

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 1662 of 1988

Date of decision: 17.3.1989.

Shri C.L. Kapoor

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri M.L. Chawla, counsel for the applicant.

Shri S.N. Sikka, Counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Chaman Lal Kapoor, retired Stock Verifier, Store Account, Northern Railway, against impugned order No. 88/Adm/A/25/2 dated 8th July, 1989, passed by the CPO/AGM (OP), Northern Railway HQs, rejecting his representation for change of date of birth from 4.4.1930 to 11.4.1931.

2. The brief facts of the case, as stated by the applicant, are that at the time of his appointment as Clerk Grade-II in the Office of the Director R.C.A.O., Delhi, Kishanganj, Delhi, on 22.6.49 his date of birth was recorded as 4.4.1930. The applicant had appeared in the matriculation examination of the then Punjab University, Lahore, but due to the partition of the country the results could not be declared due to loss of records as well as answer books to a larger extent and on the basis of 'Special Social Service Regulation', he was issued a Matriculation Certificate by the East Punjab University vide Serial No. 9053 dated 15.12.1948 which did not carry the date of birth. The date of birth was therefore declared on the basis of memory and approximate calculation which had to be provisional for all intents and purposes. All these years he had been trying to find out his correct date of birth. On 9.6.87 he wrote to the Punjab University, Chandigarh, and the West Punjab University in Lahore requesting them to send the correct date

of birth certificate, but he did not get any reply from them. The applicant then approached the External Affairs Ministry on 27.7.87 to take up the matter of his date of birth with the authorities of Pakistan at Lahore who took up the matter with the Embassy of India at Islamabad in Pakistan. He got a certificate of birth through the Ministry of External Affairs in the middle of April, 1988 issued by the Lahore Municipal Corporation on 9.12.87 (Annexure 'J' to the application) which indicates his correct date of birth as 11th April, 1931. The applicant vide his letter dated 13.4.88, addressed to the General Manager (P), Northern Railway, New Delhi, requested for correction of the date of birth of the applicant from 4.4.1930 recorded erroneously as declared under the then circumstances to the correct date of birth from 11.4.1931, placing reliance on the certificate received from Pakistan authorities through the Ministry of External Affairs. No reply was received from the GM, Northern Railway, and the applicant was retired without any written order on the last day of April, 1988. The applicant once again reminded the G.M. (Griv), Northern Railway, vide his letter dated 2.5.1988, but this representation was rejected on 8.7.88. The applicant has sought relief from the Tribunal to set aside the impugned verbal order of superannuation and the order dated 8.7.88 rejecting his representation with a direction to the respondents to reinstate the applicant with all consequential benefits on the ground that the claim of the applicant is legitimate, bonafide and genuine and is based on documentary evidence of birth certificate issued by the Municipal Corporation of Lahore (Pakistan).

3. The respondents in their reply have stated that the applicant has invoked jurisdiction of the Tribunal seeking directions to the respondents to reinstate the applicant and extend the benefit of continuity of service till the applicant retires on the claimed revised date of superannuation. The applicant was appointed in the Railway service on 22.6.1949 when he had been issued a Matriculation Certificate by the Punjab University and at that time the applicant had declared his date of birth as 4.4.1930 and

submitted the following proof/documents in support thereof:-

(i) Certificate dated 26.11.1948 issued by the Vice-President, Hindu College, Delhi (Annexure R-1).

(ii) Form of application dated 20.2.49 duly signed and filled by the applicant in his own hand for appointment as Clerk Class II (Annexure R-II).

(iii) Certificate duly signed by two gazetted officers produced by the applicant at the time of appointment (Annexure R-III).

(iv) Subsequently supported by (a) an affidavit duly signed by the Magistrate 1st Class, Delhi, (b) horoscope which was received by the applicant on 15.5.1950 (Annexures IV & V resp.).

The applicant had been signing the Service Register on frequent intervals as a token of correctness of the various entries made therein and the applicant did not dispute his date of birth for about 38 years. He suddenly woke up to agitate and dispute his date of birth for the first time on 13.4.88, specially at a time when he was due to retire on 30.4.88 on the plea that as per certificate issued by the Municipal Corporation, Lahore, his correct date of birth is 11.4.1931 where it is merely stated that a male child was born to Shri Laja Ram S/o Shri Hukam Chand, and which child there is no further evidence to be relied upon.

4. It has been stated that the proof about the date of birth given at the time of appointment is authentic and duly supported by legal documents and there are no justifications to accept any change at a belated stage just before the time of super-annuation. These matters were thoroughly examined by the competent authority before rejecting the plea of the applicant for altering his date of birth.

5. The applicant has stated that he came to know from one of his cousin brothers during 1972 that he was born in 1932 and that he was younger to his cousin. Since then, he had been trying to find out informally about the correct date of birth and ultimately applied to the Punjab University, Lahore/Chandigarh simultaneously formally on 9.6.87. He also claimed that one officer, Shri Bishamber Nath Malhotra, Head Clerk working in

the Northern Railway Headquarters, who had been retired on 31st March 1978 on superannuation on the basis of previously and erroneously admitted/recorded date of birth, was allowed the correction of his actual date of birth from the year 1920 to the year 1924 and resumed duties after a lapse of a few months after his actual retirement.

6. The learned counsel for the applicant cited various cases to support that it is the right of a person to retire only on the due date of superannuation. Shri Chawla claimed that it is a fundamental right of a person to get his age corrected at any time and cited the case of **Manak Chand Vaidya Vs. State of Himachal Pradesh and others** - 1976(1) 402. He also cited two other cases of **Hira Lal Vs. Union of India** - A.T.R. 1987(1) C.A.T. 414 - and **Sikenderbeg S. Mirza Vs. Union of India & Others** - A.T.R. 1987 (2) C.A.T. 212 (Short Note) - which allow a person to get his date of birth changed at any time. The basis is that truth must be found out and all applications must be enquired into and if the date of birth has really been recorded erroneously, it must be corrected at any stage.

7. The learned counsel for the respondents cited the following cases in support of the respondents:-

(i) **I (1988) ATLT (CAT) 647 - Amal Krishan Mitra Vs. U.O.I. & Others.**

In this case the Calcutta Bench of the Tribunal had justified the action of the General Manager for rejecting the application for correction of date of birth as he approached the court only after he received the notice of retirement while he had all along been aware of the date of birth recorded in the service book.

(ii) **II (1987) ATLT (SN) 20 - Santa Singh Vs. U.O.I.**

In this case the Chandigarh Bench of the Tribunal rejected the application for change of date of birth as the application was made very near the time of retirement of the applicant. It was also held that the application was not maintainable in terms of Rule 145 of the Railway Establishment Code.

(iii) **II (1988)(CAT)SN 13 - P.L. Sethi Vs. U.O.I. &**

Others.

In this case it was held that service records were very important documents and these had not been disputed for nearly 37 years. The case was rejected on grounds of laches. In this case also, the applicant had applied for change in the Matriculation Certificate and the same was allowed by the University.

(iv) II (1988) ATLT (CAT) (SN) 14 - Banwari Pandey Vs. Union of India & Others.

In this case, the Jabalpur Bench of the Tribunal held that where plaintiff has placed his thumb impression on the medical memos ^{age and} ~~and~~ had accepted the ^{same} ~~that~~ entries in birth register cannot alone have conclusive presumptive value and the proof must depend upon the facts and circumstances of each case.

8. There is no doubt that there is an overwhelming evidence that the applicant had himself given the date of birth recorded in the service book; that the date of birth was not only mentioned by him, but also confirmed by the records of the Hindu College, Delhi, and a certificate duly signed by two gazetted officers at the time of the appointment of the applicant as well as an affidavit signed by a Magistrate 1st Class, Delhi. It is very difficult to accept that a person should suddenly get curious to know his date of birth on meeting a cousin and that also in 1970s. It has not been explained satisfactorily what action the applicant took between 1970 and 1987. The statement that he was trying to find out the date of birth informally is not convincing. Although the certificate from the Municipal Corporation of Lahore does mention that an only son was born to his father, it is very difficult to treat it as a conclusive proof of his correct date of birth even if it has been received through the Embassy of India in Islamabad. Once the applicant knew in the 1970s that his date of birth was erroneously recorded, he should have taken some positive action, but we have no evidence of any such action. As held by this

Tribunal itself earlier, the application for change in the date of birth at the fag end of ones service career cannot be accepted in the normal circumstances. As such, the applicant has failed to establish his case and his application is dismissed. There will be no order as to costs.

B.C. Mathur
(B.C. Mathur)

Vice-Chairman