

16

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA. No. 2726/2004

New Delhi, this the 18th day of October, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Surinder Pal,
Executive Director.
Establishment (Gazetted Cadre),
Railway Board,
New Delhi.

....

Applicant.

(By Advocate Ms. Babita Panigrahy)

Versus

1. Union of India
through the Secretary,
Ministry of Railways,
Railway Board,
New Delhi.

2. The Chairman,
Railway Board,
New Delhi.

....

Respondents.

(By Advocate Shri H.K. Gangwani)

O R D E R (ORAL)

By this O.A., applicant has sought the following reliefs:

- (i) issue directions to the respondents, their agents, servant and assigns etc., to correct the date of birth of the applicant in the service record from 24.10.1956 to 24.10.57 on the basis of Birth certificate issued by District Authority (Revenue) Punjab;
- (ii) issue direction to make the entry of the date of birth as 24.10.57 instead of 24.10.1956 and to give all consequential benefits such as promotion, increments and retirement as if the applicant has joined the service as per his actual date of birth i.e. 24.10.57;
- (iii) to pass any other order or direction as this Hon'ble Court deems fit and proper in favour of the applicant and against the respondents.

2. It is submitted by the applicant that he joined Railway Service as IRSE Officer of 1980 batch on 17.4.1982. He belongs to a small village in the State of Punjab where no birth certificate was issued by any authority and date of birth is used to be recorded in the register of Village Chowkidar. As per the record of Village Chowkidar, his date of





birth was recorded as 24.10.1957. He came to know that his date of birth has wrongly been entered in the school certificates when astrologer found a mistake in the date of birth of applicant as compared to events in his life. He asked him to get his date of birth corrected.

3. It is submitted by the applicant that at the time of admission for primary education in School, his date of birth was got recorded as 24.10.1956 instead of 24.10.1957 due to the mistake of his parents, who were illiterate. He came to know about the mistake only in the year 1994 when a astrologer told him that events of his life were not matching with the planets of his date of birth as 24.10.1956. He then checked the records of the revenue authority and found that his correct date of birth is 24.10.1957 and not 24.10.1956 but unfortunately in all his academic record as well as at the time of his employment, his date of birth has been shown as 24.10.1956. He, therefore, applied for issuance of birth certificate to the District Authorities, which was issued on 5.8.1997, showing his date of birth to be 24.10.1957 (page 16). Immediately thereafter, he applied for correction of his date of birth in 1997 followed by number of reminders (pages 17 to 27) but his request was rejected vide order dated 20.11.2003 by stating that in the light of existing rules, it has not been found feasible to accede to his request (page 21). He once again gave a representation on 4.3.2004 (page 22), which was again rejected on 9.8.2004 (page 28). Therefore, finding no other option, he has filed the present OA on 9.11.2004, that is within one year from the date his request was rejected. Therefore, O.A. is within the limitation period.

4. Counsel for the applicant submitted that there is no total bar in the rules for applying for change of date of birth. On the contrary, Para 225, sub-para (ii) of IREC Vol. I very much gives power to the President in the case of Group A and B Railway servant to cause the date of birth to be altered. Therefore, applicant's case could not have been rejected unless the document relied upon by the applicant was found to be forged or not admissible in law. She relied on the following judgments to show that there was no bar requesting for change in date of birth:



19

- (i) **Union of India Vs. Harnam Singh** (AIR 1993 SC 1367);
- (ii) **Food Corporation of India Vs. A.K. Ghosh** (2000 (3) SLR 779 (Calcutta High Court);
- (iii) **State of Punjab and Ors. Vs. S.C. Chadha** (2004 (3) SCC 394).

She also relied on All India Service Law Journal 1998 (Vol.2) CAT (Mumbai) 540, to state that limitation will start running from the day request is rejected by the authorities. She also submitted that applicant had applied within 12 years of his joining service and on the date when he applied, he still had 11 years to go as he is due to retire in 2017. Therefore, it is not a case where he has applied at the fag end of his career. Since he had given an authentic document, his request was wrongly rejected by the authorities, therefore, the O.A. may be allowed.

5. O.A. is opposed by the respondents, on the ground that this O.A. is barred by limitation because as per applicant's own showing he had given the representation in 1997 and in case no reply was given to him by the respondents, he should have approached the Tribunal maximum within 18 months as per Section 21 of the Administrative Tribunals Act, 1985. That period would be over by the year 1999 whereas the present OA has been filed in November, 2004, therefore, this O.A. is barred by limitation and no application for condonation of limitation has been filed. Therefore, OA is liable to be dismissed in view of the judgment given by Hon'ble Supreme Court in the case of **Ramesh Chand Sharma Vs. Udhamp Singh Kamal** reported in 2000 SCC (L&S) 53. He also submitted that applicant cannot gain his limitation from 2003 as the orders passed by the respondents in 2003 or 2004 have not even been challenged by the applicant, as is evident from the relief clause mentioned in Para 8.

6. On merits, they have submitted that any request for alteration of the date of birth is regulated in terms of Rule 225 of IREC Vol. I and no request can be entertained after completion of the probation period, or three years service, whichever is earlier. They have relied on Rule 225 to say that since applicant had made his request after almost 15 years of joining the service, therefore, respondents have rightly rejected his claim for change in date of birth. Counsel for the respondents also relied on **State of Punjab**

S

19

and Ors. Vs. S.C. Chadha (2004 (Vol.3) SCC 394) and judgment given by Hon'ble Supreme Court in the case of **State of U.P and Ors. Vs. Gulaichi (Smt.)** reported in 2003 (6) SCC 483. He has thus prayed that the OA may be dismissed.

7. I have heard both the counsel and perused the pleadings as well. Counsel for the respondents is right when he states that in accordance with provisions of the Administrative Tribunals Act, 1985, OA should be filed within 18 months from the date of giving the representation in case representation is not decided but in the instant case it is seen the representation given by the applicant in 1997 was rejected for the first time by respondents vide order dated 20.11.2003 and within one year from the said date, applicant had filed the present OA. In case respondents had not rejected the claim at all, the contention of respondents' counsel would have been valid but since respondents ultimately decided his representation in 2003, naturally limitation would run from that day as that order gives him a cause of action. However, counsel for the respondents further submitted that applicant has not even sought quashing of those orders in the operative portion of the OA, namely, in Para 8, therefore, it is not open to him to start counting limitation period from those orders. It is correct that applicant has not sought quashing of the orders dated 20.11.2003 and 9.8.2004 in Para 8 of the OA, but in Para 1, applicant has stated, the OA is filed against the order dated 20.11.2003 and 9.8.2004. Therefore, at best it can be said the O.A. has not been properly drafted but for this technical reason, I do not think the O.A. can be dismissed on the ground of limitation. After all, it is not disputed by the respondents that they did reject the representation of the applicant for the first time on 20.11.2003, therefore, taking a lenient view in the matter, the objection taken by respondents' counsel is rejected.

8. Coming to the merits of the case, it is seen that applicant is a highly educated and qualified IRSE officer of 1980 batch, who joined Railways in the year 1982. The story put forth by the applicant is rather unheard of. He has stated that for the first time, it was an astrologer, who told him in the year 1994 that his date of birth was recorded wrongly whereas the date of birth can be known either to the parents of the child or the immediate relatives. It is unheard that the astrologer would suggest to an individual to get his date of birth corrected. The story put up by the applicant cannot be accepted



20

by any reasonable person. In any case, without going into that aspect of the matter, the moot question that arises for consideration in this case is, when the rules specifically stipulate a time period for making or request for change in date of birth, whether request made by the applicant much beyond the stipulated period could be entertained by the respondents or it was rightly rejected by them. This need not detain me for long as this point has been repeatedly discussed by Hon'ble Supreme Court and it has been held by Hon'ble Supreme Court in case after case where a time limit has been laid down for making an application for change in date of birth by the rules or administrative orders, the application should be made within the time fixed. It is only in the absence of any such rules that the application for change in date of birth should be made within a reasonable time. In the case of **Secretary and Commissioner, Home Department and Ors. Vs. R. Kirubakaran** reported in 1994 Supp (1) SCC 155, it was held by Hon'ble Supreme Court that an application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned as it has a chain reaction, inasmuch as others waiting for years below him for their respective promotions are affected in this process. Unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction on the basis of materials which make such claim only plausible. It should not be done in a casual manner. Moreover, while disposing of any such application, the Court or the Tribunal has first to examine whether the application has been made within the prescribed period under some rule or administrative matter. In the above said case, on the basis of a report of the Revenue Divisional Officer, submitted after oral inquiry made from different persons, including the mother of the respondent, the Tribunal had come to the conclusion that the date of birth of the respondent therein was August 9, 1936 instead of August 9, 1934. Even though the Commissioner for Revenue Administration had rejected the said report submitted by the Revenue Divisional Officer, but the Tribunal had accepted the said report for correction of date of birth of the respondent. In those circumstances, Hon'ble Supreme Court observed "If the date of birth of a public servant, is corrected only on the basis of a report submitted by a Revenue Officer after holding





an inquiry, according to us, it will introduce uncertainty, in public services. In the said case, Rule 49 provided for a period of 5 years after entry in service for getting the date of birth altered. It was thus held that since the respondent therein had given an application beyond the period of 5 years at the fag end of his career, the findings recorded by the Tribunal cannot be upheld. Accordingly, the order passed by the Tribunal was set aside and the order of rejection by the authorities was upheld.

9. Even in the case of **S.C. Chadha** (supra), it was held that most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules, a period has been prescribed within which an application for correction of the date of birth can be entertained. The sole object of such rules is that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. Similarly, in the case of **Smt. Gulaichi** (supra), it was held by the Hon'ble Supreme Court that normally, in public service, with entering into the service, even the date of exit, which is said to be the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service having fixed the age of retirement, it is necessary to maintain the date of birth in the service records. Most of the States have framed statutory rules or in absence thereof issued administrative instructions. In many such rules, a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades.

10. From the above judgments, it is absolutely clear that Hon'ble Supreme Court has repeatedly held that in case time is stipulated for getting the date of birth corrected in any statutory rules, any application made thereafter cannot be entertained. In this



22

backdrop, it is seen that respondents have laid down Rule 225 of IREC Vol. I which has statutory force and which for ready reference reads as under:

- (i) Every person, on entering Railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant;
- (ii) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of Group A and B railway servant, and a General Manager in the case of Group C and D railway servant to cause the date of birth to be altered;
- (iii) Where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended;

When a candidate declares his date of birth he should produce documentary evidence such as a matriculation certificate or a Municipal birth certificate. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the school leaving certificate, a Baptismal certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age".

Counsel for the applicant only read a part of this rule, namely, sub-rule (ii) to state that power is very much given to the President in case of Group A and B railway servant to alter the date of birth and that there is no bar to make an application but she very conveniently forgot to read sub-rule (iii). Sub-rule (iii) of Rule 225 makes it absolutely clear that no application for correction in date of birth could be entertained after completion of the probation period or three years service, whichever is earlier. It is thus clear that there is a specific rule in IREC Vol. I, which stipulates the period as mentioned above for giving an application for correction of date of birth. In the instant case, admittedly applicant had joined the Railways in the year 1982 whereas he gave the representation only in 1997, that is almost after 15 years, which is definitely beyond



23

the prescribed period under the statutory rules. Therefore, in view of the law laid down by the Hon'ble Supreme Court, as referred to in paras above, respondents have rightly rejected the representation of applicant for correction of date of birth.

11. In view of the above discussion, I find no merit in the O.A. The same is accordingly dismissed. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMBER(J)

'SRD'