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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 237/1991. DATE OF DECISION: 10.7.91

Dularey Applicant.

V/s.

Union of India & Ors. ... Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri S.S. Bisaria with Shri H.P. Chakravorty, counsel for the applicant.

Shri M.L. Verma, 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 First Class Coach Attendant at Jhansi at the time of filing this application and has since retired with effect from 28.2.1991, has prayed for a direction to the respondents to alter his date of birth from 16.2.1933 to 15.5.1937 and allow him to be in service till May, 1995 on the basis of his actual date of birth.

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

The applicant joined service as a Tranship Hammusal at Agra Cantt. Railway Station with effect from 9.7.1955. He was transferred to Jhansi and in 1964, he was posted as First Class Coach Attendant and worked as such till 28.2.1991 (A.N.), from which date he has been retired on superannuation on the basis of his date of birth recorded in his service record as 15.2.1933. According to the applicant, his actual date of birth is 15.5.1937, but due to some clerical error on the part of office, it was recorded as 15.2.1933.

3. In his O.A., the applicant has stated that in 1956, he applied for the post of Scale Porter, but he was denied the promotion on the ground that as per school leaving certificate, he was not Matriculate. He applied for correction of the date of birth in Service Register in 1973 after obtain-

ing another copy of the school leaving certificate from the Institution (Annexure A-3), which he submitted to the Department. He put forth his second request in 1986, followed by his representation dated 23.7.90. He has filed a copy of his representation dated 23.7.90 (Annexure A-4). In his rejoinder, he has reiterated his contentions in the O.A. and has filed a photo copy of the notings dated 17.9.56 by which his application along with copy of school leaving certificate was forwarded by Station Master, Agra Cantt. to A.P.O. II. He has also annexed therewith a copy of letter dated 10.10.56 in reply to his application by which he was informed that as he was not Matriculate, he could not be posted as Scale Porter.

4. The respondents have contested the application by filing a counter-reply, wherein they have stated that the transfer certificate produced by the applicant is neither reliable nor relevant at this belated stage. His date of birth, which was recorded at the time of his appointment, as per entry in his Service Record is 15.2.1933. They have denied having received any request from the applicant for correction of his date of birth in the year 1973, as alleged by the applicant.

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

6. The respondents have produced the service record and the personal file of the applicant. In the service book of the applicant, the date of his birth is shown as 15-2-1933 and the sheet bears both his signature and thumb impression as on 22.6.55, which were accepted by the Divisional Commercial Superintendent, Jhansi. On scrutiny of his personal file, we find the school leaving certificate of the applicant at page 213. The documents at pages 212 and 215 relate to the year 1973, which means that the school leaving certificate was produced by the applicant sometime between 16th July, 1973 and 19th December, 1973.

The second copy of his school leaving certificate is available at page 316 of his personal file. This appears to have been filed by him sometime in January/February, 1985. Copies of his school leaving certificate show his date of birth as 15.3.1937. The applicant's application dated 23.7.90 is available at page 329 of his personal file, on which orders for investigation of his correct date of birth were passed vide notes at pages 330 of the personal file. On investigation and inquiry from the School, it had been certified by the Principal that the correct date of birth of the applicant is 15.5.1937. However, after detailed notings at different levels in the office, the competent authority came to the conclusion:

" It is a case of fraud in which photocopy has been kept at various pages on this file. As I have said earlier at S.N.347, there is no chance of photocopy being done in India (and that too at JHS) in 1973 (as placed at S.N.213). The dealing clerk appears to have been helping in this case.

" (2) The recorded date of birth in the School even if true is not based on any proof but is again by statement or approximation made in 1942.

I therefore do not find any weight in considering his application for change of date of birth at this stage."

The applicant was advised vide letter dated 7.1.91 that the competent authority had come to the conclusion that his request for change of date of birth was not based on solid ground for consideration. The applicant's letter dated 21.1.91 to the same effect is also available on his personal file, but the same was also rejected. The applicant finally filed the instant O.A. on 24.1.1991.

7. The case of the respondents, in brief, is that at the time of his entry in the Railway service, the applicant had shown his date of birth as 15-2-1933. They have also taken a plea that the application is hopelessly barred by limitation. On the other hand, the plea of the

applicant is that his correct date of birth is 15.5.1937, which is supported by his school leaving certificate, and that he had submitted a true copy of his school leaving certificate along with his application for the post of Scale Porter as back as in September, 1956, vide Annexure A-5. It is, however, a fact that copies of his school leaving certificate available at pages 213 and 316 of his personal file are without any forwarding notes and it cannot be said in what context these copies were produced by the applicant. Nevertheless, since these are available on the file of the Administration, we are inclined to take a view that the certificate was submitted by the applicant at least in 1973 and again in 1986, with a view to get his date of birth corrected. Learned counsel for the applicant produced a copy of the judgment passed by a Bench of this Tribunal in the case of Shri Pritam Singh Vs. Union of India (O.A. 1611/90). One of us (Shri P.C. Jain) was a Member of the said Bench also. In that case, the facts were more or less the same as in the instant O.A. The Bench held in that case that the mere fact that the service sheet where the date of birth of the applicant was recorded had been signed by the applicant is no bar to his claiming a change in the recorded date of birth if such a change is otherwise justified on the facts and circumstances of the case. In the case of Shri Pritam Singh (supra), a number of authorities were cited in support of the fact 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. Thus the contention of the respondents that the O.A. is time-barred cannot be upheld. However, while considering the question of relief to be granted, it may not be appropriate to ignore the lapse and laches on the part of the applicant in pressing his case with the Department or failing which in seeking legal remedy.

8. The respondents have not shown to us the basis on which his date of birth was recorded as 15.2.1933 in the service sheet. We had specifically sought a clarification on this point in the course of hearing of oral arguments. Further, the only proof placed before us as also on the official record as discussed above is the School Leaving Certificate. It has been verified by the Principal in the course of the inquiry done through an official of the respondents. If a fraud was suspected, it was open to the respondents to initiate appropriate action in the matter. A perusal of the certificate shows that the applicant was admitted to the school on 21.7.42 and left on 30.6.46 after passing Class four. Obviously the applicant could not have been admitted to Class one at the age of nearly 9 years and have passed Class four at the age of thirteen, if his date of birth is taken to be 15.2.33. Therefore, unless the School Leaving Certificate is found to be bogus, it cannot be ignored in the absence of any other document in proof of age. On the basis of the claimed date of birth i.e., 15.5.1937, he was not under age for his initial appointment in 1955.

✓ 9. In the light of the foregoing discussion, the O.A. is allowed in terms of the following directions: -

(1) The applicant should be taken back in service by the respondents forthwith but not later than six weeks of the receipt of a copy of this order. He shall then be

allowed to continue in service of the respondents on the basis of his date of birth being 15.5.1937 unless his services are dispensed with otherwise in accordance with law/rules. This will not preclude the respondents from making a fresh inquiry in the matter in regard to the date of birth of the applicant.

(2) For the period from 1.3.1991 till the applicant is taken back in service as in (1) above, he will not be entitled to any pay and allowances, for the reasons given by us in para 7 above. The period of absence will not count for future increments but will not be treated as a break in service.

(3) We leave the parties to bear their own costs.

Chauhan
(P.C. JAIN)
Member (A)

Chauhan (O.P.J.S)
(RAM PAL SINGH)
Vice-Chairman (J)

Pronounced by me to-day in the open court.

Chauhan
(RAM PAL SINGH)
VICE-CHAIRMAN (J)
10.7.91