

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. O.A. 1892/ 1987
~~T.A. No.~~

DATE OF DECISION September 30, 1988.

Bodh Singh Dewan ~~Petitioner~~ Applicant.

Shri R.K. Kamal Advocate for the ~~Petitioner(s)~~
Applicant.

Versus

Union of India Respondent

Shri S.N. Sikka Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Kaushal Kumar, Member (A).

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

MGIPRRND-12 CAT/86-3-12-86-15,000

(KAUSHAL KUMAR)
MEMBER (A)
30.9.1988.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Bodh Singh Dewan Applicant.

V/s.

Union of India Respondents

CORAM: Hon'ble Mr. Kaushal Kumar, Member.

For the applicant Shri R.K. Kamal,
Counsel.

For the respondents Shri S.N. Sikka,
Counsel.

JUDGEMENT

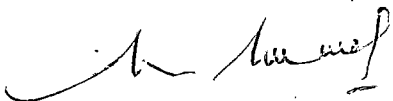
The applicant who was serving as Head Clerk in the Mechanical Branch, Office of the General Manager, Northern Railway, Baroda House, New Delhi, and who stands already retired from service with effect from 31.12.1987 on attaining the age of superannuation as per the date of birth recorded in his service records, has in this application filed under Section 19 of the Administrative Tribunals Act, 1985, challenged his date of birth viz., 30.12.1929 as entered in the service records. According to the applicant, his correct date of birth is 31st December, 1931 as per entry in his Matriculation Certificate.

2. The case of the applicant is that he joined the Railway service as a Lower Division Clerk on 24th December, 1949 and the minimum educational qualification required for recruitment to the said post was Matriculation. He did not make any declaration regarding his date of

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birth at the time of entry in service and no medical examination was carried out to determine his age at that time. He came to know that his date of birth had been wrongly entered in the service records only when his past service was being regularised in 1978. He made a representation for correction of his date of birth in April, 1978, but no inquiry was made, nor any action taken by the respondents on his representation and no final order was passed even after a copy of the Matriculation Certificate was furnished to the respondents in August, 1987.

3. The case of the respondents is that the applicant represented for alteration of his date of birth for the first time on 28.4.1978 i.e., after nearly 29 years of service. In response thereto, he was repeatedly asked to produce the original Matriculation Certificate, but he produced the same only on 20th August, 1987 when the case was thoroughly examined by the competent authority and it was observed that the applicant would have been under 18 years of age if the entry regarding date of birth as entered in the Matriculation Certificate were accepted and he would not have been eligible for appointment in the Railways; therefore, the request for change of date of birth as per entry in the Matriculation Certificate had not been accepted by the competent authority.



4. This case presents certain peculiar features inasmuch as the Matriculation Certificate on which the applicant rests his claim for correction of his date of birth was also the eligibility requirement for entry into service since the applicant would have been qualified for appointment as L.D.C. only if he were a Matriculate. The respondents have not explained as to how the applicant was appointed in service without verifying his educational qualification viz., that he was a Matriculate or had passed an equivalent examination. As per the Matriculation Certificate, his date of birth is 31.12.1931 and the applicant having joined service on 24.12.1949, he would have been short of 18 years only by seven days if the date of birth as entered in the Matriculation Certificate were furnished by the applicant at the time of joining service. It is contended by the learned counsel for the applicant that he could very well have joined service a week later to overcome the shortfall of a few days so as to complete 18 years of age. In the circumstances of the case, the contention of the learned counsel for the respondents that the applicant had deliberately concealed his date of birth as entered in the Matriculation Certificate to avoid disciplinary action for having furnished a wrong date of birth earlier cannot be sustained. It is the normal practice that a declaration is taken from the person who joins service regarding his date of birth where no Matriculation

L. Kumar

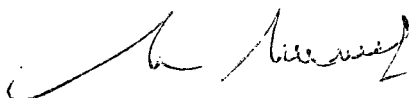
Certificate or any other collateral evidence is produced. In such circumstances, the person is also sent for medical examination to ascertain his approximate age so that necessary entry can be made in the service records. It is also a practice and there is a rule which enjoins the Department to take signatures of the concerned official periodically in the service book in token of his having verified the entries particularly the entry regarding date of birth as entered in the service records. None of these formalities had been observed or complied with by the Department. There is no declaration of age from the applicant at the time of entry in service as per the record which has been produced, nor is there any document to show that he was sent for medical examination to ascertain his approximate age. The original service record that has been produced does not bear the signatures of the applicant at any stage whatsoever to show that the applicant was either aware of or had testified to the authenticity of the entry regarding his date of birth as entered in the service records.

4. The contention of the learned counsel for the respondents that seniority lists of LDCs were being issued from time to time in which the name of the applicant figured and which also indicated his date of birth and, therefore, he should have been aware of the entry regarding his date of birth as per service records, if accepted, would only show that the applicant had failed to

be shown

represent against the wrong entry till 1978. But this is not a case where the applicant had chosen to make a representation at the fag end of his service just on the eve of retirement. The representation was made nearly nine years before the date of superannuation as per entry in the service records and the respondents did not choose to make any final order on the same or require the applicant to produce his original Matriculation Certificate before 1987. Even after the applicant had produced a copy of the Matriculation Certificate in August, 1987, no final order was passed. Even if such an order was passed by the competent authority and not communicated to the applicant, the respondents have failed to adduce any cogent reasons for having rejected the representation. The only reason which they have stated in the counter-affidavit is as follows: -

"The applicant represented for change of his date of birth for first time on 28.4.1978 i.e. after 29 years of service as he was appointed on 24/12/1949 in response to which he was repeatedly asked to produce the original matriculation certificate but he has produced the same only now i.e. 20.8.1987 R-I when the case was thoroughly examined by the competent authority and it was observed that applicant was under 18 years of age when he was appointed in Railway Service and had he shown his original matriculation certificate he would not have



been appointed in Railway. Keeping in view the above position, his request for change in date of birth according to matriculation certificate has not been agreed to by the competent authority."

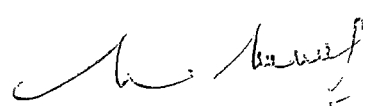
However, it has not been explained as to how the applicant was at all taken into service and appointed as L.D.C. in the absence of evidence that he was a Matriculate.

5. The learned counsel for the respondents relied on certain rulings in support of his contention.

6. In *Baba Kala v. Union of India and Others* (II ATLT (SN) 14), the Ahmedabad Bench of this Tribunal held that a birth date recorded on the service sheet is not conclusive but it can be changed only on sufficient evidence which can lead to the conclusion that change of the birth date is warranted.

7. In *Sant Singh v. Union of India* (II 1987 ATLT (SN) 20), the Chandigarh Bench of this Tribunal to which I was a party, held that an employee cannot be allowed to take benefit of an omission on his part as to date of birth just at the fag end of his service.

8. In *Amal Krishan Mitra v. U.O.I. & Others* (I (1988) ATLT (CAT) 647), the decision of the General Manager refusing to correct the date of birth of the applicant was held to be justified on the ground that he had all along been aware of the date of birth recorded in the service book and never made a representation for correction thereof. He had made a representation only after he received the notice of retirement.



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9. The facts of the cases relied upon by the learned counsel for the respondents were different and are clearly distinguishable from the facts of the present case. In this case, the applicant had made representation not on the eve of his retirement after receiving notice, but nearly nine years before his due date of retirement as per entry in the service records.

10. In *Pramatha Nath Chaudhary v. State of West Bengal and others* (1981 (1) SLJ p. 415), the Calcutta High Court on almost similar facts allowed the appeal for correction in the date of birth. In the said case, the appellant passed the Matriculation Examination before joining the service in March, 1938 from the University of Calcutta. He was 16 years and 2 months old at that time as per his claim that his date of birth was 1.1.1922. The appellant's date of birth as recorded in the Government record was 1-1-1917. He made representation for correction of his date of birth and also produced original Matriculation Certificate, but his prayer was rejected. Allowing the appeal, the Calcutta High Court observed as follows: -

"In our view, when the original certificate is produced before us and no reply is possible in the facts of this case, we have no hesitation to accept the case of the petitioner-appellant that his date of birth as stated in the Matriculation Certificate must be accepted to be correct."

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11. In Paresh Chandra Bhowmick v. Union of India and Others (1987) 2 Administrative Tribunals Cases 473), the Calcutta Bench of this Tribunal allowed the petition for correction of the date of birth on the ground that the applicant "had produced the Matriculation Certificate which showed his age according to that certificate before the Railway Authorities years ahead of his retirement, but nobody took any notice of the age recorded in the Matriculation Certificate."

12. In Udai Ram v. Northern Railway (A.T.R. 1986 C.A.T. 435), the Principal Bench of this Tribunal had occasion to examine and decide an application based more or less on similar facts. The Bench observed as follows: -

".....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 correct 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."

M. Kumar

The Bench also referred to sub-rule 3 of Rule 145 of the Indian Railway Establishment Code Vol. 1 which 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."


The Bench observed that the statutory rules provide 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.

13. In the absence of any declaration to the contrary or other collateral evidence, the Matriculation Certificate has to be accepted as conclusive evidence regarding date of birth. The original Matriculation Certificate has been produced by the applicant at the time of hearing and its authenticity or genuineness is not challenged by the respondents. The only point urged by the learned counsel for the respondents is that according to the said Certificate, the applicant had appeared for the Matriculation Examination in March 1945 and as per entry regarding date of birth, he would have been only 13 years and a few months old at the time when he appeared for the Matriculation Examination. However, there is nothing to show

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that at the time when the applicant appeared for the Matriculation Examination held by the University of Panjab, there was any bar that a person could not appear in the said Examination unless he had attained a particular age. The authenticity of the Matriculation Certificate having not been challenged, it has to be accepted as conclusive evidence regarding date of birth.

14. In the circumstances of the case, the application is allowed with the direction that the applicant shall be deemed to have continued in service from the date he was retired on 31.12.1987. He shall be taken back on duty forthwith and shall be allowed to continue in service till he attains the age of superannuation as per the date of birth shown in the Matriculation Certificate. He shall also be paid his salary from 1.1.1988 onwards as if he had been in service all along and had not been retired from service. This order shall be complied with within a period of two months from the date of its receipt by the respondents. There shall be no order as to costs.


(KAUSHAL KUMAR)
MEMBER (A)
30.9.1988.