

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1477/88.
T.A. No.

198

DATE OF DECISION 11.8.1989.

Subodh Kumar

Applicant (s)

Shri O.P. Gupta

Advocate for the Applicant (s)

Versus

Union of India &

Respondent (s)

Shri B.K. Aggarwal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. L.H.A. Rego, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

The applicant prays for a declaration herein, that the letter dated 9.6.1988 (Annexure A), addressed to him, by the Superintendent, Printing & Stationery, Northern Railway Press, Shakurbasti, Delhi (S.P.S. for short), informing him, that his request for change in his date of birth (hereinafter called D.O.B.), has been rejected by the General Manager, Northern Railway, New Delhi, namely, the respondent, by his letter dated 7.6.1988, is illegal, arbitrary and violative of the principles of natural justice and that his D.O.B. be regarded as 30.11.1934, based on which, he should be continued in service, till he superannuates on 30.11.1992. He has also prayed for consequential service benefits thereof.

2. These are the facta probanda. The applicant entered ~~vi~~ service as a Junior Machineman, in the then

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grade of Rs. 30-1-35 (A.S.) on 2.12.1954 in the Northern Railway. In the sheet, bearing the caption 'Employee's Record of Service', prefacing his service book, his age was certified as 25 years on 30.11.1954, by the Assistant Surgeon, Northern Railway, Delhi, based on which, his D.O.B. was recorded as 1.7.1929, in ~~the~~ accordance with the instructions in Appendix LXII, page 315, of the Indian Railway Establishment Code, Volume II. This birth date was denoted in the said preface sheet, both in words as well as in figures. The said sheet, is seen to bear the left-hand thumb impression, of the applicant, as well as his signature in English, in a firm mould. ~~the~~ This sheet is seen to have been attested by a witness, as also by an officer, of the Northern Railway.

3. The above sheet shows, that the applicant has studied ~~the~~ Standard upto the VIIth Class, that he speaks and writes both Hindi and English and that he can write in Hindi. There is a footnote to this sheet, stating, that the D.O.B. given by the employee at the time of his first appointment will, under no circumstances, be changed. In another sheet, bearing the caption 'Particulars of service' forming part of the service dossier of the applicant, his D.O.B. was shown as 1.7.1929, both in figures as well as in words, on 17.1.1966, ~~the~~ in token of acceptance of which the applicant has not only affixed his left-hand thumb impression but has also signed the same in English, duly attested by a witness, and by the accepting officer.

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4. At the relevant time, the applicant was holding the post of High-skilled Book Binder, in the grade of Rs. 380-560, with effect from 28.4.1973, and as on 1.1.1986, he was drawing basic pay of Rs. 560/- per mensem in that grade.

5. The applicant avers, that at the time of his entry in service, as above, he had submitted an application alongwith a school leaving certificate (S.L.C.), showing his D.O.B. as 30.11.1934. The respondent denies the same.

6. The applicant refers to the Combined Seniority List (CSL), of Skilled Book Binders and Ticket Counters and Semi-skilled Book Binders and Paper Counters, drawn up by the SPS, as on 31.10.1971, according to his ~~own~~ communication dated 10.1.1972 (Annexure 'C'), wherein, his name appears at Serial No. 21, and his D.O.B. is shown as 11.6.1934. Since his D.O.B. is 30.11.1934, the applicant states, that he submitted a representation on 15.1.1972 (Annexure 'D') to the S.P.S., with a request, to correct his D.O.B. as 30.11.1934. He further states, that he had sent a true copy of his SLC, alongwith his representation, but there was no response thereto.

7. The applicant states that, for the first time, he came to know of his date of retirement only in November, 1983, when he was asked to furnish a certificate by the Northern Railway Co-operative Thrift Credit Society, Baroda House, New Delhi, regarding his date of retirement, for the purpose of standing surety for one of his colleagues.

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He is said to have addressed a letter on 9.11.1983 (Annexure 'E'), to the Chief Printing & Stationery Superintendent, Northern Railway Press, Shakurbasti, Delhi (CPSS), requesting for a certificate, showing his date of retirement (which appeared to have been shown erroneously by the said Society) to enable him to make the necessary correction. The said Annexure, however, does not bear any date at the right-hand corner, as usual. According to him, in the record of the above Society, his date of retirement was shown as 30.6.1987, whereas his D.O.B. in the aforesaid SLC was shown as 11.6.1934, which, actually, ought to have been indicated as 30.11.1934.

3. He is said to have represented on 16.7.1984 (Annexure F), to the respondent, i.e. the General Manager, Northern Railway, New Delhi, under registered letter/AD, to correct his DOB as 30.11.1934, on the basis of the SLC, issued by the School namely, Muragachha High (H.S.) School, District Nadia (West Bengal), where he had studied. He had stated therein, that he would be able to produce the said SLC and in case the respondent was not satisfied, the matter could be investigated with the said School, in regard to the correctness of his D.O.B. Annexure 'G' is said to be the acknowledgement of the Regd. AD letter, addressed by the applicant, to the respondent, on 16.7.1984 (Annexure 'F').

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9. The applicant states, that he reminded the respondent on 13.10.1984, and ~~he~~ is citing ^{to} Annexure 'H' which, however, bears no date. He is seen to have stated therein, that he had submitted an application for his initial appointment in the Railways, alongwith a copy of his SLC.

10. The applicant states, that he received the CSL of Mistry High-Skilled, Grade of Rs. 380-560 of Binding Section, according to ~~the~~ letter dated 18.1.1985, addressed by CSPS (Annexure I). He states, that this CSL, was both in English as well as in Hindi. In the English version of the CSL, he states, that his DOB was shown as 30.11.1934, against Serial No. 9, in the grade of Rs. 380-560, while ^{in the respect of} in the Hindi version of CSL in ^{the} grade of Rs. 260-400, his DOB column was left blank, at Serial No. 13.

11. The applicant states, that as his retirement was drawing near ~~and~~ and there was no response from the ~~the~~ respondent, he was constrained to remind the respondent, on 13.3.1985 (Annexure J), pointing out to him, the anomaly in his D.O.B. in the various CSLs circulated, with a request to rectify his DOB, as 30.11.1934. He states, that he had also invited the attention of the respondent, for quinquennial verification of his ~~the~~ service record and, particularly the DOB, according to the extant rules and procedure.

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12. Thereon, the S.P.S., by his letter dated 20.2.1985/15.3.1985 (Annexure K), directed the applicant, to submit a proper SLC from his school, to enable further action. In response thereto, the applicant, by his letter dated 14.6.1985 (Annexure L), addressed to the CSPS, informed, that the authorities of the school from which he had passed out, were not issuing the SLCs, in respect of the students, who had left the school more than 10 years ago. He, therefore, urged, in that letter, that the SLC, already submitted by him, may be deemed to be in order, for the purpose of rectifying his DOB.

13. The applicant refers to the affidavit of his mother (Annexure M) dated 19.8.1985, to show that his D.O.B. was 30.11.1934.

14. On 30.9.1985, the SPS addressed a letter to the Chief Personnel Officer, Northern Railway, New Delhi (CPO) (Annexure O), giving the background to the change of DOB, as 30-11-1934, as sought by the applicant, ~~the~~ ~~of the SLC~~ with reference to photostat copy furnished by him. Referring to the photostat copy of the SLC furnished by him, from his above school, from which he had passed out, the applicant had requested for a decision thereon. The SPS is seen to have reminded the CPO in this regard on 17.12.1985 (Annexure P).

15. On 5/6.2.1986 (Annexure V), the applicant was informed by the SPS, that his request for change in his DOB to 30.11.1934, was not accepted by the respondent, i.e. the General Manager, Northern Railway, New Delhi, in terms of the Railway Board's letter dated 4.8.1972.

16. ^(i.e. Annexure V) This letter was challenged by the applicant in O.A. No. 1093/86 before this Tribunal, which was decided on 29.6.1987 in the following terms:-

"In effect, we set aside the impugned order of the General Manager, dated 28.1.1986, as also the non-speaking communication dated 5/6.2.1986 and direct that the representation of the applicant at Annexure 'D' to the petition read with the grounds indicated in the petition before us, should be thoroughly enquired into by the respondents after giving an opportunity to the applicant for a personal hearing by the General Manager and a final decision on the correction of his date of birth taken within three months of the communication of this judgment. It will be necessary to get the original record of the Nadia School examined and photostat copies taken through a responsible officer. The applicant will be retained in service till a final decision on his representation is taken or till the date of his superannuation, in accordance with the date of birth finally accepted by the respondents, whichever is later. The applicant will be at liberty to approach this Tribunal in accordance with law, if he feels aggrieved by the final decision taken by the respondents...."

17. By virtue of the aforesaid decision in O.A. No. 1093/86, the applicant continued in service till 9.6.1988, when he was finally retired, by the impugned letter dated 9.6.1988 (Annexure A), addressed by the SPS to the applicant, wherein he was informed, that the General Manager, Northern Railway, New Delhi, had rejected his request to change his DOB as 30.11.1934, and that consequently, he was finally retired from railway service on 9.6.1988 (Annexure V).

18. The applicant alleges, that this letter was

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addressed to him, without giving him a show cause notice, to state his case and was, thus, violative of the principles of natural justice.

19. Prior to the issue of the letter dated 9.6.1988 (Annexure A), retiring the applicant from service, as above, the applicant states, that the respondent had addressed a letter on 27.8.1987 (Annexure W) to the CSPS, asking him to direct the applicant to produce the damaged SLC, showing his DOB, on the basis of which, a fresh certificate was issued by the Head Master of the aforesaid school, from which the applicant had passed out. Pursuant thereto, the CSPS, by his letter dated 5.9.1987 (Annexure X), asked the applicant to produce the said damaged SLC. In reply thereto, the applicant, by his letter dated 14.9.1987 (Annexure Y), informed the CSPS, that the damaged certificate was retained by the Head Master of the School while issuing the fresh certificate. However, he did not mention therein, that the Head Master had refused to hand over the ~~damaged~~ damaged certificate to him, but only mentioned that, that certificate, could be obtained by the CSPS from the school.

20. The applicant states, that as the respondent had not complied with the order passed by this Tribunal on 29.6.1987 in O.A. No. 1093/86, he filed a Contempt of Court petition (CCP) before this Tribunal, bearing No. 105/88 (Annexure Z), as also Misc. Petition No. 1286/88, which were decided by this Tribunal on 9.7.1988 in the following terms:-

"So far as the CCP is concerned, the General Manager, Railways, has already complied with our judgment dated 29.6.1987 by the order passed by him on 9.1.1988 rejecting the applicant's revision.

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Considering that the matter involved further investigation at the level of Local School, we do not want to pursue the CCP even though the order has been passed after the period specified in the judgment. As regards MP 1286/88, if the applicant feels aggrieved by the order of the General Manager which is a new cause of action he has to file a fresh application in accordance with law if so advised. No action on MP 1286/88 can be taken at this stage. The CCP and M.P. stand disrossed of on the above basis."

21. Since the applicant was directed to file a fresh application, if so advised, on account of a new cause of action which had arisen to him, the applicant has come before ~~the~~ ^{High} Tribunal, ~~thr/~~ his present application, for redress.

22. Shri O.P. Gupta, learned counsel for the applicant, developed the case of his client as follows. He asserted, that his client was born in the year 1934 and joined Muragachha High (H.S.) School in District Nadia (West Bengal) in 1939, where he studied upto VIIth Class/ Standard. At the time, he joined ~~the~~ service in the railways on 2.12.1954, as a Class IV employee, he stated, ~~and~~, ^{he} that he had duly complied with, all the procedural formalities, in regard to this appointment. He stressed, that the DOB of his client, was entered by the respondent as 1.7.1929, in a different shade of ink, in his service record, and its author was not his client, but someone ^{he said,} else. The respondent did not insist on a copy of the SLC from his client, at the time of his appointment.

According to him, the D.O.B. of his client, namely, 1.7.1929, was determined arbitrarily, even though on medical examination, as was apparent from the fact, that as on the date of appointment of his client, on 2.12.1952, in the railways, he would have been overage

as his age would have been 25 years, five months and 2 days, and consequently, he could not have been appointed by the railways, under the Rules.

23. According to the Railway Board's Circular No. 5199, he stated, that the service dossier of a railway employee, is required to be scrutinised every five years. But this was not done in the case of his client. Even the seniority list was required to be issued annually, ~~as~~ he said. But this, too, was not done, for as long as a period of 17 years, after his client entered ~~the~~ service, as the first CSL was issued in December, 1971 (Annexure C), wherein his DOB was shown as 11.6.1934, at Serial No. 21 of the CSL. As his client was losing about five months of service, even with reference to this DOB, he was constrained, he said, to address a representation on 15.1.1972 (Annexre D), to the SPS, for correction of his DOB, which, however, was not processed.

24. Shri Gupta asserted, that his client came to know, for the first time, on 11.11.1983, about his date of retirement from the railway service, which was indicated as 30.6.1987. It was then, he said, that his client bestirred himself, to get his DOB rectified, through a series of representations addressed to the concerned authorities. The respondent, he said, took a rigid view of the Railway Board's Circular dated 18.10.1986, in this regard.

25. The matter regarding change of DOB of his client, Shri Gupta pertinaciously argued, was examined in its entirety, by a Division Bench of this Tribunal in O.A. No. 1093/86, the operative portion of the judgment in which, has been extracted in para.

16 above. The respondent, was required to comply with the directions of this Tribunal, in the aforesaid O.A. within a period of three months of its communication, Shri Gupta stated, but the respondent, without taking into account the relevant evidence, in regard to change of his D.O.B., as directed by this Tribunal, retired him from service, according to Annexure A, dated 9.6.1988, which was a vacuous and a non-speaking communication and, therefore, violative of the principles of natural justice, he asserted.

26. In order to reinforce his contentions, Shri Gupta relied on the following string of rulings, the ratio, of which is indicated against each:-

(i) ATR 1988 (I) 254 - Maganlal Parshottam Lal Patel vs. Union of India - Entry of DOB in a service book and superannuation of an official on the basis thereof, are essential administrative functions. There is no bar in regard to making a representation for change of DOB.

(ii) SLR 1987 (Vol. 45) 744 - Jagannath Sharma vs. Union of India - Admission register of primary and high schools, could be taken into account, for the purpose of correction of DOB.

(iii) SLR 1967 p. 465 - State of Orissa vs.

DR. Bina Pani - When administrative orders involve civil consequences, they have to be passed in keeping with the rules of natural justice.

27. Shri Gupta also called in aid, the decisions in the following cases, to buttress the case of his client:-

(i) ATR 1988 (I) 435 - Udai Ram vs. UOI.

(ii) 1989 SLR (57) 223 - Dharam Raj Misra vs. UOI & others.

(iii) AIR 1981 SC 1481 - Surjoo Parshad vs. General Manager.

28. In the light of the foregoing, Shri Gupta pleaded, that the DOB of his client, be changed to 30.11.1934.

29. Shri B.K. Aggarwal, learned counsel for the respondent, sought to demolish the various contentions urged above, by Shri Gupta. At the outset, he submitted, that the applicant was not speaking the truth, and was inventing a story, with scarcely any foundation in it.

This was evident from the fact, he said, that the ⁴² preface sheets ^{bez.} of (i) 'Employee's record of service' and (ii) 'Particulars of service', in his service dossier, ~~www~~ clearly showed, that the applicant was well aware, of his DOB having been recorded therein, as 1.7.1929. This DOB, he said, was indicated both in figures as well as in words, and these two sheets were duly attested by a witness and the concerned authorities of the railways. The applicant, he said, had affixed his bold signature in English on both these documents. It was clearly evident from these

sheets, he explained, that the applicant had fair knowledge of Hindi and English, in regard to both speaking and reading. The applicant had studied upto VII class/Standard and could, by no means, be regarded as illiterate, he asserted. He also pointed out, that the applicant had signed ~~only~~ in English, at more than 10 places, in his service dossier, which, in itself, would prove, that he could not feign total ignorance of English. Yet, he said, the applicant was taking a plea, in his various communications, that he had little knowledge of Hindi and English. This, in itself, bewrayed, that the applicant was taking recourse to prevarication in his various statements, in order to achieve his object of changing his DOB fraudulently, Shri Agarwal vehemently argued.

30. In order to substantiate his case, Shri Aggarwal, in the course of hearing, produced additional documents bearing pages 1 to 25, to which I shall refer in this judgment, as 'the additional set'.

31. Shri Aggarwal stated, that the applicant had himself admitted, that he had furnished a copy of the SLC to the railway authorities, at the time of his initial appointment in 1954. This meant, he said, that the DOB certificate, was with the applicant from that year, and yet, he failed to produce it, before the authorities concerned, to correct his DOB, if, at all, it was erroneously recorded, even though he had an opportunity to do so, not only in 1954 but also on 17.1.1966, as is evident, from the aforesaid preface sheets, of his service

dossier, which the applicant had attested in English, wherein the DOB was shown not only in words but also in figures. Why the applicant should have remained unconcerned and inert, in regard to change of his DOB, is a mystery, known only to him, Shri Aggarwal canvassed with vigour. The so-called tattered SLC, referred to by the applicant, was another mystery, he said, as the applicant had never produced the same and strange enough, he could not obtain it, from the Headmaster of the aforesaid school, to whom he is said to have given it, to enable him to issue a fresh SLC, on the basis thereof. & he argued, There is nothing to show, that the applicant had ever endeavoured, to secure a copy of this tattered SLC, at least, to produce it, before the railway authorities concerned, to substantiate his case in regard to his DOB. The underlying intention of the applicant was obvious, he stated. The applicant, he said, did not furnish a copy of the SLC, despite express directions given to him in this regard by the SPS, by his letter dated 20-2-1985/ 15.3.1985 (Annexure K). Shri Aggarwal stated, that Annexure L dated 14.6.1985, was contradictory to Annexure 'N' dated 11.8.1980 and Annexure U dated 15.7.1986. According to him, if as per Annexure L, the school from which he had passed out, did not issue SLCs in regard to students who had left the school more than 10 years ago, Annexures N and U could not have been issued. It was apparent therefrom, he said, that the applicant was less than truthful in his letter dated 14.6.1985 (Annex. L), addressed to the CSPS.

32. Shri Aggarwal placed reliance on the following rulings to lend force to his arguments. The ratio of each of these rulings is shown against them, in so far as it is pertinent to the present case.

(i) ATR 1986 (2) CAT 152 - Mirchu Mal Vs. UOI & Ors. -

Where the applicant has consistently accepted his DOB, when he joined service, and where there is no satisfactory evidence for not producing the SLC earlier, and where documentary evidence produced by him later, does not satisfy the test, laid down in Article 51 of the C.S.R., his request for change of DOB, after a long lapse of time, cannot be accepted.

(ii) ATR 1986 (2) CAT 142 - M. Asokan @ Munnuswamy Vs. the General Manager, N.R. & Ors. - The certificate of DOB, issued by a private school, cannot be taken as substantive evidence of the DOB, for the purpose of correction of DOB in the Service Register.

(iii) ATR 1986 (1) CAT 139 - Narayan Chandra Choudhry Vs. UOI & Ors. - Where the DOB of the applicant, on the basis of the report of his medical examination, was recorded, and the same was signed by the applicant himself at the time of his entry in service, to which he had not objected, and where preponderant factors, override the fact, that the applicant was born on a date as claimed by him, there is no warrant to alter the DOB, as claimed by the applicant.

(iv) ATR 1986 (1) CAT 336 - Manoranjan Dey vs.

G.M., Chittaranjan Locomotive Works - Greater credence should be given to those entries which are of an earlier origin, and are, thus, more reliable, for determining the age of an employee.

(v) ATR 1986 (1) CAT 345 - Nagina Singh Chemdel vs.

UOI & Ors., - The railway rules provide that any satisfactory explanation for changing DOB should be given within a reasonable time, after joining service. Where the applicant did not move the authorities concerned, within a period of five years of his joining service for changing his DOB and has not given satisfactory explanation, about the alleged error in his DOB, his request for change in DOB, cannot be entertained, especially, after a lapse of a period of 33 years, since he joined service.

33. Shri Aggarwal stated, that the applicant had taken recourse of mendacity, to get his DOB changed, with an ulterior motive, of securing additional length of service and, therefore, he pleaded, that his case was entirely meritless and called for rejection straightforwardly.

34. The object and scope of judicial review of administrative action, is different from that of an appeal. It is well-settled in law, that the object of judicial review is primarily, to keep the administrative authorities within the bounds of their power under the law. In all modes of judicial review, the jurisdiction of the Court or the Tribunal, in a declaratory action or in any proceeding before it, is merely to set aside the unlawful order and not to substitute its own decision, for that of the statutory authority, for that would be exercising the powers of appeal, which are non-existent. In other words, the superior court, exercising its supervisory jurisdiction, over an administrative decision, cannot enter into the question, whether such decision is wrong on its merits.

even on a question of law, except where that is apparent, on the face of the record.

35. With this prelude, I now proceed to examine the contentions urged before me, by both sides.

36. I have given my earnest consideration to this matter and have carefully examined the relevant record and other material placed before me, by both sides. What strikes one, at the very turnstile of this case, is the sequence of conduct of the applicant, in the course of his career, with the railways, from 1954 onwards, and the questionable veracity of his statements in regard to production of the SLC, to substantiate the correctness of his DOB. The applicant states, that he had submitted the SLC, when he had applied for his initial appointment in the railways, in 1954. Except for this bland statement, he has not substantiated his contention by any evidence. If he had really presented the SLC, at the time of his initial appointment in railways in 1954, there was no question of getting his age determined by medical examination. Shri Agarwal categorically denies, that the applicant had produced the SLC in 1954 to the appointing authority, at the time of his initial appointment. The statement of the applicant, that the railways did not insist on the production of the certificate of DOB is, on the face of it, not credible, as the concerned authority had, in para 2 of the letter dated 25.11.1954 (page 3 of the additional set), addressed to him, called for character and eligibility certificates, which impliedly, could not exclude the SLC, which furnished not only the details of DOB but also those of educational qualifications and, was, therefore, a vital document, to be produced at the time of entering service. It is odd, that if this vital document was in the possession of the applicant, right from 1954, why he should have preserved it, merely as a relic, for nearly two decades

thereafter, even though it had significance, in substantiating the correctness of his DOB. In fact, the Head Master of the school, from which the applicant had passed out, had stated in his letter dated 19.8.1987 (page 24 of the additional set), addressed to the respondent that the original admission register, could not be furnished to him, as it was destroyed by arson in 1948. If so, a moot question arises as to how at all, the applicant could have been in possession of his SLC in 1954 or thereabout.

37. If the applicant was not agreeable with the correctness of the entries in the preface sheets of his dossier, he had the freedom not to attest those sheets, but to promptly represent his grievance, if any, to the proper authorities for redress. He did not do so, on any of the two occasions, within the intervening long gap of nearly 12 years. The contention of Shri Gupta, that the applicant was made to sign the blank sheets, (by propping up the bogey of difference in shade or tint of ink in regard to the entries of DOB in the preface sheet: 'Employee's record of service' in the service dossier of the applicant relating to the year 1954), is, ex facie, opaque and does not merit credence.

38. By no stretch of imagination, can the applicant be regarded as illiterate, as he had studied upto the VIIIth Class/Standard, and had, thus, acquired a fair degree of literacy. His various leave applications and other documents, written both in English and Hindi, and the firm mould of his signature in English, as seen from the additional set and other papers placed before me by Shri Aggarwal, in the course of hearing of the case, (a copy of which was furnished by him to Shri Gupta also), clearly reveal, that the applicant was fairly proficient, in both these languages and was not wholly ignorant of

them, as made out by him. It is apparent, that the applicant has been disingenuous in stating, that he had only a smattering knowledge of these languages.

39. In view of the above facts, the instructions contained in para 145(1) of the Indian Railway Establishment Code (Vol.I), that in the case of illiterate staff, declaration of his DOB, shall be by a senior Class III railway servant and witnessed by another railway servant, do not apply to him.

40. The two preface sheets of the service dossier of the applicant, namely (i) 'Employee's record of service' and (ii) 'Particulars of service', are revealing. The DOB of the applicant, was shown therein, in 1954 and 1966 respectively, not only in figures but also in words, as 1.7.1929, and these sheets were duly attested by the applicant, and an independent witness, and by the authority concerned of the railways, particularly, in regard to the correctness of the entries therein.

41. The applicant did not cavil at the alleged erroneous entry of his DOB, first in 1954 and then again in 1966, in the earlier phase of his service, in a vital document, such as his service dossier, when these entries were made under his very nose, and he had attested them without demur, in the presence of two witnesses, on each occasion. But strange enough, with the same degree of literacy, he is seen to have bestirred himself, rather late in his service, in 1972, on a remote entry in the CSL (Annexure D), published that year, wherein he states, that his DOB was erroneously shown as 11.6.1934, which he was not required to attest. Shri Aggarwal categorically denied, that the representation dated 15.1.1972, said to have been addressed by the applicant, to the SPS, for correction of his DOB, was received.

He clarified that on 15.1.1985, the first ever representation of the applicant, to correct his DOB, was received by the railways (page 11 of the additional set). This highly belated reaction of the applicant, for correction of his DOB, indeed, passes my comprehension. There is no evidence to show, that the applicant produced the SLC, along with his application, at the time of his initial appointment, in the railways in 1954, as he now seeks to make out. He has not even raised his little finger, to recover the so-called tattered SLC, from the Head Master of the aforementioned school, at least, to produce the same before the concerned railway authorities, to substantiate the correctness of his DOB and to return it thereafter, if need be, to the Head Master, especially when that Head Master, is seen to have gone out of the way, to oblige the applicant, in his artful plan of advancing the DOB. Apparently, the applicant is taking recourse to subterfuge, in order to derive illegal gain by advancing his DOB. The legal maxim says, "one who does not speak, when he ought to, shall not be heard when he desires to speak (late)" - qui tacet consentire vedetur. In his letter dated 14.6.1985 (Annexure L), addressed by the applicant to the CSPS, he had stated, that the school, from which he passed out, does not issue SLCs to its pupils, who had passed out of its portals, more than a decade ago. This is, manifestly, at variance with Annexure N, dated 11.8.1980 (relating to the certificate of DOB as 30.11.1934, signed by the Head Master of the school) and Annexure U, dated 15.7.1986, signed by the same Head Master. It is a matter for regret, that the Head Master, too, has been in league with the applicant in this shady episode. If the very salt loses its savour,

wherewith, shall it be salted ? Who shall have faith in such Head Masters, who are the stewards of our rural educational institutions?

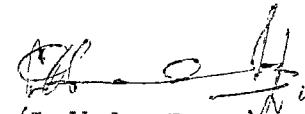
42. Dissimulation is writ large on this application. The entire tenor of the argument of the applicant to change his DOB, is typical of casuistry, and does not inspire confidence. "Manifest things require no proof" - manifesta probacione non indigent. The applicant must remember "that a plea of that, which is false, is the last of all" - exceptio falsi, omnium ultima, and that "law punishes falsehood" - lex punit mendacium.

43. In this manifestly shady background, the various rulings relied upon by Shri Gupta, in paras. 26 and 27 above, to shield the case of his client, in an attempt to advance his DOB to 30.11.1934, are of no avail whatsoever.

44. On the other hand, the decisions of the Tribunal, invoked by Shri Agarwal, in para. 32 above, are apposite.

45. I am convinced that the railway authorities have taken proper action, in compliance with the directions of this Tribunal in O.R. No. 1093/86, in keeping with the principles of natural justice, after giving due opportunity to the applicant, to state his case, and have rightly retired him from service, with effect from 9.6.1988 (A.N.), by the impugned letter dated 9.6.1988 of the SPS (Annexure A). I, therefore, find no reason to interfere with the same. In fact, the applicant has, meritlessly, gained about a year of extra service on account of efflux of time, by recourse to litigation.

46. In the result, the application fails, and I dismiss the same accordingly, with no order, however, as to costs.


(L.H.A. Rego) u.s. 1989
Member (A)
11.8.1989.