

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 936 of 1988

Date of decision: 17.3.1989.

Shri Mahipal Singh

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri B.S. Mainee, 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 Mahipal Singh, Head Clerk, Commercial Branch, Northern Railways, New Delhi, against impugned order No. 724E/5606 EIIIA dated 29.4.1988 passed by the General Manager, Northern Railway, rejecting the request of the applicant to alter the date of birth in the service record.

2. The brief facts of the case are that the applicant was appointed as a clerk on 5.5.1956 and the date of birth in the service record of the applicant was recorded on the basis of the Matriculation Certificate issued by the Punjab University in 1952. The date of birth mentioned in the certificate was 21.11.1931. According to the applicant, this is a wrong date and the mistake was committed by the relative who got him admitted in Punjab after he had taken his primary education in Village Dayanatpur, Distt. Bulandshahr (U.P.). The sister-in-law who got him admitted to school at Village Bahera Kalan, Distt. Gurgaon, erroneously gave the date of birth as 21.11.1931 instead of 31.7.1933. This mistake was detected subsequently when it was discovered that according to the date of birth recorded in the Matriculation Certificate, he became older than his elder brother whose date of birth ^{in school register} was recorded as 7.3.1932. The applicant made enquiries from the Primary School, Village Dayanatpur, Distt. Bulandshahr, which revealed that his date of birth as recorded in the School was 31.7.1933. A copy of the School Leaving Certi-

ficate issued by the Primary School, Dayanatpur, is at Annexure A-4. Thereafter, the applicant made a representation to the Respondent No. 2 (General Manager, Northern Railway, New Delhi) for altering his date of birth (Annexure A-5). His request was not accepted by the respondents. Thereafter the applicant sent a detailed representation to the Registrar, Punjab University, Chandigarh, for alteration of the date of birth and after satisfying themselves by examining the registers of the Primary School, Dayanatpur, Distt. Bulandshahr, the Punjab University altered the date of birth and issued a new (duplicate) Matriculation Certificate to the applicant (Annexure A-10). The applicant then again wrote to the General Manager, Northern Railway, to alter the date of birth in accordance with the revised Matriculation Certificate. The General Manager referred the matter to the Railway Board for decision (Annexure A-12). The Railway Board advised the Northern Railway to verify the authenticity of the duplicate certificate submitted by the applicant and after verifying the genuineness of the certificate, the General Manager, Northern Railway, submitted his recommendations to the Secretary, Railway Board, on 6.8.87 (Annexure A-13). The Railway Board (Respondent No.1), however, did not agree to the alteration of the date of birth of the applicant without indicating any reasons.

3. The learned counsel for the applicant has pointed out that in the case of non-gazetted staff, the General Manager was competent to alter the date of birth and he need not have sent his recommendation to the Railway Board. He perhaps did so as the Railway Board had issued a circular in 1972 giving a chance to all railway employees to get their date of birth changed by 1973. In this case, however, the cause of action took place ^{later} ~~only~~ after the applicant came to know of his correct date of birth when he found the School Certificate of his elder brother indicating that the applicant's date of birth as recorded was ^{if an} ~~than~~ ^{earlier} ~~than~~ that of his elder brother. The Railway Board also did not reject the applicant's representation, but asked for ^{an} enquiry. The question of limitation has, therefore, not been raised and waived and once an enquiry had been ordered to ascertain the truth and the enquiry

(8)

showed the correct date of birth as recommended by the General Manager, Northern Railways, there was no option but to change the date of birth of the applicant. The Railway Board rejected the case of the applicant illegally without issuing a speaking order. Shri B.S. Maine, the learned counsel, cited various decisions in favour of the applicant. It has been held by courts that orders affecting civil rights of petitioners must be speaking orders. He cited the following cases:

(i) **Mahabir Prasad Vs. State of Andhra Pradesh - AIR 1970 SC 1302** (cited at page 600 of Railway Establishment Manual by Shri B.S. Maine).

(ii) **Vishram Joshi Vs. Union of India - ATC 1989 97** which indicates that the General Manager is the competent authority to pass orders in such cases.

(iii) **Hira Lal Vs. Union of India - A.T.R. 1987(1) C.A.T. that 414** - where it has been laid down / the age can be altered, but an enquiry must be done to get at the truth.

Shri Maine stated that the Railways have themselves changed the date of birth in many cases after 1973. The Northern Railway would not have recommended the case if such cases were barred after 1973. The interpretation of a rule must take into consideration the circumstances of each case and the Railways cannot pick and choose cases. There cannot be any discrimination to allow change in date of birth in some cases and not in others. As the Railways have not shut the door for change of date of birth after 1973 and have entertained many cases, the applicant's case has to be decided on merit and since the enquiry report clearly establishes his date of birth, there cannot be any reasons for rejecting the same.

4. The respondents have stated that application is barred under the doctrine of Estoppel under Section 115 of the Evidence Act. The applicant slept over the matter during the entire service of 32 years and represented for change of date of birth for the first time on 7.6.84, i.e. after 28 years of service. The case of the applicant was thoroughly examined by the competent authority, but rejected the request after considering all the documents filed

9

by the applicant. The applicant ^{also} did not take advantage of the Presidential Order of 1972 giving an opportunity to all Railway employees for changing the date of birth. In the case of the applicant, the date of birth was recorded according to the Matriculation Certificate filed by him and the Primary School Certificate cannot be relied upon fully unless the person who had given such a certificate was available for examination. No affidavit has also been filed on behalf of the Head Master of the Primary School regarding the date of birth or by the applicant. On this point, the learned counsel for the respondents relied upon the case of T. Ramaswamy Vs. General Manager, Southern Railway, decided by the Madras Branch of the CAT and reported in 1987 ATLT 62. The applicant had spent only one year in School and not produced any extract from the birth register and as such, the suit failed on merit. The elder brother remained in a village doing agriculture and never passed matriculation examination on which some reliance could be placed. The theory that the applicant accidentally found out that his elder brother was younger to him according to the School Register is an after thought and is wholly unreliable. Shri Sikka also cited the case of Jena Vs. Union of India decided by the Cuttack Bench and reported in 1988(1) ATLT CAT 182 - where the Bench relied on the Matriculation Certificate along with the surrounding circumstances. He also cited another case 1988 ATLT VOL.II CAT (SN) 13 - P.L. Sethi Vs. Union of India - where the University had allowed change in the date of birth after 37 years but the court did not place any reliance on such a change as this was not authentic. The Jabalpur Bench also in II (1988) ATLT (CAT) (SN) 14 - Banwari Pandey Vs. Union of India & Others - did not accept the School Certificate and relied on the service records which had stood the test of time for a very long time.

5. While it is true that a Government employee can apply for alteration in the date of birth any time during his service, but each case has to be decided on merit. It is a matter of judgment by the competent authority whether the evidence produced before them is reliable enough for them to order a change in the date

(P)

of birth. In this particular case, the applicant has represented to alter the date at the fag end of his service and the only basis on which he relies is a certificate from the Primary School in a village. On that basis alone, the Punjab University altered the date of birth and issued a duplicate certificate to the applicant. But the circumstances are not fully convincing so as to interfere in the orders passed by the Repondent No.1. Even if the General Manager, Northern Railway, was competent to decide the case, he referred the matter to the Railway Board for orders and in the circumstances of the present case, the Railway Board cannot be faulted if they did not agree to alter the dat-e of birth. A certificate from a Primary School alone cannot be considered as conclusive evidence in this matter and I would, therefore, not like to interfere with the orders passed by the respondents. In the circumstances, the application is dismissed. There will be no order as to costs.

B.C. Mathur 17.3.89
(B.C. Mathur)

Vice-Chair man