

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. C.A. 1611/90.      DATE OF DECISION: 22-3-1991.

Shri Pritam Singh      ....      Applicant.

V/s.

Union of India      ....      Respondents.

CCRAM:      Hon'ble Mr. T.S. Oberoi, Member (J).  
                 Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, counsel for the applicant.  
Shri P.S. Mahendru, counsel for the respondents.

(Judgment of the Bench delivered by  
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Ticket Collector, Northern Railway, Delhi at the time of filing this application and has since retired with effect from 30.9.1990, has prayed for a direction to the respondents to alter his date of birth from 11.9.1932 to 5.7.1935 and permit him to serve the Government till he attains the age of 58 years as per his correct date of birth i.e., 5.7.1935.

2.      The facts of the case, in brief, are as under: -

The applicant joined service as a Pointsman on 3.1.1953. In the service record of the applicant, his date of birth is recorded as 11.9.1932 and his service card bears his signatures as well as thumb impression. However, according to the applicant, he did not know English and did not know what date of birth had been recorded in his service record, although he admits having signed the service record in Urdu. At the time of filling up his nomination form on 27.12.1952, he claims to have shown his age as 20 years. On 25.7.1981, he was asked to produce certificate in support of his date of birth, vide Annexure A-1, after he was promoted as Ticket Collector in Class III in the year 1980. The applicant produced a certificate from the office of Principal, Government

(C)

Higher Secondary School, Jagraon, District Ludhiana which showed his date of birth as 5.7.1935. (Annexure A-2). This certificate is dated 16.1.82. A Welfare Inspector was deputed to verify the genuineness of the aforesaid certificate, who after visiting the school, gave his report along with the certificate signed by the Principal of the School confirming the date of birth of the applicant as 5.7.1935 as per school record, vide Annexure A-3. The applicant represented to the General Manager, Northern Railway, New Delhi, vide his representation dated 7.6.85 (Annexure A-4) for altering his date of birth to read as 5.7.1935 on the basis of the certificate produced by him. He has placed on record copies of the reminders dated 10.10.85 (Annexure A-5), <sup>and</sup> dated 9.11.87 (Annexure A-6), but no reply is stated to have been received by him. He has, however, produced copies of departmental correspondence (Annexures A-7, A-8, A-9 and A-10) on the subject of alteration in the date of birth of the applicant.

3. The case of the applicant is that he is entitled to a change in the date of birth on the basis of his School Leaving Certificate, which shows his date of birth as 5.7.1935, and that the date of birth as recorded in his service record is absolutely incorrect and not based on any document.

4. The case of the respondents, in brief, is that at the time of his entry in the Railway service as a Pointsman, he had shown his date of birth as 11.9.1932, which was entered in his service record and that the service card bears his signatures as well as thumb impression. They have also taken a plea that the application is hopelessly barred by limitation. Although the applicant was appointed as a Pointsman on 3.1.1953, he gave his first representation for change in the date of birth only on 7.6.85.

5. We have gone through the record of the case and have also heard the learned counsel for the parties.

Ces

6. The only piece of evidence available in this case is the School Leaving Certificate. Though such a certificate is not a conclusive piece of evidence in regard to the date of birth, yet in the absence of any other cogent or reliable evidence, it cannot be ignored, particularly when the same has been verified on the spot by a representative of the respondents. The mere fact that the service sheet where the date of birth of the applicant is recorded as 11.9.1932 had been signed by the applicant is no bar to his claiming a change in the recorded date of birth if such a change in the erroneous entry is otherwise justified on the facts and circumstances of each case. It was held in the case of SHRI HIRA LAL Vs. UNION OF INDIA (A.T.R. 1987(1) C.A.T. 414) that mere signing of service record on a number of occasions does not operate as an estoppel to get an erroneous entry as to the date of birth corrected. Moreover, in this case, the applicant had produced the School Leaving Certificate as evidence of his date of birth, on being asked to produce the same by the respondents, on 25.7.1981. He also represented in the matter and reminders were also sent, but no order had been passed either accepting his claim or rejecting the same.

7. The respondents have taken the plea of limitation and the learned counsel for the respondents vehemently urged on this point at the time of oral hearing. It was argued that if the applicant had represented in 1985 and if no order had been passed thereon, he should have approached the Tribunal after waiting for six months. The learned counsel for the applicant, on the other hand, contended that no limitation applies to a request for change in the recorded date of birth. In a Full Bench judgment of

Ca

the Himachal Pradesh High Court in Manak Chand Vs. State of Himachal Pradesh (1976 (1) SLR 402), it was held as below: -

"A Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of Superannuation. He is entitled to show that the recorded entry, which determines the date on which he attains the age of Superannuation does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of Superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service, therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If on application made by the Government servant, the Govt. finds that there is substance in the claim it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law. If it does not have the force of law and is merely an executive direction without sanction of law, it cannot affect the exercise of the Government servant's right to show that the recorded entry is erroneous. Now, the Government of India decision on which the respondents rely, does not have the status of a statutory rule, and, therefore, cannot defeat the legal right of the Government servant mentioned above. So far as it affects the determination of the true date of birth it must be considered ultra vires for the reasons set out above."

Cl.

A Division Bench of the CAT in the case of Shri Hira Lal Vs. Union of India (supra) found itself "in entire agreement with the view taken by the Himachal Pradesh High Court in the above case."

8. The learned counsel for the applicant also cited the case of RAJINDER KUMAR GAUR Vs. UNION OF INDIA (ATJ 1989 (2) p. 41), in which the respondents were directed to make a thorough enquiry into the claims and counter-claims even after the applicant had been retired from service.

9. Similarly, in the case of GIAN CHAND SHARMA Vs. UNION OF INDIA & ANR. (A.T.R. 1988 (2) C.A.T. 332), it was held that the change in the date of birth can be sought and it cannot be estopped merely on the ground of delay. Again, in the case of UDAI RAM Vs. NORTHERN RAILWAY (A.T.R. 1986 C.A.T. 435), it was held that 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. A perusal of sub-rule (3) of Rule 145 of the Indian Railway Establishment Code Volume I also shows that the rule does not put an absolute bar on considering the request for alteration of the recorded date of birth. A similar view was taken in this regard by a Division Bench of the Jodhpur Bench of the CAT in O.A. 502/1987 decided on 22.2.1988. We, therefore, do not find any substance in the contention of the respondents with regard to the bar of limitation.

10. In view of the foregoing discussion, we are of the view that there is a reasonable basis for accepting the contention of the applicant that his date of birth as entered

Ce.

in the service record of the applicant, e.g., 11.9.1932 should be changed to 5.7.1935 on the basis of the School Leaving Certificate, which has been verified by a departmental representative of the respondents. It may, however, be observed that the applicant is partly responsible for the delay in judicial adjudication of his claim inasmuch as he filed this O.A. only on 26.7.90, i.e., only about two months before the date on which he was to superannuate as per the records of the respondents. The evidence had been furnished by him as early as in 1981 and he had represented in 1985. There was not enough justification for him to wait for so long. The fact that he has not actually worked from 1.10.1990 is also being kept in mind. His application is not barred by limitation, but certainly the delay on his part cannot be ignored for purposes of grant of reliefs. In the circumstances, the <sup>ap</sup>pplication is allowed in terms of the following directions: -

- (1) As the applicant has already retired on the basis of recorded date of birth, the respondents are directed to take him back into service and allow him to continue in service till he reaches the age of superannuation on the basis of his date of birth being 5.7.1935 and this date shall be recorded as the date of birth of the applicant in his service record. His continuation in service till the date of superannuation as above, shall, of course, be subject to the fact that his services are not otherwise dispensed with in accordance with the provisions of rules/law, prior to the date of superannuation.
- (2) For the period the applicant has remained out of service, i.e., 1.10.1990 till his reinstatement as above, he will not be allowed the pay and allowances admissible thereon. The period from 1.10.1990 till

13

- 7 -

his reinstatement shall, however, count as duty  
for all other purposes.

We leave the parties to bear their own costs.

*Ce*  
(P.C. JAIN) 22/3/1991  
Member (A)

*Sen* 22.3.91  
(T.S. OBEROI)  
Member (J)