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Central Administrative Tribunal, Allahabad.

Registration T.A.No.257 of 1987 (C.M.Writ Petition No.15609/1985)

Binoy Bhusan Ghosh and after
his death, his ~~ascendants~~ ^{heirs} ... Applicants
Vs.
General Manager Northern Railway
and 2 others ... Respondents.

Hon.G.S.Sharma, JM

This transferred application involving the question of date of birth is a writ petition and has been received by transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The original petitioner Binoy Bhusan Ghosh had filed this petition on 30.10.1985 with the allegations that he had joined the erstwhile East Indian Railway on 11.11.1949 as Cleaner under Assansol Division and was transferred to Allahabad in the same capacity in 1951 and in due course, was promoted as Driver Grade 'B' in 1982. He was born on 5.11.1931 but by mistake his date of birth was wrongly recorded as 5.11.1927 in his service book. It was only after the circular letters dated 4.8.1972 and 23.8.1972 issued by the Railway Board the petitioner came to know about this mistake and he accordingly made a representation to the Divisional Railway Manager (for short DRM) Allahabad-respondent no.2 on 11.7.1973 for correction of his date of birth. He had filed an affidavit of his father's sister Smt. Saila Bala Basu aged 69 years in support of his contention contained in the representation but the respondents did not correct the mistake in his service record regarding his date of birth.

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It is further alleged that the petitioner was born in Eastern Bengal now known as Bangla Desh and due to communal riots in the years 1948-49 and thereafter military action in 1971, the petitioner could not get any trace of the original documents regarding his date of birth and as his date of birth was wrongly recorded in the service book without any basis, the petitioner is entitled to get the same corrected. He accordingly prayed that the respondents be directed to dispose of his representation for correction of date of birth in accordance with law and not to retire him from service before Novr.1989.

3. The petition has been contested on behalf of the respondents and in the counter affidavit filed on their behalf by the Asstt. Personnel Officer, Allahabad, it has been stated that before giving the appointment, the petitioner was sent for medical examination on 5.11.1949, ^{and in the medical certificate} wherein his date of birth was shown 22 years and he had signed the said medical certificate. According to aforesaid medical certificate dated 5.11.1949, his date of birth was recorded 5.11.1927 which was in accordance with Para 145 of the Indian Railway Establishment Code Vol.I (hereinafter referred to as the Railway Code) and the petitioner had signed on the first page of the service book containing the said entry regarding his date of birth in English. His allegation to the contrary that he knew about this mistake only in 1973 is not correct. The petitioner was required by the respondents to submit documentary evidence in support of his date of birth but he could not furnish any proof and as such, he was rightly retired on reaching the age of superannuation according to his recorded date of birth 5.11.1927. The affidavit filed by the petitioner was not acceptable and is not a genuine one. In any case, the affidavit has got no evidentiary

A3
3

value and the petitioner has failed to make out any case for an alteration in the date of birth. The petition is barred by time and deserves to be rejected.

4. In the supplementary affidavit and rejoinder it was stated by the petitioner that the retirement of the petitioner without deciding his representation for correction of his date of birth and without giving him an opportunity of hearing ~~his~~ arbitrary and violates Art. 14, 16 and 21 of the Constitution of India. It amounts to premature retirement and is hit by Art. 311 of the Constitution. It was further stated that there was no basis for recording his age 22 years in his service record at the time of his appointment and the respondents should have corrected his date of birth in view of the affidavit filed by him and it is incorrect to say that the affidavit is not acceptable while clause 10 of the instructions regarding proper maintenance and custody of service record of non-gazetted staff provides that the particulars are required to be recorded on the basis of the affidavits. It was beyond the control of the petitioner to furnish any other proof of his date of birth on account of the subsequent events of partition and military action and the entry regarding the date of birth of the late petitioner deserves to be corrected.

5. The petitioner died during the pendency of the writ petition before this Tribunal and his legal representatives were brought on record. There is no dispute between the parties on the point that the petitioner had joined the service of the then ~~Eastern~~ Indian Railway on 11.11.1949 as a Cleaner and he was transferred to Northern Railway Allahabad in 1951 and in due course, was promoted as Driver Grade 'B'. It has also not been disputed that he was born at some place, which is now situate in Bangla Desh. The petitioner has been signing in

23/2

English from the very beginning and it is also not ^{otherwise} in dispute that he was an English knowing person. According to his service record, he was born on 5.11.1927 while according to him, he was born 4 years after on 5.11.1931.

6. It has been contended on behalf of the petitioner that the respondents have not been able to establish by any reliable material on record as on what basis the entry regarding the date of birth of the petitioner was made in the service book and in the absence of this, the affidavit filed by the petitioner of his old aunt should be accepted in support of his contention. Both the parties placed their reliance on the old para 144 (wrongly mentioned as 145) of the Railway Code which ran as follows :-

"144. Date of birth-(1) 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 employee's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior subordinate and witnessed by another railway servant.

2(a) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 1st January, 1938 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1920.

(c) Where the person concerned is unable to state his age, it should be assessed by a Railway Medical Officer and the age so assessed entered in his record of service in the manner prescribed above. "

7. The contention of the respondents is that at the time of his appointment the petitioner had stated himself of 22 years and on this basis, under clause (b) of Para 144 (2) aforesaid, his date of birth 5.11.1927 was rightly recorded in his service book and the contention of the petitioner that there was no basis for recording his this date of birth is not correct. The original service book of the petitioner has been produced before the Tribunal and it shows that in the particulars of his service, 5.11.1927 has been recorded as his date of birth both in words and figures. The entry bears his signatures in English as well as his thumb impression. The petitioner has not furnished any explanation as to how he signed this entry containing 5.11.1927 as his date of birth and in the absence of this explanation, much weight cannot be attached to the various contentions raised before me.

8. It further appears from the service record that the petitioner was medically examined during his service career atleast five times and in the medical certificates, each time his age was recorded by the Medical Officer and the certificates were signed by the petitioner in English. I will like to reproduce below the age of the petitioner as recorded in the said medical certificates:-

<u>Sl.no.</u>	<u>Date of certificate</u>	<u>Age</u>
1.	5.11.1949	22 years.
2.	11.11.1952	25 years.
3.	1.11.1955	28 years.
4.	10.11.1964	37 years.
5.	27.11.1972	45 years.

According to the age recorded in these certificates, the petitioner was born in 1927 and not in 1931. It appears to me

that the age of the petitioner was recorded by the different Medical Officers in the medical certificates of the petitioner either on the basis of his original service record or on the declaration made by the petitioner before them. The Medical Officers were never entrusted with the responsibility of assessing the age of the petitioner and as such, the age recorded in the certificates is not based on their assessment but was recorded either on the basis of the service record or on the basis of the declaration made by the petitioner as above. The petitioner being an English knowing person never objected to the age recorded in the said certificates repeatedly on a number of times. It is, therefore, not correct to say that before 1973 the petitioner never knew about the date of birth recorded in his service record. I find from the service book that the petitioner had applied for loans to the authorities and in the printed application forms for loans, he was required to mention the date of his superannuation but he deliberately omitted to make any entry in the relevant column each time. This further shows that the petitioner was conscious of his real date of birth and with ulterior motive he left the column blank to twist his case according to his requirement when necessary in this connection. I am, therefore, satisfied that the age of the petitioner was recorded in the manner required by Para 144 of the Railway Code and was rightly acknowledged to be correct by him and his contention to the contrary is not correct.

9. The petitioner had submitted an affidavit of his aunt Smt. Saila Bala Basu but this affidavit is very vague. Even the place of birth of the petitioner has not been recorded in this affidavit. The deponent being the aunt was naturally interested in him. It is thus an affidavit of an interested person and in view of the vagueness, much reliance cannot be placed on it. The respondents relied on Jagarnath Lalla Vs. Union of India (1987 (3) A.T.C.-241) in which the Calcutta

Bench of the Tribunal had observed that the declaration of the employee about his date of birth ^{in his affidavit} has little evidentiary value. On the other hand, reliance has been placed on behalf of the petitioner in Bhanwar Singh Vs. State of M.P. (A.I.R.1963 M.P.-335) in which, it was held that where the date of birth of a Government servant as mentioned in the service book is put down not on the basis of the information supplied by the servant or any scientific basis ^{or} tangible material but on the basis of a surmise of a Medical Officer by only looking at him, the retirement of the government servant on the basis of the said date of birth will amount to punishment of removal from service. In my opinion, this ruling does not help the petitioner as in the present case the date of birth was recorded in the service book on the information supplied by him and not on the basis of a report or certificate of the Medical Officer.

10. The petitioner has further placed reliance on Udai Ram Vs. N.Railway (1986A.T.C.-78); D.N.Vaidya Vs. Union of India (1987(4) A.T.C.-32); and Hira Lal Vs. Union of India (1987(3) A.T.C.-130) in which it was held that in the absence of any rule to the contrary, a Government servant cannot be precluded from showing that the entry made in the service record is wrong and the mistake can be corrected even at late stage. I have carefully considered the various contentions raised on behalf of the petitioner and find that in the instant case, the entry regarding his date of birth having been recorded in service book according to rules, it was for the petitioner to establish that this entry was incorrect. Except the affidavit of his own aunt, he could not furnish any other proof in support of his contention and in view of the fact that the affidavit is of an interested person and is vague and the petitioner

A3
2

repeatedly acknowledged the date of birth as recorded in his service record without raising any objection, he has failed to establish that the date of birth as recorded in his service book is incorrect. The petition has, therefore, no force and his contention is liable to be rejected.

11. The petition is accordingly dismissed without any order as to costs. The respondents are directed to settle the retirement dues of the deceased petitioner and pay the G.P.F. Gratuity, arrears of pension and other dues, if any, of the original petitioner to his ^{legal heirs} ~~dependants~~ according to law within a period of three months from the date the copy of this order is received by them.

G.S. Sharma
12/1/88
(G.S. Sharma)

MEMBER (J)

Dated: 12th January, 1988
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