

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.No. 1733/94.

Date of decision: 31.3.1995

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial).

Veer Chand,
S/o Shri Hem Raj,
R/o 6/23, Double Storey,
Vijay Nagar,
Delhi-9.

.. Applicant

(By Advocate Shri S.K. Bisaria)

versus:

1. Union of India
through
Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi.

2. General Manager,
Western Railway,
Church Gate,
Bombay.

3. Divisional Railway Manager,
Western Railway,
Ajmer, Rajasthan.

.. Respondents

(By Advocate Shri P.S. Mahendru)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

This petition has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order passed by the respondents dated 30.3.1994 (Annexure A-1) declaring the petitioner as retired from service w.s.f. 31.3.1994.

2. The brief facts of the case are that the applicant joined service of the respondents in Class IV

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as a Waterman on 5.6.1956. According to the applicant, at the time of joining the service, the applicant being illiterate, he had got the employment form filled with the help of his friends and his date of birth was shown as 16.8.1938. However, on 11.1.1994, the Divisional Railway Manager wrote to the applicant that according to the service record, his date of birth is 18.6.1936. (Annexure A-2). The letter further states that "the service book of this employee is not traceable". Accordingly, the applicant was called to the office to fill up the service book and also to bring all the papers and documents available with him from the date of recruitment, including an affidavit in connection with his date of birth duly attested by a Magistrate. In the letter dated 24.1.1994, it is mentioned that although the applicant went to the office on 20.1.1994, he refused to sign the incomplete service book and was asked to come again on 27.1.1994 to complete the service book. According to the applicant, in compliance with the letter dated 11.1.1994, he had submitted the certificate from the Senior District Magistrate, Ajmer dated 7.2.1994, birth certificate issued by the Rajasthan Government showing his date of birth as 16.8.1938, and his own affidavit dated 20.1.1994 declaring his date of birth as 16.8.1938 (Annexure A-3).

3. The applicant's grievance is that without any prior notice to him, the respondents issued the impugned

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notice dated 30.3.1994 retiring him from service on the next date i.e. 31.3.1994. The applicant also relies on the gazette notification issued by the Western Railway dated 1.5.1994 in which his date of retirement is shown as 31.6.1994. This, therefore, is inconsistent with the stand taken by the respondents in their impugned letter dated 30.3.1990 that his date of birth is 18.8.1935 and he should, therefore, retire from railway services on 31.8.1993. (15)

4. The respondents have filed a reply in which they have stated that the affidavit given by the applicant regarding his own date of birth is not in proper form. The further certificates issued by the Senior District Magistrate and the Directorate of Economic & Statistics, Rajasthan Government are issued on the basis of the applicant's affidavit. They have also stated that the date of registration of the birth certificate is 14.2.1994 and nowhere the documents indicate that the applicant was born at Ajmer or that the date of birth was recorded in the Birth and Death Register of the Municipal Corporation, Ajmer at the time of his birth. In view of this fact, the respondents have denied that the applicant's date of birth is 16.8.1938 or that he will retire on 31.8.1996 as claimed. They have submitted two documents from the records (Annexures B & C) in which the applicant's date of birth is given as 8.4.1934 and 18.8.1935.

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According to them, taking into account the date of birth as given by the D.M.O., Ajmer (Annexure C), he ought to have retired from service on 31.8.1993. Since, the applicant has failed to produce authentic evidence regarding his correct date of birth, the respondents have relied on this document and retired him from service on 31.3.1994.

5. I have heard Shri S.K. Bisaria, learned counsel for the applicant and Shri P.S. Mahendru, learned counsel for the respondents and perused the record in the case.

6. The whole dispute regarding the correct date of birth of the applicant has apparently started when the respondents wrote to the applicant on 11.1.1994 that his service book is not traceable and he was required to produce the relevant documents in connection with his date of birth. In this letter itself, contradictory facts are mentioned, as the respondents themselves state that according to the service record the date of birth of the applicant is 18.6.1936. They have also produced Annexures B & C showing the date of birth differently, namely, 8.4.1934 and 18.8.1935. In the rejoinder affidavit filed by the applicant, the applicant had disputed the correctness of the medical opinion on the basis of which the respondents claim that his date of birth is 18.8.1935. He has, however, referred to the gazette notification issued by the respondents and filed with the petition which shows that the applicant ought to have retired from service on 30.6.1994 by which reckoning his date

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of birth would be in June 1936. This date coincides with the statement made by the respondents in their letter dated 11.1.1994 that according to the service record the date of birth of the applicant is 18.6.1936. The explanation of the respondents that they have not corrected the mistake in the gazette notification because the applicant has already retired, is not convincing, because the gazette notification is an authentic document and the respondents have published the same in the first instance, based on some records available with them. The learned counsel for the respondents has also fairly conceded that the gazette notification has to be relied upon in the absence of any other authentic proof of the date of birth of the applicant.

7. As regards the documents placed at Annexure 3 relied upon by the applicant, in the affidavit dated 20.1.1994, the applicant has given the information that he was born on 16.8.1938, but he does not state the place of his birth. The order of the Senior District Magistrate, Ajmer, ^{is by} based on the affidavit and inspection report of Tehsildar. The birth certificate issued by the Directorate of Economic and Statistics, Rajasthan Government gives the date of registration of the birth certificate as 14.2.1994. From the record it does not appear that at any time during his service from 5.6.1956 till 1994 i.e. ^{for} 38 years the applicant had

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made any claim that his date of birth is 16.8.1938 or produced any documents to support it.

The Supreme Court in UDI & Ors. v. Kantilal Hematram

Pandya (JT 1995 (2) SC 365) has held as follows :-

" The respondent slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only. The law laid down by this Court in Union of India v. Harnam Singh [1993 (2) SCC 162] was, thus, fully applicable to the facts and circumstances of the case of the respondent and the Tribunal failed to follow the same without even pointing out any distinguishing features on facts. Stale claims and belated applications for alteration of the date of birth recorded in the service book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement, need to be scrutinised carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual. On facts, the respondent was not entitled to the relief which the Tribunal granted to him.

8. The applicant has not given a copy of the original birth certificate or any other document showing his date of birth as 16.8.1938, other than the ^{recent} ~~the~~ certificate issued in January and February 1994. He has also not given any documents showing his date of birth as 16.9.1938 relied upon by his friends at the time of filling up of his service book on joining service in 1956, or other documents in which he has declared his date of birth as 16.8.1938 during his service career of 38 years. In the facts and circumstances of the case and having regard of the judgments of the Supreme Court in UDI v. Harnam Singh (Supra) and UDI & Ors. v. Kantilal Hematram Pandya (Supra), I am not satisfied that the applicant has adduced sufficient proof to show his date of birth as entered in his service book as 18.6.1938 and this claim is, therefore, rejected.

9. However, having regard to the facts of the case and, in particular, the gazette notification issued by ^{the} Western

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Railway dated 1.5.1994, read with facts given in the letter dated 11.1.1994 of the Divisional Railway Manager (Annexure 2), the date of birth of the applicant as given in the service record can be accepted as 18.6.1936.

The respondents have failed to explain how different dates have been given in Annexures B & C and also why, if they already had his date of birth as 18.6.1936 in the

service book, they asked the applicant to fill up the

service book again vide their letter dated 11.1.1994. *The 18.6.1936 Gazette Notification showing his date of superannuation is also relevant.* Therefore, taking the date as given in the service

record as 18.6.1936, the applicant would have been

entitled to continue in service upto 30.6.1994 with all

consequential benefits and the claim for alteration of

date of birth is allowed to this extent. The respondents

are accordingly directed to take necessary action, treat-

ing the applicant as continuing in service till 30.6.1994

with all consequential benefits, including pay and allow-

ances upto that date, and pensionary benefits thereafter,

and pay the amounts due to him in accordance with the

rules within two months from the date of receipt of a copy of this order.

10. *partly allowed and* The O.A. is disposed of with the above directions.

There will be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (Judicial)