

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. DA/1005/87. DATE OF DECISION: 01.11.1990.

Shri S.D. Sharma Applicant.

Versus

Union of India & Ors. Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

For the Applicant. Shri R.L. Sethi,
Counsel.

For the Respondents. Smt. Shashi Kiran,
Counsel.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav
Banerji, Chairman)

The question raised in this Application pertains to the date of birth of the applicant. The date of birth recorded in his service record is 5.7.1928. The applicant's plea is that this has been wrongly recorded as the age recorded in the High School Examination Certificate (Annexure A-2) as well as in the Transfer Certificate (Annexure A-4) from Muslim High School, Bijnore, is 5.7.1929. On its basis it is claimed that the date of birth in his service record is wrong and needs to be corrected.

We have heard learned counsel for the applicant Shri R.L. Sethi and learned counsel for the Respondents Smt. Shashi Kiran.

The applicant was appointed as a Clerk in the Northern Railway on 27.9.1949. He was retired from Railway

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service on 31.7.1986, on the basis that he was born in July, 1928. The applicant states that he became aware of the mistake or the omission on 22.7.1986 and he made a representation to the General Manager, Northern Railways. The representation was rejected by an order dated 31.7.1986. The stand taken was that the date of birth recorded in the service book is 5.7.1928 and the applicant had signed the first page of the service book where the date of birth is recorded. This was also notified in the seniority list circulated from time to time and no objection had been taken by the applicant nor was any representation made by him. Reference was made to the instructions of the Railway Board circulated under P.S. 5511 and 5719 which precluded any alteration of the date of birth at a later stage.

In paragraph 6.3 of the O.A. the applicant has stated that at the time of his entry into Railway service on 27.9.1949 the applicant had not been issued High School Examination Certificate or the extract of Gazette dated October 8, 1949 and the only evidence of age was the Transfer Certificate (Annexure A-4) which indicated the date of birth as 5.7.1929. The High School Examination Certificate of 1949 which was filed later clearly records that the date of birth was 5.7.1929. It is evident from the above that both in the High School Examination Certificate and the Transfer Certificate, the date of birth recorded is 5.7.1929. There is a presumption that the date recorded in the High School Examination Certificate is the genuine date of birth.

In paragraph 6.3 of the counter reply of the respondents, it is admitted by the respondents that an attested true copy of Transfer Certificate was filed by the applicant along with his application for appointment dated 1.8.1949, in which his date of birth was mentioned as 5.7.1929. This supports the view that there was a mistake in transcribing the year of birth as 1928 instead of 1929.

Learned counsel for the respondents contended that it was not open to the applicant to come at a very belated stage, i.e. just 9 days before the retirement to make an application to correct his date of birth. Such belated applications can neither be entertained nor allowed even by the Tribunal. In support of the above contention, she cited a decision of the Bangalore Bench of the Tribunal in the case of A.M. RACHAIYA VS. SOUTHERN RAILWAY (1986(4)SLR 237). The Division Bench took a view that an application for change of date of birth, after 24 years from the date of entry into service cannot be entertained nor our interference was called for. In the above case when the petitioner Shri A.M. Rachaiya entered service, gave his date of birth as 20.6.1928 on the basis of School Leaving Certificate issued by some educational authority which was attested and was also accepted and entered in the service register. The Division Bench took the view that it was not open to challenge subsequently. In the present case the School Leaving Certificate which was given to the Railways mentioned the date as 5.7.1929 but the entry in the service book made was 5.7.1928. The facts of the present case are different from the case, decided by the

Bangalore Bench.

Another case referred to by the learned counsel for the Respondents was SAMI AHMED VS. U.O.I. (1987(2)SLR 160). This was a case where the matriculation certificate was relied upon as proof of date of birth by the employee. The Patna Bench of the Tribunal held that there was a difference between the date declared and the date given in the matriculation certificate and they declined to rely on the matriculation certificate on the ground that the omission could not be termed as a bonafide mistake.

In the Patna case, the applicant had not produced the matriculation certificate presumably because that would have revealed that Sami Ahmed was under age and he had given another date of birth. A person who has taken advantage of a wrong date cannot be permitted to resile from it on the basis of matriculation certificate filed subsequently. The facts are entirely different from the case before us and this case is also distinguishable.

The learned counsel for the applicant referred to the case of HIRA LAL VS. UNION OF INDIA (1987(1)ATR.414), decided by the Principal Bench. This decision supports the proposition that an employee is entitled to get the date of birth corrected in his service record if it is patently erroneous.

It is, however, true that belated application for correction of the entry of the date of birth is not normally allowed. There are instructions also to that effect issued by the Railways. However, where there is a patent

error in the service record and the date of birth, which has been recorded, had not been given by the applicant, or is contrary to the one given by the applicant, it would be a matter for consideration for the correction of the record. If the facts are such which lead to no other conclusion, then it being a clerical error, is always open to the Tribunal to look into the matter and correct the patent error.

Learned counsel for the Respondents then argued that the Railway Authorities had given an opportunity for the correction of date of birth upto 31.7.1973 (vide Railway Board's letter No. E(NG)II-70ER/1 dated 4.8.72 circulated by the respondents letter No. PS 5719 dated 5.1.1972). The above instructions also indicated that no second opportunity would be given after the above date. The argument was that the applicant had not applied for correction of the date of birth by 31.7.1973 and hence he was precluded from making any further application subsequently.

It has already been noticed that the applicant when he applied for service in the Railway had filed a Transfer Certificate (Annexure A-4) which showed his date of birth as 5.7.1929. This was admitted by the respondents in paragraph 6.3 of the reply. Paragraph 6.3 of the reply reads as under:-

"That para 6.3 is admitted to the extent that an attested true copy of the transfer certificate was filed by the applicant along with his application for appointment dated 1.8.49, in which his date of birth was mentioned as 5.7.1929. Later on the service record of the applicant was prepared on 24.12.1949 i.e. 3 months after the date

of appointment. On the first page of his service record, the date of birth has been recorded in figures as well as in words as 5th July, 1928. This page has been signed by the applicant on 24.12.1949, and his thumb impression also affixed on 24.12.1949 in token of the correctness of the entries made on the first page of S.R. A true photo-copy of the same is annexed herewith and marked as Annexure R-1. This date of birth might have been entered on the basis of some documents produced by the applicant on 24.12.1949, may be his original High School Certificate."

The above paragraph shows that the applicant himself had furnished his date of birth vide Transfer Certificate as 5.7.1929. There is no reference to any other paper on the record which forms the basis of the date of birth as 5.7.1928. As a matter of fact in paragraph 6.3 it is stated that "This date of birth might have been entered on the basis of some documents produced by the applicant on 24.12.1949, may be his original High School Certificate". This sentence clearly shows that there is no material on the record on the basis of which the entry 5.7.1928 was made. A conjectural plea has been raised in this paragraph that there could be some other document produced by the applicant on 24.12.1949 and it is further stated that it could be on the basis of High School Examination Certificate. The High School Certificate filed by the applicant soon after his appointment in the Railway shows the date of birth as 5.7.1929. Consequently it is apparent that the date of birth as 5.7.1928 was wrongly recorded while being transcribed in the service record. In the absence of a specific document or statement by the applicant saying that his date of birth was 5.7.1928, it could not be

recorded as such in view of the fact that the transfer certificate filed by the applicant showed his date of birth as 5.7.1929. The High School Certificate also pointed out to the same fact. It is, therefore, evident that there was a mistake which is apparent on the face of the record. It is no doubt true that the applicant's signature was taken on the service book, but the applicant's signature exists at the top of the page (in annexure R-1) and not after the statements made above the signature, as is normal. It appears to us that there is a clerical mistake in recording the date of birth in the service book. We are of the view that there is a patent error and it has to be corrected.

We are conscious of the fact that it is not open to any employee to make an application to get his date of birth corrected at any time but the facts of this case make out a case for interference. This decision will not act as a precedent for all cases for amendment or correction of the date of birth. We, therefore, allow the O.A. and direct the respondents to correct the date of birth as 5.7.1929 instead of 5.7.1928. The applicant who has retired will also be entitled to consequential monetary benefits.

There will be no order as to costs.

S. K. Rasgotra
(I.K.RASGOTRA)
MEMBER (A)
1.11.1990.

A. B.
(AMITAV BANERJI)
CHAIRMAN
1.11.1990.