

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA.727/88

Date of Decision: 16.11.1988

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BENI MADHO

Applicant

Vs.

General Manager,
Northern Railways,
New Delhi & others.

Respondents.

PRESENT:

Shri Sudhir Kulshrestha, Counsel for the applicant
Shri S.N.Sikka, Counsel for the respondents.

C O R A M

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

This is an application under Section 19 of the Administrative Tribunals Act 1985, against the impugned Order No. 82/Admn.II/T.A./DKS/046/048/Misc. dated 21.4.1988 (Annexure X to the Application) passed by the General Manager (P), Northern Railway, rejecting the request of the applicant for alteration of his date of birth without assigning any reasons whatsoever. The case of the applicant is that he joined the department on 10.3.1957 as a Peon when he was about 21 years of age. Surprisingly, his date of birth was recorded as 2.4.1930 whereas his actual date of birth is 22.8.1936. The applicant has stated that according to the Circulars dated 27.9.1972 and dated 25.10.1978 the claims of alteration of date of birth of illiterate Class IV employees could be ~~conceded~~ ^{considered} on their representations and there will be no limitation for doing so. According to the applicant his parents got married in the year 1934 and two sons were born out of the wedlock. The applicant was born on 22.8.1936 and a younger brother some time in 1942. The fact that his date of birth was recorded as 2.4.30 came to his notice when once he was sitting along with other staff members ^{they were} talking about the remaining tenure of their service. On knowing about his wrong date of birth in service book, the applicant moved an application on 22.4.88 for correction and alteration of his date of birth in his service book from 2.4.1930 to the actual date of birth, i.e., 22.8.1936. In support the applicant produced as many as five certificates from various authorities. He had not handwritten his date of birth and being illiterate had only put his thumb impression on his service book. After various inquiries finally on 26.2.1985 Senior Welfare Labour Inspector Traffic and Accounts, Kishanganj, Delhi, was deputed to the native place of the applicant to verify the authenticity of the Certificates, viz., Death and Birth Certificate, Certificate by Gram Pradhan, Certificate of Family Register, etc., which were produced by the applicant in support of his claim regarding change of date of birth. The Senior Welfare Labour Inspector visited the native place of the applicant and reported that all the certificates are true and have been certified from the ~~A.I.C.~~ District Magistrate/Collector, Pratapgarh. A copy of the report of the Welfare Inspector is at Annexure II of the application. This report indicates that the authenticity of certificates/affidavits bearing

the date of birth of the applicant having been born on 22.8.1936 was verified by him from the original records shown by the Senior Copiest Judicial Record room at the Collectorate office at Pratapgarh. A fresh Affidavit had also been filed by the applicant which was attested by the Assistant Collector 1st Class. He also examined "PARIVAR (family) REGISTER" maintained since 1972 for the purpose of identification of family members residing in the Village and also casting votes in the Elections indicating the date of birth as mentioned by the applicant. On the basis of the report of the Senior Welfare Inspector, Senior Accounts Officer/Traffic wrote to the Deputy Divisional Personnel Officer for approving the alteration in the date of birth of the applicant and the President of the Northern Railway Union also recommended the alteration in the date of birth to various authorities. But vide letter dated 5.8.1985 the respondents rejected the prayer of the applicant. The Senior Welfare Inspector was again deputed to the applicant's native place to verify about the total number of male and female children born from the parents of the applicant. The Senior Inspector again submitted supplementary report which reads as follows:-

"As desired I may further state in continuation of my report dated 18.4.85 that I had made ~~dist~~^{reft} enquiries at the native place of Shri Beni Madhe, Peon which reveals that his statement is correct and only one brother who is younger to him was born and no other male child was born out of his parents and the marriage of his parents took place in the year 1934 which is well after the recorded date of birth of the employee."

However, the competent authority rejected the applicant's claim on 13.4.88/21.4.88.

The case of the applicant is that he did not take any advantage of a lower age at the time of his employment as he was 21 years of age at that time. He is being denied of his six years of service. The authorities have rejected his prayer because in the birth register the name of the child has not been recorded (Annexure V of the application). The applicant submits that the names are not recorded in birth register except the gender of child and parentage. This point has already been made out in the letter of the Addl. F.A. & CAO/(T) addressed to the General Manager (P) vide Annexure VI to the application.

The claim of the applicant is that he could not have been born in the year 1930 when his parents had got married only in the year 1934. That his date of birth recorded in the service book has been written by some one else, the applicant being illiterate and without knowing the reality he had put his thumb impression on it. He further says that the respondents themselves made inquiries about the date of birth through Senior Welfare Inspector who noted in his favour and as such, he must be given the advantage and his date of birth changed. The learned Counsel for the applicant also says that once an inquiry is

ordered by the respondents, the principle of estoppel should apply and that the respondents should not be allowed to reject the case only on the basis of the service records. The documents produced by the applicant are also very old. Even the Gram Panchayat Register which was opened in 1972 should be treated as true. He cited two cases in favour of the applicant; one is Gujarat High Court case 1983 (3) SLR (Vol.34) page 231 where it has been held that in the case of an illiterate person the date of his birth can get corrected even at the time of retirement and in the other case 1987 (2) SLR page Hira Lal Vs. Union of India where the Tribunal has decided that on the basis of the record the date of birth could be changed. (However, the basis for change in that case was School record.) The learned Counsel also cited the case of State of UP Vs. Chunni Lal where the State of UP has filed SLP before the Supreme Court against the orders of Allahabad High Court (Lucknow Bench) where the change in date of birth was decided in favour of the applicant.

The respondents in their reply have stated that the date of birth mentioned in the service record of the applicant cannot be changed as it was duly attested by his superior officer viz: the Assistant Engineer. There is no ground to doubt the authenticity of original service record. The case of the applicant was thoroughly examined by the competent authority and the reasons for rejecting the same were conveyed to the applicant through the superior officers. The learned Counsel for the respondents said that the service record is treated as authentic and is to be relied upon in the absence of any over-riding considerations. No reliance could be placed on the "PARIWAR REGISTER" which was opened later on. He also says that there is no record to show that the parents were married in the year 1934 and the supplementary report by the Senior Welfare Inspector quoted by the applicant is not available in the relevant file. There is only one report of the Senior Welfare Inspector. The learned Counsel cites two cases of the Tribunal. In the first case 1987 (1) ATLT 424: (Shanti Prashad Tapalyal Vs: Union of India), the Principal Bench observed that "PARIWAR REGISTER" maintained was not an authentic record; in the other case 1987 (2) ATLT 81 Cuttack Bench held that the authenticity of the service record with the finger impression could be relied upon. In that case no other certificate has been filed except an affidavit to the effect that the date of birth was wrongly recorded.

Normally the service records should be treated as authentic and must be relied upon for accepting the date of birth. There are, however, certain factors in favour of the applicant in this case. He was appointed at the age of 21 years and as such he did not take advantage of the lower age at the time of his recruitment. The most important factor is that the respondents themselves deputed their Senior Welfare Labour Inspector to examine the veracity of the truth and the Inspector verified the records concerning the date of birth maintained by the Village Panchayat Office and the District Office of Pratapgarh and gave a report in favour of the applicant. The respondents have not given

any reasons for not accepting the report of their own officer. The reasons given by the respondents as mentioned in Annexure V to the applicant that the documents submitted by the applicant do not indicate his name hence the request of the applicant for alteration in the recorded date of birth could not be considered by the competent authority, are certainly not convincing. It is a normal practice to give the parentage of the new born as the name would be adopted only later on. If the gender of the new born baby is given along with the date of birth and the parentage, it should be considered as a reliable document. The respondents have not given any other reasons for rejecting the claim of the applicant. The F.A. & C.A.O. has also brought out these points in his letter dated 28.6.84 to the General Manager. The respondents denied that there is ^{any} _{no} supplementary report of the Senior Welfare Inspector where he had reported about the year of the marriage of the parents of the applicant. The respondents have merely said that no such record is available in the files of the respondents, but the applicant has quoted from such a report which does indicate that the parents of the applicant were married in 1934 and, therefore, the applicant could not have been born in the year 1930.

Taking into consideration all the aspects, viz: that the applicant had not taken any advantage of the lower date of birth at the time of his recruitment; that he was an illiterate person; that he did produce some documents, like, the copy of death and birth register, Certificate of Gram Pradhan, an affidavit from the Uncle of the applicant and above all the report of the Senior Welfare Labour Inspector, I feel that the benefit must go to the applicant. The respondents are directed to alter the date of birth of the applicant from 2.4.30 to 22.8.36 and allow him all the consequential benefits.

The application is, therefore, allowed. In the circumstances of the case, there will be no orders as to costs.


16/01/88
(B.C. MATHUR)
VICE-CHAIRMAN.