

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 5th day of March, 2001.

C O R A M :- Hon'ble Mr. S. Dayal, Member- A.

Orginal Application No. 468 of 1996

Lalji Ram S/o Kamta Prasad

R/o Vill. Lakhraon, Kakarmatta

P/o Bajardeha Distt. Varanasi

r/o H. No. 10-22, Rly. Crossing, Varanasi

At present working as Painter Gr. I Diesel Locomotive
Works, Manduadeh, Varanasi

.....Applicant

Counsel for the applicant :- Sri V.K. Barman

V E R S U S

1. Union of India through the General Manager,
Diesel Locomotive Works, Varanasi

2. Sr. Personnal Offocer, Diesel Locomotive Works,
Varanasi.

.....Respondent.

Counsel for the respondents:- Sri Amit Sthalekar

O R D E R (oral)

(By Hon'ble Mr. S. Dayal, Member- A.)

This application has been filed for seeking a
direction to the respondents to correct the date
of birth of the applicant from 13.03.1941 to
28.06.1950 and also a direction to the opposite

parties not to interfere in the working of the applicant till he attains the age of 58 years from the date of birth i.e. 28.06.50.

2. The case of the applicant is that he entered in the service of the respondents as casual labour on 03.05.64 and was appointed as Cleaner on 03.05.67. The applicant had not studied in any recognised institution and the date of birth recorded at the time of recruitment in service as 13.03.41 was on account of sheer approximation. The applicant claims that he made various attempts for correction of date of birth but respondents never gave definite reply. He, therefore, approached to District Magistrate on 26.06.95 and consequent upon orders passed by the District Magistrate, Varanasi, the C.M.O had issued age certificate on 28.06.95 stating that in his view, applicant is 45 years of age. It is claimed that in the ^{electoral} roll of elections prepared in 1988, the age of the applicant is stated to be 37 years. It is claimed that applicant came to know about ^{recorded} his date of birth and has submitted representation dated 06.10.95. It is also claimed that the applicant's father Sri Kamta Prasad was employee of D.L.W, Varanasi and the opposite party No. had issued certificate on 17.10.91 stating that the date of birth of Kamta Prasad is 16.12.34.

3. I have heard Sri V.K. Barman, learned counsel for the applicant and Sri Amit Sthalekar, learned counsel for the respondents.

4. Learned counsel for the applicant has contended that the applicant was initially appointed as

casual labour for which there was no prescribed age. The applicant entered in to service on 03.05.67 as a Cleaner. He has drawn my attention to Rule 145 of Indian Railway Establishment Code Vol. I in sub Rule 2-c which reads as under :-

" Where the person concerned is unable to state his age it should be assessed by a Railway Medical Officer and the age shall be assessed and entered in his record of service in the manner prescribed above. The railway servant being informed of the age so recorded and his consent should be obtained there to."

Learned counsel for the applicant has contended that sub rule 2-c of Rule 145 lays-down as to how the date of birth is to be recorded. The same is to be done at the time of entering in railway service. The applicant in this case entered in to railway service on 03.05.64. However, he is shown to have been borned on 13.03.41 on the basis of memo of medical examination dated 07.03.67 (annexure C.A- 3), the letter of General Manager (P) addressed to the applicant dated 16.03.67 showing that his date of birth is 13.03.41 on the basis of assessment of Medical Officer (annexure CA- 4). It is contended that this was false and fabricated because applicant had not entered in to service on 13.03.67 but had entered on 03.05.67. It has also been stated that father of the applicant was borned on 16.12.34 and the applicant is said to be borned on 13.03.41 which is not possible. It is argued that if the applicant was borned in 1950 then applicant's father would be of 16 years ^{of} age and then it becomes possible.

5. Learned counsel for the respondents has controverted the arguments made by the learned counsel for the applicant and has submitted that the initially appointment as Temporary Sanitary Cleaner was made on 13.05.67 which was duly accepted by the applicant. He has further stated that said offer of appointment was subject to passing medical examination or production of his orginal certificate or satisfactory proof in support of his age. It is contended that the applicant did not produce any satisfactory proof about his age and therefore, he was examined by Railway Medical Officer on 13.03.67. The age assessed by Railway Medical Officer was communicated to the applicant which was acknowledged and was accepted by the applicant on 21.04.67. Copies of these letters were enclosed as annexure C.A-4 and C.A- 5 to the counter reply. The applicant at the fag^l end of his service, ^{Career} ~~carrier~~ started agitating about his age.

6. Learned counsel for the respondents has also stated that the certificate given by S.P.O, D.L.W, Varanasi was to one Sri Kanta Prasad S/o Late Ganga who was born~~ed~~ on 16.12.34 as per the record available in the documents with D.L.W. The name of applicant's father given in his order of appointment (annexure CA-1), age assessment letter (annexure C.A- 3), letter of General Manager (P) (annexure C.A- 4) and in particulars of service (annexure C.A-6) is Kamta and ^{not} ~~Kanta~~. Therefore, the arguments advanced on behalf of the applicant that he could not have been born~~ed~~ in 1941 is erroneous.

7. Learned counsel for the respondents has also contended that the date of birth of the applicant if taken to be 28.06.50, the applicant would have been less than 14 years of his age at the time of entry as casual labour and less than 17 years of age at the time of his appointment as Temporary Sanitary Cleaner.

8. Learned counsel for the applicant drew my ^{attention to his Suppl. rejoinder reply in which} one Sri Raghbir Prasad (Gram Pradhan) has certified that Sri Kanta Prasad is commonly known as Kamta and ^{Kanta Prasad alias} that Sri Lalji Ram is son of alias Kamta.

9. Learned counsel for the respondents has also contended that the date of birth can not be allowed to be changed near at the time of retirement. He has relied upon U.O.I & Ors. Vs. Kantilal Hematram Pandya, A.I.R 1995 SC (1349). The Apex Court has laid down as follows :-

"The respondent slept over his right to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only. The law laid down by this court in Harnam Singh's case (1993 A.I.R SCW, 1241) (Supra) was thus, fully applicable to the facts and circumstances of the case of the respondent and the Tribunal failed to follow the same without even pointing out any distinguishing features on facts."

Thus the applicant employee was not entitled to the relief claimed in that case.

10. Learned counsel for the respondents has also relied on the authority of U.O.I Vs. C. Ramaswami & Ors. (1997)4 SCC 647. This case reproduced

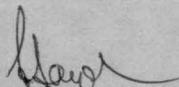
to interpretation of 1971 to 1978 which is applicable to the officers who are already in service. However, Hon'ble Supreme Court has mentioned that even in the absence of statutory rule like Rule 16-A, the principle of estoppel would apply to the applicant and the authority concerned would be justified in declining to alter the date of birth.

11. The twin foundation of the case of applicant is not acceptable. The suggestion that the applicant entered in to service only on 03.05.67 and therefore, date of birth could not have been ascertained on 13.03.67 has been explained by the learned counsel for the respondents in paragraph (II) to (v) of the counter reply. In any case, the applicant was in service as casual worker from an earlier date and his regular appointment would have been subject to applicant furnishing documentary proof of date of birth or on the basis of medical examination in absence of documentary proof of date of birth . If the medical examination was made on 13.03.67, it does not vitiate recording the date of birth on 13.03.67 in his service book. The formalities of Rule 145 of I.R.E.C have been duly followed by the respondents. The strenuous attempt made by the learned counsel for the applicant to show that the documents annexed as annexure C.A-3, C.A-4, C.A.-5 and C.A.-6 were not genuine and are forged is not worthy of any ~~ex~~ evidence because service record is maintained in normal course and there is no suggestion that the respondents have any other service record of the applicant. It can not be treated as anything more than an attempt to build a case of malafides without alleging any individual office of malafides.

12. Regarding the ground of date of birth of Sri Kanta Prasad, I find that the annexure- I of Suppl. rejoinder reply shows the name of father of the applicant as Kanta Prasad and the certificate of Gram Pradhan can not be accepted as a definitive proof of the fact that the said Kanta Prasad was applicant's father.

13. In any case, the very fact that the applicant has made this application near his date of superannuation on the basis of his recorded date of birth is cause sufficient to reject the claim of the applicant. In addition I find that there are no merits. The O.A is, therefore, dismissed.

14. There will be no order as to costs.


Member - A.

/Anand/