

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

78

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DATE OF DECISION 30.5.1986

Raj Kumar Malhotra Petitioner

Shri D.S. Chauhan, Advocate for the Petitioner(s)

Versus

Union of India & another Respondent

Shri K.N.R. Pillai, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? N

JUDGEMENT

The petitioner has moved the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying that his date of birth allegedly recorded in his service record as 1.2.30 should be recognised for the

purpose of reckoning the date of his superannuation and the impugned notice dated 31.1.1986 issued by the respondents retiring him from service with effect from 31.1.86 (afternoon) by taking his date of birth as 1.2.28 should be quashed with all consequential benefits.

2. The brief facts of the case which are not in dispute are as follows. The petitioner joined the Northern Railways as a clerk on 18.6.46 in Lahore now in Pakistan. The Matriculation Certificate indicates his date of birth as 1.2.30 which date according to the petitioner had been recorded in the service records. On 31.1.86 the impugned order was passed retiring him from the Railway service on superannuation with immediate effect which according to the petitioner is contrary to the date of birth figuring in the service records and the Matriculation Certificate. He has quoted some instances of seniority lists where his date of birth had been quoted as 1.2.30. According to the respondents, the petitioner was working from Feb. 1973 to the date of his retirement on 31.1.86 with short breaks, in Personnel-4 Section of the Divisional Railway Manager's Office and had access to all service records including his own. He was in that section between 1967 and 1969 also. During this period while working as Assistant Superintendent and Superintendent he had used his official position and tampered with his service record by changing the originally declared date of birth of 1.2.28 to 1.2.30. If the date of birth as claimed by him as 1.2.30 had been taken into account at the time of his entry in the Railway service on 15.6.46, he would have been ~~under~~ ^{age} for recruitment. In the seniority lists issued prior to 1973 the date of birth was correctly being shown as 1.2.28 and it was after he had been posted in P-4 Section that tampered dates of birth started figuring in seniority lists etc.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents very carefully. During the course of arguments, the learned counsel for the respondents showed us the following documents with the results of our examination indicated against each :-

<u>Document</u>	<u>Observation</u>
(i) A seniority list of June 1970 which had been kept in P4 Section in which against Item No. 10 the name of the petitioner namely, Raj Kumar S/O Beli Ram was typed and the date of birth was shown as 1.2.28.	The figure of 28 was scored and 30 had been shown above it.
(ii) Seniority list of 16.3.1960 in which against Item No. 128 the name of the petitioner S/O Shri Beli Ram, dated of birth was shown as 1.2.28 without any tampering.	This list was not in the custody of the petitioner as being of 1960 prior to his posting in P4 Section.
(iii) The original Card B had left hand upper corner torn out and joined with the main card with transparent tape.	The torn portion does not fit well with the card. The torn portion bore the words date of birth in print, and some date was shown in manuscript below. It was not legible. On close scrutiny the year of birth was found to be entered as 1930 and the date 1.2.30 was also shown at the top middle of the card. It could be reasonably presumed that the original left hand corner of the card had been replaced by a blank torn part and the changed date of birth was entered on that fragment and attached with the main card with adhesive transparent tape. To put the changed date of birth beyond it was indicated in hand at another place on the card where there was no column for entering date of birth.

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82

(iv) The first page of the Character Roll forms with the entry for date of birth This page of the form for the years ending 31.3.67, 31.12.65 & 31.12.64 bore the date of birth as 1.2.28. This page of CR forms seems to have been filled up in petitioner's own handwriting with tilt to the left and the date of birth entered was 1.2.30. The CR's of 1969-70 onwards bore the date of birth as 1.2.30 but in a different handwriting which was stated by the learned counsel for the respondents to be that of the petitioner's subordinate.

(v) The selection list signed by the Divisional Superintendent bore the date of birth as 1.2.28 against petitioner's name.

(vi) The original leaf of the service record was missing and the new leaf had been added of which on the first page only the name and the date of birth was recorded in petitioner's own handwriting without any signature of any officer or without any other column filled up. This shows tampering by the petitioner himself.

(vii) The leave account book of the petitioner in which the date of birth in red ink was scored off and the date 1.2.30 written immediately afterwards in petitioner's own handwriting. - Ditto -

4. From a close examination of the above documents, it is crystal clear that the consistent and determined efforts had been made by the Petitioner to tamper with the date of birth of the petitioner as recorded originally in the various service records of the petitioner kept in P4 Section of the Personnel Division. The petitioner had admitted and it was clear from the records placed before us that the petitioner was posted in that Section between 1967 and 1977.

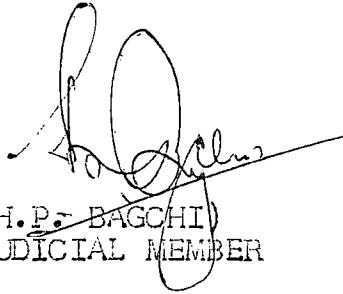
This is also the period during which the tampering had been done.

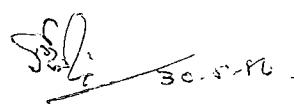
5. The learned counsel for the respondents argued that during 1972-73 the officials of the Railway Department were given one time opportunity of getting their dates of birth corrected but surprisingly the petitioner did not come up with any application for correction as he had by then satisfied himself that the date of birth in the service record had already been changed through scrupulous means and clandestine manner when he was incharge of the section where such records were in his custody. The learned counsel for the petitioner argued that if the respondents were so sure of the tampering of the documents they should have taken disciplinary action against him. On the other hand, the inquiry made by the Vigilance staff did not find him guilty. The learned counsel for the respondents indicated that the Inquiry was not conducted by the C.B.I. but by the Departmental Vigilance staff who did not probe deep enough into the matter and their preliminary superficial finding cannot be taken as conclusive.

6. We do not want to go into the depth of the matter but documents and the evidence produced before us cast grave doubts about the authenticity of the date of birth as 1.2.30 for being recognised as the original officially recorded date of birth. The conduct of the petitioner also in the whole matter leaves much to be desired. He has not been able to explain why and how the date of birth 1.2.28 was recorded in the old official documents and why he did not move the office to protest against that date and got it corrected. He admits that on the basis the date of birth being 1.2.30 he would be about 16 years old on 18.6.46 when he entered the Railway service. Though he has cited instances where persons were recruited at less than 18 years of age by the Railways, but most of them had been

recruited during the period of ~~hostilities~~ ^{hostilities} of the Second World War before 1946. The weight of evidence does not go in his favour and one cannot also brush aside the possibility of temptation to conceal the date of birth as recorded in his Matriculation Certificate from his employer at the time of his original appointment so that he may not be rejected as an underaged candidate.

7. It is true that the date of birth of 1.2.30 as claimed by him is borne ^{out} by the Matriculation Certificate but since the petitioner seems to have derived benefit of early appointment by concealing this age at the time of his original appointment and since he did not move well in time his employers to get the recorded date of birth changed and since there is undeniable evidence of tampering and deliberate efforts to manipulate and fabricate the date of birth in the old service records, we do not find it a fit case for our intervention on behalf of the petitioner. Accordingly we reject the petition. There will be no order as to costs.


(H.P. BAGCHI)
JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER