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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2845/1991. DATE OF DECISION 6-2-1992.

Ch. M.K. Naidu Applicant.

V/s.

Union of India & Anr. Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

Shri B.B. Raval, counsel for the applicant.

Shri B.K. Aggarwal, counsel for the respondents.

JUDGMENT

The applicant, who joined as a Khalasi in the Indian Railways on 1.6.1953 and has since retired on 31.12.1991 from the post of Chief Neutral Train Examiner, Bhandra Marshalling Yard, Bombay, is aggrieved by rejection by the respondents of his request made on 1.8.1991 for change of his date of birth from 1.1.1934, as entered in the service record to 10.1.1936, as now claimed by him. The respondents have opposed the O.A. by filing their reply. The applicant, however, chose not to file rejoinder to the reply of the respondents. I have carefully perused the material on record and also heard the learned counsel for the parties.

2. The main contention of the applicant is that his right to serve upto the last date of reaching the age of superannuation is his fundamental right and the rejection of his request was violative of Articles 14, 16 and 21 of the Constitution of India. It may be stated here that a Government servant has a right to continue in service till he attains the age of superannuation as prescribed in the rules, but this right is not a fundamental right as enshrined in Chapter III of the Constitution of India. With respect to this legal right, a Full Bench of the Central Administrative Tribunal, in T.A. No. 1104/1986 and 1089/86

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- MALLELA SREERAMA MURTHY AND ANOTHER Vs. UNION OF INDIA & OTHERS (Full Bench Judgments of Central Administrative Tribunals (1989-1991) p. 152) decided on 17-8-1989, has already held that the Railway Board's orders dated 4-8-72 laying down limit of three years for Railway servants for seeking change in the date of birth, was in conflict with the rules and hence could not be enforced in respect of those who were already in service before that date. Accordingly, it has to be held that the mere fact that the applicant did not seek change in his recorded date of birth at the appropriate time cannot be held to debar the applicant from seeking such a relief at a later date. However, it has to be established that he had reasonable and valid grounds justifying such a delay and his request has also to be considered in the light of the evidence in support of his claim.

3. Another contention of the applicant is that in accordance with the provisions of Rule 225 of the Railway Establishment Code, Volume I, in his case, his date of birth on his entering Railway service was required to be entered in the record of service in his own handwriting, as he was literate. However, this contention cannot be upheld for the reason that when the applicant joined the Railway service, Rule 145 of the Establishment Code was in operation and as per clause (1) of this Rule, in the case of literate staff, the declared date of birth was required to be recorded by a senior Class III railway servant and witnessed by another railway servant. A photostat copy of the history sheet filed by the respondents as Annexure R-I, shows that the date of birth recorded therein was *prima-facie* entered by Head Neutral Train Examiner and signature of Attesting Officer also appears therein. Date of birth recorded therein is: 1st January 1934 (Thirty four).

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4. The applicant has also relied on a certificate issued by the President of the Panchayat Board on a date in May, 1950 (at page 17 of the paper book), in which it is certified that the date of Ch. Murali Kumar Naidu S/o Suryanarayana Naidu is 10th Jan. 1936 and it is also stated that his character is good to the best of his knowledge. This certificate is not of much value inasmuch as it is neither, nor purports to be, an extract from any statutory record of births maintained by the Panchayat Board, if any. Another certificate relied upon by the applicant issued by the Headmaster of P.S.H.E. School, Polavaram, Srikakulam Dt. is at page 18 of the paper book. According to this certificate, Chelumuri Murali Kumar Naidu S/o Chelumuri Suryanarayana Naidu is stated to be a "bonified student of VIII class" from 12/4/1949 to 3/5/1950 and his conduct and character were satisfactory. It is further stated therein that his date of birth is 10-1-1936 as per school records. This certificate does not bear any date. However, the date below the signature of the Headmaster, though not very legible, is *prima-facie* of May, 1950. The certificate does not bear any stamp of the school. Apart from the fact that the certificate has the deficiencies as mentioned above, it cannot be taken to be as a substantive evidence as held by a Division Bench of the Tribunal in the case of M. ASOKAN alias MUNUSWAMY Vs. THE GENERAL MANAGER AND OTHERS (A.T.R. 1986(2) C.A.T. 142), as the school authorities normally make the entries regarding date of birth on information furnished by either the parents or the other relations, who accompany the child while admitting him into the school. Thus, the entries made by the school authorities are based on the information furnished to them by others. There is nothing before us to show that the entry about the date of birth in this certificate was made by the school authorities, even if it is presumed to be based

on records maintained by the school in the normal course of its working, on any documentary evidence. Further, the applicant, as per this certificate, remained in the school only from 12.4.1949 to 3.5.1950, and, therefore, he must have studied in other schools prior to joining this school as well as after leaving this school. No such school leaving certificate from such other schools has been filed.

5. The applicant has also filed a photostat copy of his horoscope, which is in Telgu (copy at page 20 of the paper book). An English translation of the same was made available by the learned counsel for the applicant. It is seen therefrom that the date of birth in the horoscope is shown as 9/10-1-1936 (after mid-night 4.35 a.m.). However, this horoscope does not bear any date on which it might have been prepared or supplied. There is no affidavit of the person who might have prepared this horoscope. It is not an officially published document. It has not been issued by any public authority in the discharge of his public duties. It cannot, therefore, be accepted as evidence in support of the claim of the applicant.

6. The applicant has also filed affidavits from three of his relations in support of his claim. All these affidavits are dated 30th October, 1991. One of these affidavits is sworn by Smt. R. Rajlaxmi Naidu, who states to be the sister of the applicant, states that the applicant was born at Vishakhapatnam in Andhra Pradesh. Another affidavit also states that all the children born to his sister, i.e., mother of the applicant, were born at Vishakhapatnam in the State of Andhra Pradesh. However, the service sheet at Annexure R-1 shows the birth place of the applicant as Parlakimedi District Ganjam Province Orissa. Thus, much reliance cannot be placed on these affidavits which are also obviously of interested parties.

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any incorrectness in the date of birth recorded therein. Copies of these seniority lists have been filed by the respondents. They have further filed a copy of the application dated 7.4.52 given by the applicant for his initial appointment with the respondents, in which the applicant stated that he was a young lad of 18 years old. This also, according to them, shows that he was born in 1934. The contentions of the respondents, apart from the contents of the entries in the service record as already referred to above, have not been countered by the applicant, who chose not to file any rejoinder to the reply filed by the respondents. Thus, it is clearly seen that the applicant very well knew that his date of birth recorded in the service record is 1.1.1934. Moreover, the certificates issued by the President of the Panchayat Board and the Headmaster of P.S.H.E. School, Polavaram, are shown to have been issued in May, 1950 and, as such, the same are deemed to be in possession of the applicant before he joined the service. Non-disclosure of the information in those certificates at that time can only be taken to mean that the applicant deliberately held back the above information with a view to getting employment even before he reached the age of 18 years. The applicant availed of the benefit of appointment under the respondents on the basis of the date of birth as 1.1.1934. He cannot now be allowed to take another benefit of extended period in service on a claim which has been made only about five months before his due date of superannuation. He must have met his relations even prior to June, 1991 and the question of his retirement in December, 1991 could not have specifically arisen in family discussion only in the last meeting in June, 1991.

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8. In the light of the foregoing discussion, we find no merit in this O.A., which is accordingly dismissed, leaving the parties to bear their own costs.

Cecil J. J. S.
(P.C. JAIN)
MEMBER(A)