

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * * *

O.A. NO. 1731/1991

DATE OF DECISION 25-9-91

SHRI JAI DATT

.....APPLICANT

VS.

UNION OF INDIA & OTHERS

.....RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI B.B. RAVAL

FOR THE RESPONDENTS

.....SHRI ROMESH GAUTAM

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Sub Head in FA&CAO (PF), Northern Railway, Head Quarter, Baroda House, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dt. 12.4.1991 regarding alteration of his date of birth in the Service record from the recorded 15.9.1933 to 15.9.1935.

2. The applicant claimed the relief for a direction to the respondents to alter the erroneously recorded date of birth of the applicant in the Service record from 15.9.1933 to

15.9.1935 on the basis of confirmatory and authentic documentary evidence and (b) a further direction that all the consequential benefits arising out of so altered date of birth from 15.9.1933 to 15.9.1935 be given to him.

3. The facts of the case are that the applicant is resident of Village Pathura, District Almora (U.P.) and he did not attend any recognised institution. The applicant joined the Railways as Class-IV on 7.12.1955 and was subsequently promoted to Clerk Grade-I on 23.9.1990 and at present working as Sub Head (Accounts Assistant) in the office of FA&CAO, Northern Railway, New Delhi. The applicant's date of birth at the time of his entering into service as Class-IV staff was recorded as 15.9.1933. The applicant after a long time went to his native village and got a certificate from the Gram Panchayat. The exact and correct date of birth of the applicant, according to him, is 15.9.1935 and a certificate to that effect was issued by the Chairman, Village Panchayat, Pathura. The applicant applied for the correction of his date of birth on 11.3.1987, but that request of the applicant was rejected by respondent No.2 by the letter dt. 30.4.1987 (Annexure-A 4). The applicant again submitted another application in December, 1990 and made a request for the change of his date of birth in the Service record from 15.9.1933 to 15.9.1935.

6

The applicant was informed by the letter dt. 12.4.1991 (Annexure-A 1) that if the applicant wants an alteration in the date of birth, he should submit one of the following certificates in this regard :-

- (i) Matriculation certificate; or
- (ii) Copy of the school register; or
- (iii) Transfer Certificate; or
- (iv) An affidavit in support of the declaration of his age

The applicant submitted an affidavit in support of his correct date of birth, but the respondents have not yet decided his representation nor altered his date of birth. Since the applicant is to retire on 30.9.1991, so he has filed this application on 29.7.1991.

4. The respondents Railways contested the application and raised the preliminary objection that the present application is hopelessly barred by time as an earlier representation made by the applicant for the correction of his date of birth rejected by the letter dt. 30.4.1987 (Annexure-A 4) stood relying on S.S.Rathore Vs. State of MJP. (AIR 1990 SC 10). The applicant was told as early as in 1987 that the documents submitted by him are not authentic documents. The applicant has made a declaration at the time of joining the service (Annexure-R 1) giving his date of birth as 15.9.1933. The applicant has also signed the service sheet (Annexure-R 2)

Le

in which the date of birth of the applicant is shown as 15.9.1933. It is further contended that the applicant could have come before the Tribunal assailing the order of rejection of his representation by the letter dt. 30.4.1987 (Annexure-A 4) and so the applicant cannot come now again after a lapse of some more than 3 years. It is further stated in the reply that the ^{representation for correction} ~~of~~ date of birth was required to ^{be} submitted in view of the Railway Board's letter No. E(NC) II 70 BR/1 dt. 3.12.1971 circulated by Northern Railway vide Circular No. PS 5719 (Annexure-R 3). In view of this aforesaid circular, the applicant who was well in service at that time should have submitted representation before 31st July, 1973 as after that date no second opportunity could be given to the applicant. The application has been moved again in December, 1990 after allegedly obtaining the certificate of date of birth from Chairman, Village Panchayat, Pathura on 20.12.1990, i.e., 35 years after his appointment. As regards the documents summoned from the applicant by the letter dt. 12.4.1991, which is impugned in this case, the applicant was asked to furnish the initial requirements because the applicant had concealed the fact of rejection of earlier representation with regard to the same fact by the letter dt. 30.4.1987. The certificate signed by Gram Panchayat is not a confirmatory document. It is said that the affidavit in question has been manipulated

Le

8

by the applicant. It is said that the application is without any force.

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

6. The learned counsel for the respondents referred to the cases of S.S. Sandu Vs. U.O.I. & Anr. -1983(1) SLJ 475 and Shiv Narain Ram Vs. Senior Superintendent of Police, Allahabad & Anr.-1977 SLJ S.N. 4. There is a great force in the contention of the learned counsel for the respondents that an earlier request for correction of date of birth has already been rejected by the letter dt. 30.4.1987 (Annexure-A 4). The said letter is reproduced below :-

"With reference to his representation received under your endorsement referred to above, Sh. Jai Dutt, CGI of your section may be informed that the photostate copy of the certificate issued by Chairman, Gram Panchayat as furnished by him cannot be termed as authentic documents.

On going through the record it appears that Sh. Jai Dutt has also given a declaration to the effect that to the best of my knowledge my Date of Birth is 15.9.33. Therefore, his request for change in the recorded Date of Birth cannot be acceded to."

If there was any grievance left to the applicant, then at that time, the applicant could have come to the Tribunal or should have assailed this rejection in a competent forum, but instead of doing that, the applicant has gone under hibernation and he was awoken only December, 1990. This unexplained

le

9

delay on his part and further not challenging the order dt. 30.4.1987 is fatal to his case of correction of date of birth.

7. The learned counsel for the applicant has placed reliance on the case of V.N. Chavan Vs. U.O.I. & Others, reported in 1991 (2) SLJ C.A.T. Madras Page-30, but the facts of the case are totally different. The applicant in any case has to convince by a cogent, reliable and bonafide evidence that his correct date of birth is not recorded in the Service records and the correct date of birth is such and such. By the impugned letter dt. 12.4.1991, which was a letter in due course of correspondence, the applicant was asked to furnish certain details. Had the applicant informed in his representation dt. 20.12.1990 that an earlier request for correction of date of birth has been rejected, in that case, the respondents would have probably not enquired the initial basic requirements from the applicant and it has been clearly stated so by the respondents in their reply. Even in any case, an affidavit in support of the declaration of age cannot be that of the applicant himself, but it should be of a person who has attended ~~some~~ ceremony ^{after the} birth of the applicant or from either the parents or a person related to the applicant who could know the pedigree as is envisaged under Section 32 of the Evidence Act. The applicant is interested

Je

person and is merely saying on oath that he was born on 15.9.1935, does not appear to be a convincing deposition when he had only left a few months to retire on the basis of the recorded date of birth. The deposition of an interested person has to get support from an independent source. In the present case, the applicant placed reliance on a certificate of Chairman, Village ^{Panchayat} ~~Pathura~~. Firstly, no credibility can be attached to such a certificate. In fact, under Section-34 of the Evidence Act, credibility is attached to the entries made in the birth register or the record which is maintained in due course of business. The applicant has not filed any extract of the birth register. Moreover, the Village U.P. Panchayat Raj Act came into force in 1947 and earlier to that, the birth record was maintained in the respective police stations. Thus the respondents have rightly considered this certificate of Chairman, Gram Panchayat, Pathura as not a convincing piece of evidence. Again in the representation dt. 20.12.1990 (Annexure- A 5), the applicant has written that while filling up the form of High School Examination, the applicant fell ill and he could not fill up the form. Further he has stated that while getting services in Class-IV of the Railways, he has unknowingly written his date of birth as 15.9.1933. When once he has admitted that he has himself given the date of birth in the service records as 15.9.1933, then it is for the applicant to give a cogent and convincing evidence that the correct date of birth has been 15.9.1935.

le

11

8. Though there is no limitation provided for the correction of date of birth for those who entered before issue of notification of 1971 as held in R. Shankara Narayana Vs. U.O.I. (1991 (16) ATC 801) and also the declaration by the applicant in the service record is not to operate as an estoppel for correction of date of birth as held in Hira Lal Vs. U.O.I. (ATR 1987 C.A.T. 414), but in the present case, the applicant has not assailed the order of rejection of his earlier representation dt. 30.4.1987 and in such a case, the unexplained delay in coming to the court is fatal to the claim of the applicant for correction of date of birth (Dr. S.S. Rathore Vs. State of M.P. ATR 1990 S.C. P-10. Repeated representations do not extend the limitation provided u/S 21 of the A.T. Act, 1985).

9. However, we have considered the case of the applicant also on merits and mere affidavit of the applicant could not be said to be a convincing evidence ^{of date of birth} and the respondents have filed the order dt. 13.8.1991 (Annexure- B 5) that no case for correction of date of birth has been made out. Though the reasons given in the said letter dt. 13.8.1991 may be different, but we are also coming to the same conclusion on the basis of the evidence on record and the law cited before us that the applicant has not made out any case for the correction of his date of birth from 15.9.1933 to 15.9.1935.

10. In view of the above discussion and circumstances of

↓

12

the case, the application is without force and is
devoid of merit and is dismissed leaving the parties to
bear their own costs.

Jormane

(J.P. SHARMA)
MEMBER (J)

25.9.91

Dickelma 25/9/91
(D.K. CHAKRAVORTY)
MEMBER (A)