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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA.No.2174/90

Dated this the 27th of January, 1995.

Shri P. T. Thiruvengadam, Hon. Member(A)
Dr. A. Vedavalli, Hon. Member(J)

Mohd. Salim Beg,
S/o Shri Abdul Karim Beg,
R/o 99, Bisat Khana,
Jhansi.
Working as Chief Train Clerk,
Jhansi Railway Station,
Central Railway, Jhansi (U.P.) ...Applicant

By Advocate, Shri H.P. Chakravorty.

versus

1. The Union of India through the
Secretary, Ministry of Railways,
Railway Bhawan, New Delhi.
2. The General Manager,
Central Railway, Bombay V.I.
3. The Division Railway Manager,
Central Railway, Jhansi ...Respondents

By Advocate: Shri D.S. Mahendru proxy counsel for
Shri P.S. Mahendru

O R D E R (Oral)
(By Shri P. T. Thiruvengadam)

The applicant joined service on 24.10.50 in Group 'D'. At the time of his joining, he did not give any document in support of his age and based on the provisions in Establishment Code, his date of birth was recorded as 18.10.1921. The applicant had been promoted to the post of Chief Trains Clerk and in the year 1978, when a list was circulated with regard to pending retirements, the applicant filed his school leaving certificate. In this certificate, the date of birth is shown as 30.7.1933. The applicant prayed that his date of birth should be changed accordingly.

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2. On receipt of the school certificate on 15.6.1970, the respondents examined the issue. It was noticed that there was a clerical error since even as per the medical certificate issued on 18.10.1950 wherein the applicant was shown as 19 years, the date of birth could not have been 18.10.1921, as recorded. The respondents obtained permission of the competent authority and altered the date of birth of the applicant from 18.10.1921 to 18.10.1931. As per the revised date of birth, the applicant was to be kept in service till 31.10.1989. On 24.6.1989, a letter was issued stating that the applicant was due to retire on 31.10.1989 on the basis of his date of birth of 18.10.1931. Immediately, the applicant gave representation dated 21.8.1989. His representation was rejected by the respondents in their letter dated 26.10.1989. Respondents retired the applicant on 31.10.1989. This OA has been filed on 4.10.1990, challenging the rejection letter dated 26.10.1989 and for consequential benefits.

3. The learned counsel for the applicant relies on the school leaving certificate, a copy of which has been attached as Annexure A-5 to the OA. In the certificate issued by the school, the date of birth of the applicant is shown as 30.7.1933 and it is indicated that the applicant studied in the school during August 1940 to June 1947 in IIIrd to VIIIth Classes. The applicant states on his submission of the school certificate in the year 1970, he had presumed that the date of birth would have been corrected to 30.7.1933. He was suddenly taken unaware by the letter dated 24.6.1989 by which, he was advised

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that he was to retire on 31.10.1939. It is contended that the school certificate is a record which cannot be unilaterally brushed aside by the respondents.

4. The respondents had admitted the error in originally recording the date of birth as 18.10.1921. On their own, they had corrected it to 18.10.1931, for which, there is no basis, as per the applicant. No advice was given to the applicant though the change had been made to 1931 only and not to the year 1933. The applicant had no inkling that the correction was not done properly.

5. The learned counsel for the respondents argued that the correction was made since it was realised that a clerical error in compilation had occurred. The respondents did not accept the school certificate, wherein, the date of birth had been shown as 13.7.1933. This would have meant that the applicant would have joined service on 21.10.1950, by which time, he would not have completed 18 years of age. It was argued that the minimum age of entry is 18 years and the applicant cannot now make use of the alleged school certificate for gaining a benefit which was basically not available to him.

6. The learned counsel for the applicant argued that there are a number of employees who had joined service prior to completing 18 years of age. To substantiate his statement, he refers to Annexure A-9 and A-10, where there are instances of two employees whose date of engagement in service is, such that they had not completed 18 years at that time.

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Reference was also made to letter of Railway Board dated 22.6.1966 (Annexure A-8) attached to the rejoinder containing the following provisions:-

....."The pay of persons appointed on or before 1.5.1956 and also of those who are already in service and were below 18 years of age on that date, will be regulated in accordance with this order....."

7. It is argued that a reading of the above letter would indicate that prior to 1956, appointment could take place even when the applicant had not crossed 18 years of age. But it could not be established whether the above mention was in relation to cases of exceptional circumstances like compassionate appointment where appointments could be made below the minimum age of 18 years, by special relaxation.

8. Having heard both the sides, we note that it is admitted that the correction was made in the year 1979. Keeping in mind the recent pronouncements of their Lordships of the apex court, we questioned as to how the applicant did not make any representation till August 1989 i.e. just a few months prior to the date of retirement as indicated by the respondents. Though the applicant has only put thumb impression at the time of joining, we have noted that he has studied upto VIII class, as brought out in the school leaving certificate. It is unusual for a literate person to affix his thumb impression. The applicant had also earned promotion in the course of his service and in 1989 was functioning as Chief Train Clerks which is on the IVth level above the minimum level in Group 'C'. The applicant was holding a responsible post and

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should have known about the change in his date of birth. We find from the Annexure A-9 to the rejoinder, a copy of the seniority list dated 30.4.1986 relating to the Chief Train Clerks had been circulated. In this seniority list, the name of the applicant figured at Sl.No 24 and his date of birth is shown as 18.10.1931. Thus the applicant did have an opportunity to know that his date of birth had been shown only as 18.10.1931 in the records of the respondents. After making the correction whether any specific intimation was given to the applicant, could not be brought out by the respondents. It is the case of the applicant that he had not been given any intimation about the change of date of birth. Be that as it may, we find that the applicant had kept quiet after giving his representation in 1976 till August 1989, ie. just 2 months prior to the date of superannuation as per the corrected office records. From the seniority list dated 30.4.1986 produced by the applicant and annexed to the rejoinder, we do note that the applicant had an opportunity to note all the corrections. In a number of judgements, their Lordships of the Supreme Court have held that plea for change in date of birth need not be entertained on the sole ground of applicant not applying in time and knocking the door only at the far end of service. We note that the applicant had not been vigilant after submitting his representation for change in date of birth. In the circumstances, the OA is dismissed as devoid of merit. No costs.

A. Vedavalli
 (Dr. A. Vedavalli)
 Member (1)

P.T. Thiruvengadam
 (P.T. Thiruvengadam)
 Member (A)

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