He made further representation to the higher authorities but to no effect. This contention of the applicant on the face of it does not inspire confidence. The service-sheet of the applicant goes to show that he knows Hindi and signs in Hindi. He has written in the service-sheet his own name Jagpat Miora and has also written the date of birth in figures 15.7.1936. The contention of the learned counsel during the course of arguments that this

is not written by the applicant cannot be accepted. His service-sheet was prepared in 1958 and in the particulars of service the name of the applicant is written in Hindi. When the signature of the applicant resembles with the signatures Jagpat written at the bottom of the verification clause it also cannot be accepted that the applicant is Jagpat Misra and not Jagpat Prasad. The father's name is Raghuraj Prasad which also is the same as in the present application. The permanent address given in the affidavit filed alongwith representation is also the same as in the service-sheet. Thus, the identity of the person with the service-sheet cannot be disputed. It does not at all appears reasonable that the applicant was unaware of his recorded date of birth and learnt only few months before his retirement.

5. The contention of the learned counsel that the order of rejection of his representation is non speaking order also does not carry any weight. The competent authority after considering the representation, the affidavit of the applicant and the certificate issued by the B.D.O. came to the conclusion that the date of birth cannot be changed and will remain as it was recorded. In the counter filed by the respondents as well as during the course of the arguments it is stated that the certificate of B.D.O. was recently issued and was duly scrutinised by the competent authority.

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6. The next contention of the applicant's counsel is that the applicant at the time of his appointment has submitted the horoscope and the certificate from the Birth and Death Register of the village where the date of birth was mentioned as 15.7.1939. This fact also cannot be taken for granted because there is a presumption of the correction of the official record and merely asserting a fact without corroborating the same cannot create any doubt on the genuineness of old record more than 30 years old. In the service-sheet there is signature of the Attesting Officer on the same date. Had the applicant submitted any such document at the time of his appointment he would have asserted the same in the affidavit he has filed alongwith his representation. In the representation also he has not mentioned this fact that at the time of his appointment the proof of his date of birth was also submitted. It therefore is an after thought very well designed to give support to his case.

7. The learned counsel has also referred to a number of authorities on the subject of correction of date of birth. These are Ranjit Kumar Chatterjee Vs. UOI reported in LLJ 1984(1) 402, Baij Nath Vs. General Manager, N.E. Railway reported in LLJ 1986(II) Page 41. The learned counsel for the applicant has also referred to Benapani's case reported in

SLR 1967(I) 465. The learned counsel has also referred to para 225 of the Indian Railway Establishment Manual which goes to show that in the case of illiterate officers, the date of birth shall be recorded by the senior railway servant and witnessed by another railway servant. It further lays down that if a person who is not able to declare his age should not be appointed in railway service. This para further lays down that the date of birth as recorded in accordance with the rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. However, there is an exception that the General Manager in the case of Group C and D railway servants can cause the date of birth to be altered where the person is illiterate and General Manager is satisfied that a clerical error has occurred. Thus, according to para 225 also, the applicant is not entitled to get the date of birth corrected as a matter of right. His case has already been considered by the competent authority and rejected. In the case of Baij Nath supra, the Allahabad High Court has considered the matter and observed that in case of Class IV employee the authority declining to alter the date of birth should give reasons. In

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the case of Ranjeet Kumar Chatterjee ~~supra~~, the Calcutta High Court observed that the authority declining to alter the date of birth without reasons is not justifiable. This authority also does not help the applicant inasmuch as his representation has been duly considered and after considering the same it was rejected. The learned counsel has also placed reliance on the case of Maganlal Purshotam Lal Patel Vs. U.O.I. decided by C.A.T., Bombay Bench reported in ATR 1988(1) 254. In this case the Tribunal has held that if the representation for correction of date of birth was not made during the stipulated period, that will not operate as a bar subject to the production of a reasonable evidence to give effect that date so recorded is incorrect.

8. The law has been now clearly laid down by the Hon'ble Supreme Court in a number of decisions. In the case of Executive Engineer Shadrok (R&B) Division Vs. Ranga Dhar Malik, Jt 1992(5)SC 364, reported case/the Tribunal has considered the matter of correction of date of birth and remanded the case to the Department for further enquiry. The Hon'ble Supreme Court held that roving enquiry in the matter did not justify when the matter has already been considered by the Administration. In the case of Union of India Vs. Harnam Singh (1993 (24) ATC 92), the

Tribunal allowed the relief correction of the date of birth but the Hon'ble Supreme Court held that since the aggrieved party did not move for correction of date of birth within the statutory period, the application itself after the expiry of the statutory period could not be entertained and the direction issued by the Tribunal for correction of date of birth was quashed. Again in the case of State of Tamil Nadu Vs. T. V. Veenugopalan reported in J.T. 1994 (5) S.C. 337 a similar case came before the Hon'ble Supreme Court where the aggrieved party sought the correction of the date of birth just before retirement. The Hon'ble Supreme Court quashed the judgement of Madras High Court and dismissed the claim of the employee. In another case of Secretary and Commissioner, Home Department Vs. R. Kumbakaran reported in JT 1993(5) SC 404 the Hon'ble Supreme Court turned down the relief for correction of date of birth on the ground that the party has come only at the fag end of his retirement. In view of the above law laid down by Hon'ble Supreme Court, the applicant has no case at all for getting his date of birth corrected just at the fag end of his retirement.

9. There is also a valid reason behind the contention of the respondent's counsel that during the course of active service the employee has occasion to know about the date of birth recorded

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in the service record. It may be in the seniority list circulated or in various other communication addressed by the employee to the authorities. In the present case the applicant showed that he came to know about the recorded date of birth only when he applied for advance from the G.P.F. for the marriage of his son. This contention has already been considered in the earlier part of the judgement. The correction of date of birth cannot be taken as a unilateral affair. It affects the right of the other employees also.

10. Taking all the facts into account and in the conspectus of the facts and circumstances, the present application is totally devoid of merit and is therefore dismissed.

J. P. Sharma

(J. P. SHARMA)
MEMBER (J)

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