

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 1895 of 1988 Date of decision: 30.5.89

Shri Banarsi Dass .... Applicant

Vs.

Union of India & Others .... Respondents

PRESENT

Shri B.S. Maine, counsel for the applicant.

Shri S.N. Sikka and Shri BK Agarwal, counsel for the respondents

CORAM

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

This is an application filed by Shri Banarsi Dass, Motor Mechanic, Motor Workshop, Northern Railway, New Delhi, against impugned orders No. 220-E/1 dated 26.8.88 passed by the Shop Superintendent, Northern Railway Motor Workshop.

2. Brief facts of the case are that the applicant, according to whom his date of birth is 1.1.1933 as per School Leaving Certificate, the respondents have issued a notice to retire him from 30.4.89 based on the date of birth entry in their service records and that inspite of his representations, the service records have not been corrected. The applicant was appointed as a Khalasi on 14.4.52 and at the time of his appointment had produced his school leaving certificate and also declared his age as 19 years. The applicant had been giving his date of birth as 1.1.1933 in the applications submitted by him for loans or otherwise and the respondents never informed the applicant that the date of birth mentioned in the service record was April, 1931 and the respondents never contradicted the date of birth given in his applications. According to Railway Board's circular letter dated 2.1.1971, signatures of Railway servants should be obtained after every five years on the first page of service book against item 22. The applicant did not know at any time that an incorrect date of birth had been written in his service



record, but when he came to know of this on receipt of notice of retirement on 30.4.89, he immediately made a representation against it. It has been stated that the competent authority to decide the case of alteration in the date of birth is C.P.O., but his representation has been rejected at a lower level. When the applicant had submitted his school leaving certificate, issued by the Junior High School, Ghaziabad, it was incumbent on the part of the respondents to make necessary enquiries before deciding the matter.

3. Shri BK Agarwal who appeared for the respondents in addition to Shri S.N. Sikka, brought the service record of the applicant. The service book shows that the date of birth of the applicant was 5.4.1931. The first page of the book has been written in the hand of the applicant and signed by him in the presence of witnesses. The leave record which is part of the service record bears the signature of the applicant several times on different dates. The applicant who was present in the court admitted his signatures. It was also seen from the records that the school certificate produced by the applicant was obtained by him from the Deputy Inspector of Schools, Ghaziabad, on 5.5.88 after receiving the notice of retirement.

4. This Tribunal has held in a number of cases that while an applicant has a right to get his date of birth corrected at any time and the rule of five years will not apply and that if there is overwhelming evidence to indicate the correct date of birth, the same should be enquired into. There are definite decisions that in normal cases service records should be treated as authentic and where both the parties have relied upon such a record for a very long time, any representation for changing the date of birth at the fag end of service will not be taken into consideration.

5. The learned counsel for the applicant, Shri Maine, said that following the decision in Hira Lal's case, it was incumbent on the part of the respondents to have started an enquiry to find out the truth about the date of birth of the

applicant once he had produced the school certificate from the Deputy Inspector of Schools, Ghaziabad, and that only the competent authority, namely, the C.P.O., could have normally passed orders and since no enquiry was and since his representation was rejected at a lower leve, the application must be allowed.

6. It is noted that the averments made by the applicant in the original application are not correct. It has not been established that the aplicant had given his date of birth as 1.1.33 at the time of his appointment. On the other hand, he has himself signed the service records showing the date of birth 5.4.1931. It is noted that in many cases the Railway servants have not been asked to sign the service books after five years of entry as instructed by the Railway Board. In this particular case, the applicant has signed the service book on several occasions and, therefore, it cannot be said that he was not aware of the date of birth recorded in his service book. It cannot be presumed that he was under the impression that his date of birth has been recorded as 1.1.1933 and there is no justification for his not making any representation till he received a notice of retirement. An enquiry can certainly be done if there is an overwhelming evidence to indicate that the date of birth written in the service record is not correct, but the service record is always considered authentic if it has not been challenged for a long time and accepted by the applicant and the respondents for over three decades. I see no merit in the application which is dismissed.

7. The learned counsel for the applicant pointed out that in spite of the orders passed by this court on 28.4.89 that the applicant would not be retired on 30.4.89 till the date of hearing of the case today, he has been retired on that date. This is a serious matter and under the normal circumstances would be liable for contempt. The learned counsel for the respondents, Shri B.K. Agarwal, pleaded that the respondents had unfortunately no knowledge of these orders and in the mean-

time he has been appointed as the counsel for the respondents. The applicant has also not moved any contempt petition and in view of the fact that the original application has been dismissed, the matter is left at this stage. However, the respondents are directed to make full payment of salary etc. to the applicant till 31.5.89, but his retirement benefits will be calculated as if he had retired on 30.4.1989.

There will be no orders as to cost.



(B.C. Mathur)  
Vice-Chairman