

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

—4—

DATE OF DECISION: 20.1.1989.

Regn. No. O.A. 2050/88

Shri Rajender Kumar Gaur ... Applicant
Vs.

Union of India ... Respondents.
For the applicant: Shri JogSingh, Advocate.
For the respondents: Shri O.N. Moolri, counsel.

CORAM:

Hon'ble Shri S.P. Mukerji, Vice-Chairman.

JUDGMENT.

In this application dated 24.10.1988 under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who has been working as Head Clerk under the Northern Railway, has sought change of his recorded date of birth from 5.10.1930 to 22.10.1933. The applicant stood superannuated on 31.10.1988 on the basis of the recorded date of birth. He has also prayed that the order dated 12.10.1988 rejecting his representation should also be set aside.

2. The brief facts of the case are as follows. The applicant was admittedly appointed as a clerk in the office of the Divisional Railway Manager, New Delhi on 14.2.1953. In 1961, his services were terminated for unauthorised absence but he was reinstated by the order dated 23.3.1971. Since he has been an active member of the various societies and associations of workmen of the Railways, according to him, the authorities were not well disposed towards him. He was compulsorily retired on 3rd October, 1986 in public interest and on his moving the Tribunal against that order, the respondents withdrew the order of

2

retirement. He was thereafter suspended which ~~order~~ ^{subsequently} was also revoked. On 11th May, 1988, his name ^{as} figured in the list published by the respondents of those who were to retire between 31.7.1988 and 31.12.1988. His name was included in that list, according to him, on the basis of wrong date of birth as 5.10.1930. He represented on 17.8.1988 which was rejected on 12.10.1988. According to the applicant, his correct date of birth as recorded in the Matriculation certificate is 22.10.1933. This date of birth was recorded in the original service record and the original Matriculation certificate had been deposited with the respondents by the applicant in 1953. The original Matriculation certificate, according to the respondents, had been misplaced. The service record, which was re-constructed when he was reinstated, showed that the date of birth recorded by the applicant in his own hand was 5.10.1930, in accordance with the Matriculation certificate.

The respondents have further stated that the ~~Medical~~ ^{Medical} ~~Memorandum~~ ⁶ which certificate of the applicant issued on 8.11.1971 ~~bore~~ ^{his application in} bore the signature of the applicant, also showed the date of birth as 5.10.1930 (Annexure R-2). The medical memo. (Annexure R-3) also bore the same date of birth. The respondents have also quoted from para. 6 of O.A. No. 1147 (Annexure R-4) and the affidavit filed by the applicant (Annexure R-5) in the aforesaid O.A., which was also filed by the applicant, in which the applicant had indicated his age as 55 years on 5.10.1955 and as 56 years on 5.12.1986. In the seniority list published in September, 1987 (Annex. R-6), the applicant's date of birth was shown as 5.10.1930 to which he did not object. The respondents have also indicated that since

the applicant did not avail of the opportunity given to all Railway employees to correct the dates of birth in 1972 and 1973, the application cannot be maintained because of laches and delay.

3. In his rejoinder, the applicant has argued that the respondents have admitted that they have misplaced the original Matriculation certificate which had been submitted by him in 1953 at the time of joining service. ^{on his part} He has stated that he tried his best to secure a copy ^{^R} of the Matriculation certificate from the institution at Haridwar, from where he passed the Matriculation. ^{but} The Principal indicated his inability to ^{give a copy} ~~do so~~. ^h He has annexed a copy of the Principal's letter also. Accordingly, the applicant approached the senior Medical Officer, City Board, Bulandshahr, where he was born and the Senior Medical Officer, on the basis of the records, gave a certificate that one son was born to Pandit Ravi Shankar Sharma, the applicant's father on 22.10.1933. The applicant has filed an affidavit to ^{say} ~~show~~ that he is the only son of his father and that no ^h other son of his father was born.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents. It is established law that if sufficient grounds exist, an enquiry can be made into the correctness of the date of birth recorded in the service register and such an enquiry cannot be precluded on the ground that once the date of birth is recorded in the service register, the employer is bound by it and that such an enquiry can be made even after the employee has retired - R.S. Kallolimath Vs. State of Mysore and Another (AIR 1977 SC 1980). In Surendra Singh Vs. Divisional Engineer, Telegraphs, Allahabad & Anr.

(Signature)

the Allahabad High Court has held that where a Government servant makes a request for change in his date of birth and adduces evidence, the Government ~~are~~ ^{is} bound to consider the request objectively and on its merits. Since in the instant case, it is admitted that the original Matriculation certificate had been submitted by the applicant at the time of his recruitment in 1953 and it was thereafter misplaced by the respondents, and since it is evident that the reconstructed service record from 1973 was not based on the original entry made in 1953, there is a prima facie ^{case} to probe further into the matter on the basis of the original Matriculation certificate. The case is further strengthened by the certificate given by the Senior Medical Officer, Bulandshahar to the effect that in accordance with the entry in the birth register, the date of birth of the son of Pandit Ravi Shankar Sharma is 22.10.1933. In O.A. No. 396/87, the Division Bench of this Tribunal of which I was a party, in its judgment dated 4.5.1988, had observed that "the entry of date of birth in the service record which went unchallenged and accepted by the employee concerned for years, cannot be altered at the fag end of one's career unless there is an over-whelming evidence in support of the correct date of birth and no element of fraud or malafide intention or taking undue advantage at the time of recruitment by the recorded date of birth is present".

5. In the circumstances, I allow the application in part to the extent of directing the respondents to make a thorough enquiry into the matter and ascertain the ~~recorded~~ ^{correct} date of birth by examination of the original records ^{at} ~~at~~ the City Board of Bulandshahar and also by examining the records kept with the concerned authority which issued the Matriculation certificate.

A final decision about the date of birth on the basis of the enquiry and after hearing the applicant should be taken within a period of ~~one~~ ^{four} months from the communication of this order. The applicant will be at liberty to approach this Tribunal, if so advised and in accordance with law, if he feels aggrieved by the decision so taken. There will be no order as to costs.

SPL
(S.P. Mukerji)
Vice-Chairman.
20.1.1989.