

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



O.A./350/00328/ 2020



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Umesh Kumar Singh,
C/O – Sri Bhagwan Singh,
Worked as Parcel Porter
at Asansol in Eastern Railway,
residing at C/O – Uma Shankar Singh,
Domohani Railway Colony,
Qter. No. 554/A/93, opposite Arunaday High School,
P.O. – Kali C.H.,
P.S. – Asansol North,
District – Paschim Bardhaman – 713302,
worked at Parcel Office, Malda Station
Under Sr. DCM, Eastern Railway, Malda.

..... vs. Applicant.

Versus

1. Union of India,
through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.
2. The Sr. Divisional Commercial Manager,
Eastern Railway,
Malda Division, DRM Office,
Malda – 732101.
3. The Sr. Divisional Personnel Officer,
Eastern Railway,
Malda Division, DRM Office,
Malda – 732101.

..... Respondents.

For the applicant	Mr. A. Chakraborty, Counsel
For the respondents	Mr. K. Sarkar, Counsel

Date of Order : 6.4.2021

ORDER

Per : Bidisha Banerjee, Judicial Member

Ld. Counsels were heard.

2. This O.A. has been preferred to seek the following reliefs:

"8.i) Office Order being No. ET-2/Misc/MLDT dated 14.01.2020 issued by the respondent No. 2 and communication thereof vide Office Order dated 14.01.2020 by the respondent No. 3 is not tenable in the eye of law and as such the same may be quashed.

ii) An order do issue directing the respondents to correct the date of birth entries in the service record of the applicant in accordance with school record and thereby re-instate him along with grant of all consequential benefits along with interest accrued thereon.

iii) Costs and Incidentals.

iv) Pass such further or other order or orders and other relief/s as may be deemed fit and proper in the peculiar facts, & circumstances of the present case."

3. The brief facts leading to application as under:

The Applicant was, initially, working as Casual Parcel Porter in Eastern Railway at Asansol and, even after completion of considerable time period in such capacity when he was not absorbed he preferred a Writ application being W.P.(Civil) NO. 90 of 1997, through a Union in which order for regularization and absorption was passed by the Hon'ble Apex Court of India subject to certain terms and conditions. Railways issued one letter being No. CCN/P.Porter/Regn.96 dated 12.01.1999 seeking full particulars from the candidates and the applicant. Accordingly, he submitted full particulars in prescribed proforma and submitted the same on 03.02.1999. 126 candidates were ordered for screening and selection by the Railway Administration in the year 2000 and, accordingly, Office order dated 07.11.2000 was issued to the applicant asking him to attend the Railway Office with documents in support of date of birth, education qualification, caste certificate character certificate and required number of passport size



photos duly attested by Gazetted Officer and accordingly the applicant submitted all such documents. Even after submission of all the documents, the Railways did not make entry of the correct date of birth of the applicant. It was learnt that the entry of the date of birth of the applicant has been made as on 01.01.1955. Medical board was conducted where the applicant was ordered to sign on the medical papers and he did so, but substance and materials filled in on medical papers had not been read over or explained to him. No a copy of the report of medical board was furnished to him. For which he was never aware of the contents thereof and was never in a position to raise objection against any wrong recording. That it is well settled principle that the date of birth of a candidate recorded in educational certificate is the concrete and authenticate one. More so, after the completion of medical process and before appointment the attestation form had been obtained and accepted by the Divisional Personnel Officer of the Eastern Railway which contains the correct date of birth of the applicant i.e. 02.02.1966. Applicant approached the authorities on many occasions for making entry of his correct date of birth in the railway records but to no avail. He preferred one OA No. 350/1909/2018 which was disposed of on 23.12.2019 with a direction to look into the grievances of the applicant and to consider the same in terms of the judgment and to pass appropriate order within a stipulated period after giving oral hearing. That, vide one office order dated 08.01.2020 the applicant was directed to appear before respondents on 14.01.2020, on which all the documents and judgments were again placed. That the respondent NO. 2 pass a speaking order dated 14.01.2020 rejecting his prayer on the ground that his claim cannot be considered at the fag end of his service. The speaking order was communicated to the applicant vide letter dated 14.01.2020 of the respondent No. 3 thereby advising the applicant to fill up the pension booklet.

The applicant has pleaded that the speaking order is not tenable in the eye of law since all the educational certificate was submitted by the applicant showing his date of birth on 02.02.1966 and attestation form submitted to that effect was duly accepted by the railways in 2000 that the respondents committed a blatant error in wrongly recording the same in the service book of the applicant and thereby compelling him to retire before he attained the age of 60 years. Hence, this application.

4. At hearing both the sides were directed to produce the documents in support of their claim.

The documents furnished by applicants which forms part of records are as under:

A Transfer Certificate dated 15.8.84 in Hindi vernacular. That bears the following:

Date of birth as 2.2.1966

Date of entry in school as 22.1.1977

Date of Leaving School as 31.12.1980

Class as Eighth passed.

The documents furnished by Respondents:

1. Vide letter dated 7.11.2000 the applicant was asked to furnish the following:

No. E (T-2)/Commr./Arrgt/P. Porter

Asansol, dt. 7.11.2000.

To Sri Umesh Kumar Singh
Sri Bhagwan Singh
R. K. Dangal, Railpar,
PS&PO - Asansol,
Distt- Burdwan.

Sub: Regularisation of Parcel Post
Hon'ble Supreme Court's order, dt
16.10.98 in Writ petition Civil
No. 90/1997.

In connection with the above, you are advised to immediately attend this office on any working day with the following original documents:-

- i) Certificates in support of your Date of Birth & Educational Qualification (School/College certificates or Affidavit).
- ii) Caste Certificate, if any.
- iii) Character certificate issued from Gazetted officer.
- iv) 04 copies of your recent passport size photographs duly attested by a Gazetted Officer.

for Sr. Divl. Personnel Officer,
E. Rly, Asansol.

2. The form filled up by the applicant on 2.2.99 as under:

The Divisional Railway Manager,
Eastern Railway, Asansol.

Sub: Order passed by the Hon'ble Supreme Court
of India on 16.10.98 in writ petition (civil)
No. 90 of 1997 - Railway Parcel and Goods
Handling Mazdoor Union - vs - Union of India
and others.

Ref: Your letter No. ODM/P. Porter/Regn/96 dt. 12.01.99

Sir,

In connection with the above the particulars of the
302 petitioners in detail as asked for vide your letter quoted
above is as under for your information and further action from
your end.

NAME - UMESH KUMAR SINGH
PRESENT HOD - C/o SRI BHAGWAN

: R.K. DANGAL, RAILPAR
PS - P. ASANSOL, DIST - BURDWAJ
PERMANENT ADD - VILL - P.D. - MOT
PS - MADHULURA, DIST - CHHAPRA
STATE - JHARKHAND

1. Complete postal address,
both present and permanent
station etc.

2. Father's name

SRI PRAHLAD SINGH

3. Station of working

ASANSOL

4. Date of birth

22/02/1976

Community

HINDU (UR)

5. Date of engagement as labour

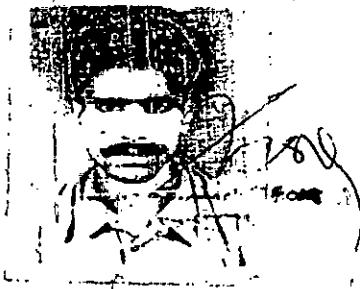
09/05/1984

6. Qualification

CLASS VIII PASSED

7. Identity card duly issued

YES



Date: 22/02/99

Yours faithfully,
Gopal K.

TOKEN NO. 33
(Petitioner No. 1000 of
the above case)

3. Attestation form filled up on 29.12.2000 which shows that the

applicant had duly declared his date of birth as 2.2.1966 with the TC

dated 15.8.84.

4. Service book entered in 4.7.2008 which shows date of birth as 1.1.60.

5. The reason why the entry in service book 8 years after his regular
appointment in 2002 was made as 1.1.60, instead of 2.2.66 is neither

comprehensible nor countenanced. The entry made by respondents in the service book is without any basis.

6. The applicant has heavily relied upon a decision of this Tribunal in MoD

Narayan Singh and Probal Chatterjee.

7. In Mod Narayan Singh this Tribunal having considered the following

decisions:

- (1) *Union of India -vs- Harnam Singh [1993 (2) SCC 162];*
- (2) *Md. Ynus Khan -vs- U.P. Power Corporation Ltd. & Ors [2009 (1) SCC 80];*
- (3) *State of Tamil Nadu -vs- T.V. Venugopalan [(1994) 6 SCC 302];*
- (4) *State of Punjab -vs- Mohinder Singh [Appeal (Civil) 3739 of 2005] [SLJ 2005 (2) pg 477];*
- (5) *Kamta Pandey -vs- M/s BCCL through its Chairman cum Managing Director, Koyla Bhawan, Dhanbad & Ors. [2007 (3) JLJR 7216];*
- (6) *Ramanand Tiwary -vs- Indian Iron & Steel Co. Ltd. [LPA 493 of 2000];*
- (7) *Dy. Commissioner of Police, Special Branch & Ors. -vs- Bhupesh Ranjan Karanjai & Moti Ranjan Bhattacharyya;*
- (8) *Home Department -vs- R. Kirubakaran [1994 Supp (1) SCC 165];*
- (9) *Union of India -vs- C. Rama Swamy [1997 (4) SCC 647];*
- (10) *Punjab & Haryana High Court at Chandigarh -vs- Meghraj Garg & Anr. [(2010) 6 SCC 482];*
- (11) *State of Madhya Pradesh & Ors. -vs- Preme Lal Shrivastav [2011 (9) SCC 664];*
- (12) *State of U.P. -vs- Shiv Narain Upadhyaya [2005 (6) SCC 49];*
- (13) *Eastern Coalfields Ltd. -vs- Bajrangi Rabidas [2014 (13) SCC 681];*

An extract of the discussions made in the order is as under:

"8. In regard to correction of date of birth after entry in service the following legal position could be noticed:

- (i) *In Union of India -vs- Harnam Singh [(1993 (2) SCC 162] the Hon'ble Apex Court x x x observed as under : (extracted with supplied emphasis for clarity)*

"... The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if

there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

(ii) In Md. Yunus Khan -vs- U.P. Power Corporation Ltd. & Ors. [2009 (1) SCC 80] the Hon'ble Apex Court noticed that there was still a period of about four years before appellant was to retire on the basis of his uncorrected date of birth. Hence it held

"his request for correction should have received favourable consideration".

(iii) In State of Tamil Nadu -vs- T.V. Venugopalan [(1994) 6 SCC 302] Hon'ble Apex Court has held thus

"It is well known that the service record would be opened after the government servant enters the service and normally the entry in service record would be countersigned by the government servant. The date of birth as entered in the school record is the source of materials for making entry in the service record."

(iv) In State of Punjab -vs- Mohinder Singh [Appeal (Civil) 3739 of 2005] [SLJ 2005 (2) pg 477] the Hon'ble Apex Court held that

"...Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam."

(v) In Kamta Pandey -vs- M/s BCCL through its Chairman cum Managing Director, Koyla Bhawan, Dhanbad & Ors. [2007 (3) JLJR 7216] Hon'ble High Court of Jharkhand at Ranchi found that "Matriculation Certificate issued by recognised Educational Board has been obtained by an employee before his employment, and the date of birth as per Matriculation Certificate having been mentioned in I. Card issued by Company, immediately after appointment". The Hon'ble Court held

"If the Court is fully satisfied that there has been real injustice to the person concerned and his claim for correction has been made in accordance with the procedure prescribed and when a clear case relating to date of birth is made out on the basis of clinching materials, necessary direction to make a declaration of said date of birth can be given".

(emphasis supplied)

(vi) In Ramanand Tiwary -vs- Indian Iron & Steel Co. Ltd. [LPA 493 OF 2000] the Hon'ble High Court of Jharkhand at Ranchi considered the following facts :

"The petitioner-appellant was appointed as a General Mazdoor in the company of the respondents on 20.2.1970. After 10 years, on the basis of his Matriculation certificate containing his date of birth as 31.12.1950, he was promoted to the post of Attendant Clerk on 23.5.1980. Though the appellant submitted his Matriculation Certificate and other Certificates containing his date of birth to be 31.12.1950 the respondents asked him to appear before the Medical Board. Accordingly he was subjected to the medical test. The Medical Board on 29.9.1989 on physical assessment of the appellant, found him to be 40 years of age. As per the report of the Medical Board his date of birth was 29.9.1949".

The Hon'ble Court therefore held as under :



"We are of the considered opinion that the respondent authorities committed grave illegality in issuing the letter impugned treating his date of superannuation as 31.1.2006, since as per the Matriculation Certificate his is to retire on 31.12.2010. Accordingly, the impugned letter is quashed, the order of the learned Single Judge is set aside and the respondents are directed to correct the petitioner-appellant's age in their records in terms of the Matriculation Certificate and pass consequential orders, like reinduction into service with all the benefits and allow him to continue till he attains superannuation."

(emphasis supplied)

(vii) In Dy. Commissioner of Police, Special Branch & Ors. -vs- Bhupesh Ranjan Karanjai & Moti Ranjan Bhattacharyya, rendered by Special Bench of Hon'ble High Court at Calcutta on 26.3.93,

"...the moot question for determination was whether a Government servant can apply for correction of date of birth subsequent to his entry in service on production of a Matriculation Certificate which could not be produced at the relevant time for the purpose of recording of the date of birth which would be contrary to the date of birth recorded in the service book or declared at the time of entry in his service".

Hon'ble Court held:

"In service jurisprudence, the principle of estoppels cannot be strictly applicable so as to debar a person from coming forward with correct facts and figures so as to enable the authority concerned from correcting the same to take a decision thereof."

Hon'ble Court considered the implications of the Rules 9(1), 9(3), 9(4) and 9(5) of WBSR Part I, 197 and held as under :

"The expression, 'no right to revise it subsequently' appearing in Rule 9(1) of the West Bengal Service Rules, Part I, means that the Government Servant has no right to revise the declaration already submitted in Form I. IN other words, he is precluded from revising his own declaration as of right. This does not take away his right to apply for rectifying an apparent mistake or error before the appointing authority or the State Government, as the case may be, for invoking the power of review was specifically provided in Rule 9(5) of the Rules.

The binding effect of the declaration under Rule 9(1) of the said rules would arise only when the declaration was made with a copy of the matriculation certificate and whereupon under Rule 9(3) of the said rules the authority has passed an order. A simple declaration under Rule 9(1) without anything more, cannot create a total bar to apply for correction on the basis of the matriculation certificate.

Thus in order to disentitle a Government employee from asking for revision of the date of birth there must be an order under Section 9(3)(4) and that when the date of birth is recorded on the basis of the matriculation certificate the same could not be allowed to be reopened at the instance of the Government servant. On a plain reading of Rule 9(5) of the said Rules it is clear that a government servant can apply for review of his date of birth recorded in the service record if he can make a good and sufficient case on production of some relevant document. The power of review under Rule 9(5) could only be invoked on the basis of the principles of review for correcting the error apparent on the face of the record and for the purpose of taking into of new and additional evidence."

It was considered the following decisions where contrary view was taken

(i) *In Home Department -vs- R. Kirubakaran [1994 Supp (1) SCC 165]*

"...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. Before any such direction is 3 1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276 : (1993) 23 ATC 4'(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92 issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. x x x The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove the wrong recording of his date of birth, in his service book."

(vi) *In Union of India -vs- C. Rama Swamy [1997 (4) SCC 647]* the Hon'ble Apex Court held:

"...It will not be unreasonable to presume that when a candidate at the first instance communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing office."

(iii) *In Punjab & Haryana High Court at Chandigarh -vs- Meghraj Garg & Anr. [(2010) 6 SCC 482]* Hon'ble Apex Court held, where the respondents had sought for correction of date of birth recorded in his service book, after 12 years of his joining the service, as clearly misconceived.

(iv) *In State of Madhya Pradesh & Ors. -vs- Prem Lal Shrivastava [2011 (9) SCC 664]* although the Hon'ble Apex Court observed that change of date of birth in service record at fag end of career is to be permitted only in exceptional cases on irrefutable proof, the Hon'ble Court held

"On facts held, High Court committed manifest error in allowing change of date of birth after lapse of over two decades notwithstanding that no period for filing such application was prescribed."

(v) *In State of U.P. -vs- Shiv Narain Upadhyaya [2005 (6) SCC 49]* while reiterating the aforesaid proposition of law the Hon'ble Apex Court castigated the practice of raising dispute by the public servant about incorrect recording of date of birth in their service book on the eve of their retirement.

Further the following propositions were also noted:

In Eastern Coalfields Ltd. -vs- Bajrangi Rabidas [2014 (13) SCC 681] the Hon'ble Apex Court found the following:

"... there can be no iota of doubt that the date of birth mentioned in Matriculation or Higher Secondary certificate has to be accepted as authentic."

A sum up of legal propositions enumerated hereinabove would be as under:

(1) A Government servant who has declared his age at the initial stage of the employment is not precluded from making a request later on for correction of his agexxx.....xxx.....xxx.... if he is in possession of an irrefutable proof relating to his date of birth as different from the one earlier recorded and even if no period of



limitation was prescribed for seeking correction of date of birth the Government servant must do so without any unreasonable delay: (*Harnam Singh* *supra*)

(2) 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. (R. Kirubakaran *supra*)

(3) A Tribunal or a Court must be "fully satisfied that there has been real injustice to the person concerned and his claim for correction can be made in accordance with the procedure prescribed and within the time fixed by any rule or order. (R. Kirubakaran *supra*)

(4) Correction of date of birth can be allowed even at the fag end of service when a clear case, relating to date of birth is made out on the basis of clinching materials. (Kamta Pandey Supra).

(5). The onus is upon the applicant to prove the wrong recording of his date of birth in his service book.

(6) The date of birth entered in the school record is the source of materials for making entry in the service records. (T.V. Venugopalan *supra*).

(7) *Entries in school register and admission form regarding date of birth constitute good proof of age. (Mohinder Singh supra)"*

This Tribunal having considered the matter as such held as under:

"12: That apart, law is well settled that in absence of birth certificates, Matriculation Certificates or School records have a higher probative value for determination of date of birth which the Railway Rules also amply recognise, as indicated supra. The certificates which constituted irrefutable proof of their age being available there was no occasion for the respondents to record the date of birth as per age determined by a Medical Board in violation of their own statutory rules (Para 225 *ibid*). They could resort to such a procedure only upon failure on part of the applicants to declare their age with sufficient proof. They were bound by their own explicit provisions.

13. Furthermore, there were no provisions in the rules which would allow on the basis of a screening committee's recommendations, ascertainment of age through a Special Medical Board when irrefutable proof in regard to date of birth was available. Therefore the date of birth in the case of applicants were not recorded in accordance with para 225 *ibid* and as such it could not held to be binding in terms of para 225(4) *ibid* and also it could be altered on the basis of irrefutable proof.

14. It could be further noticed that the service record entries were made only in 2004 (as Mod Narayan (Singh's record would reveal) and not in 2000 as claimed by the respondents. Therefore it is not a case where a change of date of birth was sought by the applicants long after their entry into records, or at the fag end of their career or that the erroneous recording of date of birth was at the behest of the applicant or that a change in the recorded date would exemplify and demonstrate that the applicants had gained entry unscrupulously; by suppressing their actual age in order to gain undue advantage.

15. In such view of the matter the impugned orders of the OAs are quashed and the respondents are directed to correct the date of birth entries in the service records of the applicants, in accordance with their Matriculation Certificates/ School records and pass appropriate order within two months from the date of receipt of the copy of this order."

In *Probal Chatterjee* [O.A. 1139/2018] this Tribunal held as under:

2. The grievance of the applicant in a nutshell is that his date of birth has been wrongly recorded as 11.01.1960 in place of 11.01.1965 ignoring the original documents and admit card which were submitted before the authority concerned. His representation, with all documents, was not considered. The applicant alleges that the act and action on the part of the railway authorities is in utter violation of the principle of natural justice and equity.

3. Per contra, to refute his claim, Ld. Counsel for the respondents would place the extract of service record of the applicant which demonstrates that the applicant has put his signature on the page which records his date of birth as 11.01.1960. Further, Admit Card of West Bengal Board of Secondary Education, a Check List, Proforma for Family Declaration and Application Form, all bear date of birth as 11.01.1960.

4. Ld. Counsel for the applicant would strenuously urge that the applicant should not suffer for the erroneous recording of date of birth as 11.01.1960 when the certificate of Madhyamik Pariksha, which has the highest probative value in the matters of dispute in date of birth, bears his date of birth as 11.01.1965.

5. We heard the Ld. Counsels and perused the materials on record.

6. In view of the fact that date of birth in Admit Card of Madhyamik Pariksha has highest probative value, the authorities are directed to ascertain from the West Bengal Board of Secondary Education the correctness of the Admit Card and other Certificates (Annexure-A/2 to the O.A) and to act accordingly.

In the aforesaid backdrop, we would note that the respondents have miserably failed to justify why a deliberate wrong entry of date of birth (as 1.1.60) was made in the service book in 2008 when the applicant had declared and produced all the documents bearing his date of birth as 2.2.66 at the time of verification of documents in 1999 and before his entry into service in 2000.

8. Having considered the rival contentions and having noted the deliberate wrong entry made in the service book we direct the authorities to verify the genuineness of the TC and correct the Service Book entry to allow the applicant to reap benefits of the same.

No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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