

OA No. 291/608/2015

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/608/2015

Order reserved on 23.09.2021

DATE OF ORDER: 06.10.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Kanti Lal S/o Late Sh. Prem Chand aged about 56 years, House No. R/o 88/A, Railway Colony, Near Railway Station, Bundi, Rajasthan.

....Applicant

Shri Manish Parihar, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Railway, Jabalpur (Madhya Pradesh).
2. Divisional Railway Manager, Kota Division, Station Road, Kota Junction, Kota-324002 (Rajasthan).
3. Senior Divisional Personnel Officer, Divisional Railway Manager Office, Kota Division, Station Road, Kota Junction, Kota-324002 (Rajasthan).
4. Assistant Personnel Officer (Electrical), Divisional Railway Manager Office, Kota Division, Station Road, Kota Junction, Kota-324002 (Rajasthan).

.... Respondents

Shri P.K. Sharma, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- I. The impugned letter dated 31.07.2015 (Annex-A/1) by which the applicant has been ordered to be retired on 31.07.2015, may kindly be declared arbitrary and illegal and accordingly be quashed and set aside, in the interest of justice.
- II. The respondents may kindly be directed to rectify the date of birth of the applicant as 10.07.1959 instead of 10.07.1955 in his service book and accordingly the respondents may be directed to treat the year 2019 as the retirement year of the applicant and accordingly the applicant may be ordered to be treated as continue in service and be held entitled for all benefits thereof.
- III. Any other order or direction which this Hon'ble Tribunal deems just and proper may also be passed in favour of the applicant.
- IV. Cost of the original application may also be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the applicant, are that he was appointed on the post of Khallasi on 16.02.1983 and subsequently he came to be regularized in the pay scale of Rs. 750-940 w.e.f. 19.09.1990. Thereafter, he got several promotions.

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Since his initial appointment, Applicant has been peacefully rendering his service till the issuance of letter dated 13.10.2014, which contained a list of employees who were to be retired in the year 2015, inasmuch as Applicant got shocked to find his name in the said list, despite his date of birth is 10.07.1959 and would have retired on 31.07.2019. Thus, Applicant moved an application on 01.12.2014 and annexed documents which revealed that his date of birth is 10.07.1959 and, therefore, requested the Respondents that his name from the list of employees due to retire in the year 2015 may kindly be removed and his name has to be placed in the list of employees who will retire in the year 2019. Applicant stated that he has several documents which reveal that his date of birth is 10.07.1959 and he was initially given appointment on the post of Khallasi. Also the seniority lists dated 17.01.1995, 20.02.1996 & 30.07.1998, all of which specifically reveal the date of birth is 10.07.1959 and not 10.07.1955. Thus, series of documents show that the date of birth of the Applicant is 10.07.1959. Even the pay slips of the Applicant reveal that the date of birth of Applicant is 10.07.1959 and according to which the date of retirement will be

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31.07.2019. Despite several documents available with the Applicant which clearly reveal that his date of birth is 10.07.1959, the arbitrary action of the Respondents will deprive the legitimate right of an employee to continue in service. Vide letter dated 16.01.2015, Respondents provided the certified copy of service book of the Applicant as the original service book was lost by the Department and the service book annexed to the present OA was prepared later, thus, Applicant cannot be denied of his right to continue in service for mistake of wrongly entering details in service book. Therefore, being aggrieved by the arbitrary action of the Respondents to retire the Applicant on 31.07.2015, Applicant has approached this Tribunal for quashing the impugned letter dated 31.07.2015, (Annexure A/1), and that he be allowed to continue in service.

3. Respondents, after issue of notices, filed their reply and stated that the date of birth as recorded in the service book was 10.07.1955 and on the basis of his date of birth, he was superannuated on attaining the age of 60 years on 31.07.2015. As the date of birth was correctly recorded in his service book as

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10.07.1955, his name was correctly shown in the retirement list of 2015 which was notified on 13.10.2104. Applicant had submitted an application on 01.12.2014 (Annexure A/2) and the same was forwarded to the Headquarter for further proceedings. It is further stated that the service book of the Applicant was prepared in the year 1988 and according to the service book, the date of birth as recorded in his service book was 10.07.1955, which was counter signed by the Applicant. On receipt of representation of the Applicant, the matter was referred to the HQ office/competent authority to take a decision in the matter of alteration of date of birth. The competent authority has decided the matter and directed not to alter the recorded date of birth in the service book i.e. 10.07.1955. It is further stated that the Applicant has denied to fill the pension form, therefore, the pension papers could not be prepared. As the action of Respondents is legal and as per law, therefore, the O.A. filed by the Applicant is not maintainable and deserves to be dismissed.

4. Applicant has filed rejoinder denying the contentions of the respondents. He further stated that

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the Master Circular regarding procedure for recording the date of birth on entering the railway services and its alteration specifically provides that for Group 'C' & 'D', the General Manager is the competent authority, who can alter the date of birth and in the case of clerical error, it is permissible. Further, in the case of satisfactory explanation, it is also permissible. However, the case of the Applicant is not of change of date of birth, but it is on the part of Respondents, who initially entered correct date of birth i.e. 10.07.1959 and thereafter, without any document or without any material, changed it to "10.07.1955" instead of "10.07.1959". Applicant further states that he has enough documentary evidence to prove that he is entitled for consideration of his date of birth as "10.07.1959" instead of "10.07.1955". Thus, in the interest of justice, the relief as prayed by the applicant be allowed.

5. Heard learned counsels for the parties at length and examined the pleadings brought on record.

6. The Applicant has reiterated his stand as taken earlier. He further states that the Respondents have

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totally ignored the Transfer Certificate (on the basis of which he was given initial appointment) or the official documents which prove his date of birth as 10.07.1959. It is not the discretion of the Respondents to change the date of birth, rather it is the right of the Applicant to get the said mistake rectified. The present case has got larger ramifications and it is not just limited to rectification of an entry in the service book rather it is a case where an employee has been arbitrarily subjected to retire even when 04 more years of his service is remaining. The Respondents casually dealt with the application of the Applicant dated 01.12.2014 and this casual and adamant approach of the Respondents is unwarranted. The Applicant has further raised the ground that even if it is an inadvertent mistake on the part of the Applicant, his right to continue in service cannot be curtailed even when each and every single document except the service book reveals the date of birth as 10.07.1959. The applicant has relied upon the following judgments/orders:

- i) Punjab & Haryana High Court at Chandigarh vs. Megh Raj Garg & Anr., (2010) 6 SCC 482.
- ii) Union of India vs. C. Rama Swamy and Ors., (1997) 4 SCC 647 : 1997 SCC (L&S) 1158.

- iii) Hari Prasad Meena vs. Union of India & Ors., (OA No. 616/2013), decided on 18.02.2014 by C.A.T., Jaipur Bench).
- iv) Ashgar vs. Union of India & Ors., 1998 SCC (L&S) 1428.
- v) Union of India & Ors. vs. Jagdish Prasad 'G' (DB CWP No. 9323/2015), decided on 29.01.2019 by the Hon'ble High Court of Judicature for Rajasthan at Jaipur.

7. The Respondents also reiterated their stand and stated that the Applicant himself is responsible for the date of birth as he himself has counter signed his service book which was prepared in the year 1988, in which date of birth of the applicant was recorded as 10.07.1955. Thus, the Applicant has been rightly retired by the Respondents on 31.07.2015 the day when he is superannuated. Respondents further stated that the representation of the Applicant was forwarded to the competent authority to take a decision in the matter of alteration of date of birth and the competent authority has decided the matter of the Applicant and directed not to alter the recorded date of birth in the service book i.e. 10.07.1955. As the actual date of birth as recorded in the service book is 10.07.1955, therefore, Applicant stood retired on 31.07.2015. Therefore, the action of the Respondents is legal and the same is just and proper. Also the submission of the Applicant that his transfer certificate

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of 5th standard is age proof cannot be accepted. As service book of an employee is a valid document and as the same is binding on the employee, therefore, age of the Applicant according to the service book has to be considered. Thus, the O.A. filed by the Applicant is not maintainable and deserves to be dismissed.

8. The question which requires adjudication is whether rectification in the date of birth can be carried out and whether the Applicant is responsible for the clerical error.

9. After hearing the parties and perusing the pleadings, the factual matrix of the case is that Applicant was appointed as Khallasi on 16.02.1983 and was regularized w.e.f. 10.09.1990 in the pay scale of Rs. 750-940 and thereafter he has got several promotions and lastly in the year 2014 he was promoted as Technician Grade II w.e.f. 01.11.2013. With the issuance of the letter dated 13.10.2014, the Applicant was all of a sudden shocked to see his name in the list of employees who are to be retired in the year 2015 as he was due to retire only on 31.07.2019 as his date of birth was 10.07.1959. Vide letter dated

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01.12.2014, he made an application annexing several documents in his favour so as to reveal his date of birth as 10.07.1959 with a request to the authorities that his name be removed from the list of retirees of the year 2015. At the time of entry in service, he had produced Standard 5th Leaving/Transfer Certificate which clearly reveals his date of birth as 10.07.1959. Also the order issued by the Respondents for grant of temporary status reveals his date of birth as 10.07.1959 as well as several seniority lists dated 17.01.1995, 20.02.1996 & 30.07.1998 issued by the Respondents themselves show his date of birth as 10.07.1959. His pay slips as well as cover page of Leave Pass book also show the said date of birth.

10. We have also noted that it is only when the original service book of several employees which were lost by the department were re-prepared, at that juncture, the concerned officers might have committed the mistake of wrongly entering the details in service book and in haste, the Applicant without properly checking the same, has inadvertently counter signed his service book. Thus, it is clear that the Applicant has not approached the Court for change of

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date of birth but has only approached for correction of date of birth which can be perused from several documents not only of the Applicant but those of the Respondents themselves show the date of birth of the Applicant as 10.07.1959. The said fact came to the notice of the Applicant only when his name occurred in the list of retirees of the year 2015 vide letter dated 13.10.2014.

11. We have also observed that the Master Circular No. 12, with regard to the Procedure for Recording Date of Birth on Entering Railway Service and its alteration, powers are given to the General Manager being competent authority in the case of Group 'C' and Group 'D' employees to alter the date of birth in case the General Manager is satisfied that a clerical error has occurred. As seen just because the Applicant by mistake has counter signed the re-prepared service book and was unable to notice his date of birth wrongly entered by the officers of the Respondents, they cannot put the Applicant to face undue hardship. Also it is clear from the pay slips of the Applicant, seniority list prepared by the Respondents, Railway Provident Fund details, and several other documents

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of Respondents themselves which clearly go to show the date of birth of the Applicant as 10.07.1959. It is not the case of the Applicant that at the fag end of service, he wants to change his date of birth. But a clerical error can always be corrected for which merely the employee is not responsible as also the officers of the Respondents who have duly filled the details while re-preparing the service book are equally responsible.

12. We are in agreement with the judgments/orders passed in the cases of Hari Prasad Meena as well as that of Jagdish Prasad "G" (supra), relied by the applicant, which clearly observe relying upon the Hon'ble Apex Court judgment in the case of Ashgar Khan (supra), that the Applicant cannot be made to suffer for his negligence in not checking his service book and that he cannot be held responsible for the clerical error. The present case is much better than the relied ones as there are several documents of the Respondents themselves which show the date of birth of the Applicant as 10.07.1959. It was only when his lost service book was re-prepared and he inadvertently counter signed the same without properly checking the details filled in by the officers of

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the department and, thus, a bonafide clerical mistake deserves to be corrected. On the other hand, we are not in agreement with the judgment relied by the Respondents as the Applicant does not want to change his date of birth but only wants correction as date of birth recorded by the Respondents themselves as per several documents not only of the Applicant but also vital documents of Respondents which go to show that the date of birth of the Applicant was 10.07.1959.

13. We, therefore, are of the opinion that the clerical error made while re-preparing the service book of the Applicant in the year 1988 by the officers of the Respondents though counter signed by the Applicant can be corrected. In view of these observations, the impugned order dated 31.07.2015, (Annexure A/1), is quashed and set aside. We, therefore direct the Respondents to correct the clerical error made in the service record of the Applicant with regard to his date of birth and the said date of birth be corrected as "10.07.1959" instead of "10.07.1955". The said exercise of correction in service record of the Applicant to be carried out within four weeks from the date of receipt of a certified copy of the order.

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Accordingly, it would be clear that the Applicant is deemed to have retired as on 31.07.2019 and, thus, he will be entitled to all consequential benefits including promotion, if any, as would have been due to him treating him as on duty till 31.07.2019. The Respondents are accordingly required to calculate the same and make said payments within two months from the date said corrections are carried out in the service records of the Applicant. In case, the said payments as mentioned are not made, the Respondents will have to pay interest at the GPF rate as was due to be paid to him till the said payments are made.

14. In the light of the observations and directions made herein above, the present Original Application is allowed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

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