

A handwritten signature in dark ink, appearing as a stylized 'M' or similar character.

DATE OF DECISION 9th May 1986

Shri Jagjit Singh Advocate for the Respondent(s)

The petitioner has come up under Section 19 of the Administrative Tribunals Act praying that the respondents may be directed to correct the date of applicant's birth from 21.5.1928 to 25.1.1930 as mentioned in the Matriculation Certificate of the applicant and not to retire the applicant on 31.5.1986 on superannuation. The brief material

facts of the case are as follows.

2. The applicant was appointed as a Porter on 2.1.1950 in Class-IV post by the Northern Railway at Rewari Station. At the time of his appointment, he reported to have declared his date of birth as 21.5.1928 in his own hand-writing and under his own signatures. This is denied by the applicant. According to the applicant, the wrong date of birth might have been due to clerical error or oversight and the respondents were duty bound to enter the correct date as recorded in the Matriculation Certificate. The mistake of the officers of the respondents came to applicant's notice in the beginning of 1985 and he represented against it on 16.4.1985 and was advised to submit the Matriculation Certificate which he did, but the mistake was not rectified. He made another representation on 3.10.1985. According to the respondents, by their circular of 4.8.1972 issued by the Railway Board, an opportunity had been given to the employees to represent against the recorded dates of birth till 31.7.1973 and it was directed that no opportunity shall be given after that date. They have further stated that the applicant did not produce the Matriculation Certificate at the time of his appointment or ^{at} any stage during the 36 years of tenure till 1985. They deny that there was any clerical error on their part as the applicant himself had entered the

date of birth as 21.5.1928. It is further stated that in the various seniority lists, the petitioner's date of birth had been indicated as 21.5.1928 which he did not dispute and therefore, he is estopped from challenging it now. They have further stated that the applicant cannot derive any benefit under sub-rule (3) of Rule 145 of the Indian Railway Establishment Code Volume-I.

3. We have heard the arguments of the learned counsel for both the parties at length and gone through the documents closely. Normally, requests for changing the date of birth once it is entered in the service records are discouraged and rejected in case the requests are made long after entering the service or if the applicant had derived some advantage in the matter of recruitment etc. at the time of initial appointment on the basis of the date of birth entered in the service records or if there is no satisfactory justification for changing the date of birth.

4. In the instant case, it is admitted that having entered service on 2.1.1950 as porter it was in 1985 that for the first time and only a year before the date of his superannuation on 31.5.1986, that the applicant moved the authorities for changing the date of birth. It is also true that the applicant did not avail of the general opportunity given in 1972 for the railway employees for rectification of the date of birth. However, there are a number of weighty reasons

which cannot be overlooked in favour of the applicant. The first and the foremost is that the applicant is seeking change of date of birth on the basis of Matriculation Certificate issued to him in February 1947 by the University of undivided Punjab. We have seen the original of Matriculation Certificate and we have no doubt at all that the original certificate bears the date of birth as 21st May 1930 without any element of forgery or manipulation. The Matriculation Certificate was issued during the pre-partition days and the question of manipulating the certification in 1985 does not arise. Matriculation Certificate is the ^{best} ~~most~~ officially recognised authority for fixing the date of birth. If we take the Matriculation Certificate of the applicant as genuine the date of birth of 21.5.30 as recorded therein cannot be over-looked. We have also seen the service record on which according to the respondents the applicant had himself in his own hand recorded the date of birth as 21.5.28. The date of birth indicated on the service record is in bolder type than the other entries made in the applicant's own hand-writing and we cannot easily dismiss the averment of the applicant that the date of birth had not been written by him.

5. The applicant rose from the lowliest position of a porter and retired as a Guard. His

struggle through the travails of partition of the country also deserves a sympathetic consideration and the claim if genuine, to our mind should not be denied to him on technical considerations.

Accordingly we need not give undue weightage to the disputed entry of date of birth figuring in his service records. Further, it is admitted that in accordance with the Railway Board's circular Letter No. E(G)69 LE 1/15 of 2nd January 1971

"a signature of railway servant should be obtained after every five years on the first page of service book against item 22. This provision in the Rule is in vogue to avoid difficulty at the time of payment of pension and to ensure periodically the bio-data of the employee is current and upto date". It is admitted by the respondents and clear from the service records that this important provision of the circular has not been followed in case of the applicant whose signature had not been obtained even once after his recruitment, in vindication of the date of birth recorded therein.

6. The respondents plea is that in the seniority list circulated from time to time the date of birth of the applicant had been indicated as 21st May 1928 and the applicant should have challenged the date long ago. However, no evidence was produced before us to deduce that the applicant had been informed of the seniority list in person. It is also admitted that the applicant has been working as a Guard since 23.4.1963 and has been always on the wheels and in this situation one can

reasonably presume that he could not be in constant touch with all the circulars, seniority lists which had been published by the Railway Headquarters from time to time.

6. From the records it is evident that as soon as the applicant came to know about the erroneous entry regarding his date of birth he represented to the Railway authorities and the Railway authorities vide their letter of 24.4.35 a photostat copy of which is annexed as Annexure B to the petition called upon the applicant to produce the Matriculation Certificate in original. This means that the Railway authorities themselves were prepared to consider changing the date of birth. Unfortunately his representation was rejected on the basis of the circular of 1972. However sub-rule 3 of Rule 145 of the Indian Railway Establishment Code Vol. I provides that -

"The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of gazetted railway servant and a General Manager in the case of non-gazetted railway servant to cause the date of birth to be altered."

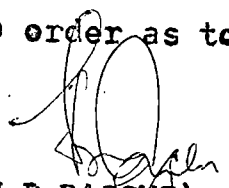
Thus the statutory rules provides for alteration of the date of birth in special circumstances and accordingly the administrative circular of 1972 cannot be taken as an insuperable barrier to giving justice to the applicant. We have also noted that the applicant had not derived any undue advantage by the date of 21.5.26 entered in the service records. He entered service on 2.1.1950 and even with the date

of birth as 21.5.30 as entered in the Matriculation Certificate he would be eligible for entering service as he was more than 18 years of age on that day.

8. A Government servant has a right to continue in service until he reaches the age of superannuation. This entitles the government servant to show that the entry made in service record does not represent his true date of birth and, therefore, it correspondingly places an obligation on the government to determine his true date of birth unless such an enquiry is barred by any procedure having the force of law. Thus where an authentic and unimpeachable evidence about the date of birth is furnished the same cannot be ignored or brushed aside impinging upon the fundamental right of a party to continue in service until he attains the age of superannuation.

9. Taking the entire conspectus of the facts and circumstances of the applicant, we feel that in the interest of justice and equity the date of birth of 21st May 1930 as entered in his Matriculation Certificate should be entered in his service record and his date of superannuation should be determined on the basis of this authoritative date. In effect, we allow the application and direct that the date of birth of 21.5.30 should be entered in his service record and the applicant's date of superannuation determined on that basis. The correction should be made within 15 days of the announcement of this judgment as the

applicant is facing superannuation on the basis
of the existing entry on 31.5.1986. There will be
no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER

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 9.5.86
(S.P. MUKERJI)
MEMBER