

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 607 of 87

198

4.7.89

T.A. No.

DATE OF DECISION 4.7.89

Shri Buta Singh

Petitioner

Shri R.L. Sethi

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri O.N. Moolri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.

B.C. MATHUR , VICE- CHAIRMAN.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ND
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? W

Central Administrative Tribunal
Principal Bench, New Delhi

12

Regn. No. OA-607/87

Date of Decision: 4.7.89

Shri Buta Singh

.... Applicant

Versus

Union of India & Ors.

.... Respondents

For the Applicant

.... Shri R.L. Sethi, Advocate

For the Respondents

.... Shri D.N. Moolri, Advocate

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 Buta Singh, former Foreman, Tie-Temping, in the Northern Railway Headquarters, against the impugned order No.F-219-E/1(TT)/Pt.VI dated 27th April, 1987 (Annexure A-1 to the application) retiring him from service.

2. The brief facts of the case as stated in the application are that the applicant was recruited as a Khalasi in the Northern Railways on 14.2.1949 and rose to the post of Foreman, Tie Temping. The applicant had read upto class Vth and was declared illiterate as Middle standard did not fall within the definition of requisite standard of literacy for purposes of entering the date of birth in the hand-writing of the applicant. His date of birth in the service record was recorded by a senior railway clerk and witnessed by another Railway servant. In 1983, it was brought to the notice of the applicant that the declared date of birth as recorded in the service-book was 14.2.1928, whereas the applicant's actual date of birth as recorded in the school certificate was 1.1.1930. The applicant approached the respondents to correct his date of birth in 1983 ~~itself~~ ^{he} and

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13

the same was corrected by the respondents in 1983 itself on the basis of the school certificate (Annexure A-2). According to the corrected date of birth, he was due to retire on 1.1.1988 but without any reason or without any notice to the applicant, he was abruptly superannuated from service on 28.4.1987 by the impugned order. The ease of the applicant is that he has not been afforded reasonable opportunity under Article 311 of the Constitution and the impugned order was passed without hearing him. The applicant cannot be made to retire on some assumed date of birth. Even if 14.2.1928 was the declared date of birth, he should have been superannuated on 28.2.1986, but he was allowed to continue in service beyond that date. It shows that his date of birth 1.1.1930 based on the school certificate, was duly accepted by the respondents.

3. The respondents, in their reply, have stated that the applicant is a literate person and knows Hindi, English, Urdu and Punjabi very well and signs in good English. The service-book of the applicant was witnessed by the Assistant Engineer and his date of birth at the time of entry in the service was recorded as 14.2.1928. His seniority list has been circulated during the course of the employment of the applicant with his date of birth and it is only after he had completed his service life with the respondents, at the ^{service near} end of his retirement the applicant raked up the matter of his date of birth on the basis of school certificate which is not an original school certificate, but one made out on 10.3.1987. The applicant was due to retire on 13.2.1986 but due to some manipulations in the service records, he continued to serve the respondents beyond his correct superannuation date. The service records were not corrected

14

under the ^{orders} ~~authority~~ of the competent authority but the records were ^{not} fabricated and altered with the connivance of staff members and the matter has been under investigation of the C.B.I. for unauthorised interpolations in the service record for which there is no authority on the record. The change is illegal and cannot be ^{re}lied upon. The clerk who interpolated the service record, is facing investigations and enquiry of the C.B.I. and action has been taken against the Clerk concerned, Shri Narain Dutt, for this interpolation. It was only on 24.3.1987 that the applicant submitted his school certificate dated 10.3.1987 after his date of retirement had passed on 13.2.1986. The applicant continued in service due to interpolation in the service record with the connivance of the staff. The matter was taken up on detection vide Annexure R-7 and consequently, the applicant was retired on 28.4.1987. The case is presently pending with the C.B.I. for investigation into the illegal and unauthorised change in the date of birth. Had there been any mistake, the applicant could have moved the respondents with genuine/original records concerning his date of birth but the school certificate which was issued in 1987, could not be relied upon. The case of the respondents is that the date of birth in the service record of the applicant was recorded correctly as 14.2.1928 but the service record was manipulated by the applicant through the connivance of the staff in the office. When the manipulation came to the notice of the authorities, they took immediate action and retired the applicant and a C.B.I. enquiry was initiated. The applicant was also directed to produce a copy of the order of the authority under which the date of birth has been changed.

4. It was considered necessary to see the original service record as well as the original file in which G.M.P. letter No.3-E/162 dated April, 1985 appears to have been issued to ascertain whether the letter was issued by the G.M.'s Office, or whether some one has given a fictitious number. The original records have not been produced by the learned counsel for the respondents on the ground that all the records have been taken ^{away} by the Vigilance Department and it has not been possible to get back the same. In the absence of the original records, it is not possible to see the correspondence and noting in the file. It is, however, very clear that the original noting in the service record mentions the date of birth of the applicant as 14.2.1928. It has been later changed to 1.1.1930, but there are no initials or signatures and seal of the officer making these changes. Similar change in the date of birth is shown in the employee's record of service prepared at a later date. It appears ^{that the} ~~as if~~ correction in the date of birth has been made in not a very proper way. The date on which changes were made, is also not clear but it appears that it was done in the month of April, ¹⁹⁸³ 1983. The applicant has not been able to produce a copy of his application asking for the change in the date of birth. It has been indicated by the learned counsel for the respondents that Shri Narain Dutt, Head Clerk, has made the changes in his own hand-writing and based on that, he did not put the papers of the applicant for superannuation in time. The respondents took action only when the interpolation came to their notice. The applicant was asked on 4.3.1987 to furnish the authority under which the change of date of birth was made in the service record. The letter, asking for his explanation, was delivered to him on 7.3.1987 and he was asked to reply

116

within a week. The applicant did not produce any documentary proof except giving a photo-stat copy of his school certificate which was not accepted by the respondents.

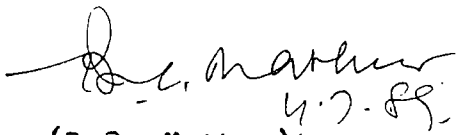
5. The point to consider is whether the services of the applicant were terminated arbitrarily w.e.f. a date which was neither his date of birth according to the school certificate, namely, 1.1.1930, nor the date which was originally recorded, i.e., 14.2.1928. It has to be examined whether the orders of the respondents should be quashed on the ground that the applicant was not given a proper show-cause notice and action to retire him was taken without hearing him. In the case of Shri Hira Lal, this Tribunal has held that a person should be given a reasonable opportunity and a proper enquiry should be held before passing any orders. On the other hand, there is no authentic record to suggest that any change in the date of birth was actually ordered by the competent authority at any time. It is quite possible that there has been some manipulation in the service record with the connivance of staff. The record of representation for changing the date of birth is only in 1987 which the respondents did not accept as it is after the date of superannuation. It is, of course, possible to consider representations even after retirement but the Supreme Court in the case of State of Assam Vs. Deka (SLR - 1971 (2)-14) and in the case of Bhupinder Nath Chatterjee Vs. State of Bihar (SLR - 1977(1),590) have held that dates entered in the service record and acknowledged by the employee cannot be disputed by an employee at a ^{very} late ~~late~~ ^{an} date. It is ^{the} _n case of the applicant that he knew about his correct date of birth in 1983 when he applied for change. This means that he waited for nearly 34 years before applying for the change.

17

6. The respondents should have held an immediate inquiry about the circumstances in which the date of birth has been altered in the service record giving a reasonable opportunity to the applicant to state his case. In this case, when the alleged interpolation was detected by the respondents, the applicant had already passed the age of superannuation and they, therefore, gave him a short notice to state his case and it can be said that in the circumstances, they did make an inquiry. In the meantime, the case against the Head Clerk, Shri Narain Dutt, who is reported to be the person responsible for making the interpolation, has been handed over to the C.B.I. The learned counsel for the applicant has laid great emphasis on the fact that the applicant was not a literate person and as he had read only upto class V, but it has been brought out that he knows Hindi, Urdu, English and Punjabi quite well and signs in good English. The signatures of the applicant in English on the particulars of service (Annexure R-1 to the counter-affidavit) and employee's record of service (Annexure R-2 to the counter-affidavit) indicate that the applicant had signed these papers with the full knowledge of what was written there. The fact that an Assistant Engineer has countersigned these papers, shows that these records are authentic. Keeping in view the fact that the school certificate, which is not in original, was produced only in 1987 and the fact that the service records showed the date of birth as 14.2.1928 at least for 34 years, I am not inclined to pass any orders for ~~the change~~ ^{changing it} in the date of birth. ^{as prayed for in the Application} Perhaps, the respondents were also justified in taking a quick decision after noticing that the date of superannuation had already been passed when they detected the change in the date of

18

birth in the service record. However, the respondents are directed to make a thorough inquiry into the circumstances leading to the change in the service record regarding the date of birth and in case they find that there was some order from the Northern Railways Headquarters permitting the change in the date of birth by a competent authority, the applicant should get full benefit of the same but this is left to the respondents to take a decision after completing the inquiry within a period of six months from the date of the receipt of this order. The application is disposed of accordingly. There will be no order as to costs.


(B.C. Mathur)
Vice-Chairman (Admn.)
4.7.88