

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Transfer Application 1398 of 1987

(W.P. No. 10641 of 1984)

Sohan Lal Shrawan Petitioner

Versus

1. Union of India through the Secretary,
Ministry of Communication, post and
Telegraph Department, New Delhi.
2. Post Master General, U.P. Circle, Lucknow.
3. Post Master, Kanpur.

. Respondents.

Hon'ble Mr. S.N. Prasad, Member (J)

The above Misc. writ petition No. 10641 which was filed in the High Court of Judicature at Allahabad, has been received in this tribunal by way of under section 19 of the Administrative Tribunals, Act 1985 and has been numbered as T.A. 1398 of 1987.

2. Briefly, stated the facts of the case, inter-alia, are that the petitioner belongs to scheduled caste and previously known as Ghasite Prasad, was appointed in the department of Post and Telegraph in the year 1949. He wanted to change his name and hence complying with all the formalities, he was permitted to be known as Sohan-Lal Shrawan instead of Ghasite Prasad with effect from 6.4.1957 vide memo dated 2.4.1959 (annexure-1 to this writ petition. The petitioner passed his High School Examination in the year 1962 from Mahatma G andhi Intermediate College, Mandhana with roll No. 228001, and his date of birth as shown in High School certificate is 26.7.1930, which is the authentic date of birth (annexure 3 to this writ petition). After passing High School Examination, the petitioner became entitled for the higher grade and post ^{was} ~~he~~ clerk w.e.f. 24.5.1973 and was confirmed in the said post.

Contd...2/-

in the said post on 1.5.1982. The name of the petitioner in the gradation list duly corrected upto 1.7.1983 appears at serial No. 180 and his date of birth as ~~appeared~~ per records of the respondents has been shown as 26.7.1930 in column No. 4 and as such 26.7.30 is the confirmed, accepted and duly recorded date of birth of the petitioner (annexure 4 to the petition). On 7.7.1984 the petitioner was served a notice of superannuation dated 23.5.1984 intimating the petitioner that he was permitted to retire from Government Service on attaining the age of superannuation w.e.f. 31.7.1984 (A.N. ~~X~~ vide annexure 5 to the petition); whereupon the petitioner vide his letter date 9.7.1984 represented in writing to the respondents No. 3, inter-alia, requiring to correct the said mistake and to withdraw the notice as well as noted that he will superannuate on 31.7.1988 but his request has not been accepted by the respondents hence, the petitioner filed the petition with the prayer for quashing the aforesaid notice of superannuation dated 23.5.1984 and for directing the respondents to record the date of birth of the petitioner as 26.7.1930 in his ^{Roll} Service and not to retire the petitioner before 31.7.1988 and for further direction to the respondents not to interfere in the discharge of his duties and to pay all the benefits to the petitioner.

3. The counter-affidavit has been filed by Shri K.D. Singh, deputy post master (Gazette) district, Kanpur, on behalf of the respondents wherein it has been stated, inter-alia, ~~are~~ that the petitioner entered in the post and Telegraph service, as village post man w.e.f. 14.1.1949 and at the time of his entry in the Post and Telegraph Department, his name was Ghasite Prasad, son of Sri Nanhe Lal and he signed the 1st page of service roll on 12.1.1949 to confirm the particulars filled in the by the Inspector, Post Offices, Kanpur. His date of

birth was recorded as 31.7.1926. The petitioner desired to change his name from Ghasite Prasad to Soham Lal Sharwan and accordingly, the Inspector of Post offices, Kanpur sub-Division permitted this change vide his memo dated 2.4.1959. Under the incentive scheme the petitioner was promoted as clerk in the year 1972 and he joined as clerk on 22.5.1973 on account of passing High School while remaining in service. The date of birth of the petitioner remained the same, ^{at} ~~that~~ In the gradation list corrected upto 31.7.1973 and in the gradation list of Post-Men corrected upto 1.7.1975 ^{and upto 31.7.78} the date of birth of the petitioner was shown as 31.7.1926, but in the gradation list of 1983, the date of birth of the petitioner was erroneously noted as 26.7.1930 instead of 31.7.1926, and that error was rectified by the corrigendum which was issued on 12.5.1984 confirming the date of birth of the petitioner to be 31.7.1926 (vide annexure C.A-5 to the counter-affidavit). The order of the superannuation of the petitioner was issued in conformity ^{with} ~~his~~ his date of birth ~~as~~ written in his service roll as 31.7.1926. It has further been stated that as per service condition date of birth of Government servant can not be altered in service record unless it is found to be clerical mistake, and since the date of birth of the petitioner as recorded in his service roll at the time of his initial appointment as 31.7.1926 is his correct date of birth and the petitioner has been accepting the same since the very inception of his appointment, and his date of birth is not 26.7.30 and the petitioner has for the first time at the page number of his retirement after the receipt of the notice of his superannuation ~~and~~ has moved an application on 9.7.1984 which is an after thought and should not be

allowed and in the above circumstances the petition of the petitioner is liable to be dismissed with cost.

3. I have learned counsel for the parties at length and have thoroughly and carefully gone through the record of the case.

4. The learned counsel for the ^{petitioner} (applicant) while drawing my attention to the contents of the petition and to the papers annexed thereto and to the first page of the service roll of the petitioner, has argued that at the time of his initial appointment the petitioner was not a literate person and had not signed the first page of the service roll, and has further argued that the signature in English "Ghasite Prasad" and as well as the signature in English "Sohan Lal Sharwan" purporting to be signature of the petitioner are infact not signature of the petitioner, as the petitioner never signed the first page of his service roll, and has further argued that during his service period, the petitioner never saw the first page of his service roll, and has further argued that the writing in English and as well as in Hindi appearing on the first page of the service roll of the petitioner were written by the Inspector concerned or official concerned; and has further argued that the gradation list corrected upto 31.7.1973, 1.7.1975 and 31.7.1978 as shown in annexure C-A-3, C.A.-4, C.A.-4(i) were not issued to the petitioner and the petitioner had no knowledge at all about these seniority lists, and has further argued that seniority list corrected upto 1.7.1983 (vide annexure 4 to the petition) clearly shows the date of birth of the petitioner as 26.7.1930 against serial No. 180 and as such the date of birth of the petitioner as recorded in his High School Certificate (annexure 3) should be deemed to be correct and authentic; and has further

argued that High School Certificate has itself its own evidentiary value and the onus of the proof to assail or falsify the date of birth as 26.7.1930 as written in the High School certificate of the petitioner lies heavily on the respondents; but respondents have failed to do so; and has further argued while drawing my attention to the order sheet dated 19.9.1991 and to the certificate dated 13.12.1948 issued by the principal, Bhagwant Nagar School District HarDOI (copy whereof is annexed to the application dated 11.11.1991), that the above certificate dated 13.12.1948 also proves that the date of birth of the petitioner is 26.7.30 and as such the petition should be allowed and the relief sought for be granted to the petitioner, and in support of his arguments has placed reliance on the following rulings :-

(i) (1990) 12 Administrative Tribunals Cases 804, "Thaneswar Baruah (applicant) Vs. Union of India and others (respondents) at page 804, wherein it has been enunciated :-

"Date contained in certificate not rendering him underaged at the time of entering service- In such circumstances, despite the attestation and despite the delay, claim to correction of the recorded date of birth allowed and order of retirement based on the recorded date of birth set aside."

(ii) (1989) Administrative Tribunals Law Times, Vol-II Shaukat Ali (petitioner) Vs. Indian Airlines (Respondent) at page 517, wherein it has been enunciated :-

"Constitution of India-Art 226-Change of date of birth on the basis of School Leaving Certificate-Certificate produced on the eve of retirement as per original date of birth-Certificate admitted to be genuine-Whether School Leaving Certificate be rejected on ground of delay ? (No)."

(iii) All India Service Law Journal 1963(1), S.S. Sandhu (petitioner) Vs. Union of India and others (Respondents) at page 475 wherein it has been enunciated:-

A-2
6

:: 6 ::

"Date of birth recorded in Matriculation certificate-Onus to prove that the same is incorrect on any one who wanted to say that the same is wrong."

(iv) A.I.R. 1989(1) C.A.T. (Principal Bench, New-Delhi) *J.S. Sehgal (Petitioner) vs. Union of India and others, et al.* wherein it has been enunciated :-
~ 628

"Date of birth recorded in the matriculation certificate is ordinarily reliable and the onus of proving that the same is incorrect is on the person who disputes it."

5. The learned counsel for the respondents has drawn my attention to the contents of the petition of the petitioner, particularly para 7 of the petition, and to the contents of the counter-affidavit and the annexures *C.A-1 to C.A-5* and has also drawn my attention to the first page of the service roll of the petitioner; and has argued that a careful perusal and visual examination of the entries appearing at page first of the service Roll of the petitioners, inter-alia, reveal that the petitioner Ghasite Prasad (as named formerly), who was appointed on the post of village post Master made his signature in English and below his signature had put date "12.1.1949" and after the change of his name from Ghasite Prasad to Sohan Lal Shrawan, he had made his signature as Sohan-Lal Shrawan in English" against item No. 9 meant for signature, and both signatures are in different inks; and has further argued that the petitioner passed High School examination in the year 1962 i.e. after 12 years of his appointment; as a private candidate from *the Centre* Mahatma Gandhi Intermediate College Mandhana, Kanpur, as would be obvious from the perusal of Annexure-3 to the petition itself and not as regular student of the aforesaid intermediate college, and has further argued that though the petitioner passed High School examination in the year 1962 but he did not submit any application to the

Contd...7/-

department concerned to change his date of birth according to his date of birth as recorded in the aforesaid High School certificate, and has further argued that the petitioner even after the issue of the seniority lists as corrected upto 31.7.1973, 1.7.1975 and 31.7.78 did not file or submit any application to change his date of birth; though in the seniority list (vide C.A.-2, ~~C.A.-3~~, C.A.4, and C.A.4(i)) his date of birth was ^{invariably} ~~always~~ mentioned as 31.7.26; and has further argued that the petitioner did not submit or file any application for change of his date of birth even after issue of the corrigendum date 12.5.84 whereby the mistake about his date of birth which was ~~un~~ previously noted in his seniority list as 26.7.30 was corrected as 31.7.26 in accordance with other gradation lists issued earlier; and has further argued that certificate purported to be dated 13.12.48 issued by the principal, which is ² enclosed alongwith the application dated 11.11.1991 of the petitioner, ^{as} referred to above, ~~was~~ not filed or ² presented at the time of his appointment on 12.11.1949 by the petitioner and as such the aforesaid certificate purporting to have been issued on 13.12.1948 has got no evidentiary value and the date of birth of the petitioner 26.7.30 as recorded in the High School Certificate should also not be deemed to be correct. ^{and} In view of the ^{facts and} above circumstances, the petition of the petitioner should be dismissed and in support of his arguments he has placed reliance on the following rulings :-

- (i) (1991)15 Administrative Tribunals Cases 527, "Kesar Singh (petitioner) Vs. Union of India and others (Respondents) wherein it has been enunciated:-

Age-Date of birth-Delay in seeking alteration of-
Effect-Representation for alteration of record-
-d date of birth made only a few years (about 5 years in this case) prior to the date of retirement, held, rightly rejected-Laches and delay".

:: 8 ::

(ii) A.T.R. 1986 C.A.T. 167, "Sharada Prasad (Applicant)
Versus Officer Commanding, Station Workshop (EME) Type-L, Allaha-
bad and three others. (Respondents) wherein it has been
enunciated :-

"Date of birth as recorded in service Book 1.7.27
-Such date of birth verified by applicant after
every five years -Applicant also declaring such
date of birth as correct in his declaration on
28.1.60 -Conduct of applicant also showing that
his date of birth as recorded in Transfer Certifi-
cate of his having passed Class-IV as well as in
High School Certificate as not correct -In such
a case, request for correction of date of birth
after service of retirement notice ~~is~~ cannot be
accepted"?

6. I have perused the above rulings.

7. This is important to point out that it is not
disputed that the petitioner was initially appointed as
~~Post-man~~ Post-man. In this context it is also significant
to point out that in the petition it has nowhere been
stated by the petitioner that he was quite illiterate and
was not knowing how to make his signature in English at the
time of his initial appointment on 12.1.1949. It is also
in the fitness of the things to remark that the duties
assigned to post-man also include^d distribution of dak letters
containing addresses of the person concerned on the envelopes,
post-cards in different languages viz. English, Hindi etc.
Thus, ~~this~~ being so and keeping in view the entries appearin-
g on the first page of ~~the~~ Service-Roll of the petitioner
and keeping in view the different kinds of inks used in
writing the entries and signatures "Ghasite Prasad" and
"Sohan Lal Shrawan" in English existing on the 1st page of
the Service-Roll of the petitioner appear to be the signatu-
res of the petitioner; and the signature "Ghasite Prasad"
^{been} made by the petitioner on 12.1.1949 at the time of his
initial appointment and the signature "Sohan Lal Shrawan"

^{appears to have}

~~made by the pe~~

Contd....9/-

A2
9

:: 9 ::

~ appears to have been ~

~ ~~was~~ made by the petitioner at that time when his changed name "Sohan Lal Shrawan" was amended in the Service Roll of the petitioner.

8. This fact should also not be lost sight of that from ~~the~~ ^{perusal} of Annexures C.A.-3, C.A.-4, and C.A.-4(i) and from the scrutiny of the entire material on record and keeping in view the circumstances of the case, it becomes obvious that the date of birth of the petitioner in the seniority lists corrected up to 31.7.1978 used to be mentioned as "31.7.26". But for the reasons ~~best~~ ^{best} known to the petitioner, no objection of any kind was raised by him regarding his date of birth and the above argument of the learned counsel for the petitioner to the effect that the petitioner had no knowledge about the ~~seniority list~~ ^{seniority list} does not stand to reason and sanity, keeping in view the glaring facts and circumstances of the case.

9. This is also note worthy that in the seniority list corrected up to 1.7.1983, as referred to above, appearing against S.No.180 not only the date of birth of the applicant in column No.4 but also the "Date of entry in Department" in column No.5" was also ~~erroneously~~ ^{erroneously} changed. As admittedly the petitioner was initially appointed as post man in January, 1949 but "date of entry in department" has been mentioned therein as 26.3.1966 and in regard to the ~~erroneous~~ ^{erroneous} entry corrigendum was issued on 12.5.1984 and copy whereof was also sent to the petitioner (vide Annexure C.A.-5). But no objection or representation was made by the petitioner immediately after that corrigendum; and for the first time objection was raised by the petitioner in regard to his date of birth on 9.7.1984 after receipt of the notice of the respondents dated 23.5.1984 regarding the superannuation of the petitioner w.e.f. 31.7.1984 (A.N.) in accordance with his date of birth "31.7.26" as entered in his Service-Roll.

Thus, it is apparent that the petitioner made representation

Contd...10/-

:: 10 ::

only about a month prior to his retirement; and these glaring facts and circumstances lead to the conclusion that the date of birth of the petitioner as entered in his Service-Roll is his correct date of birth.

10. It is also note worthy that from the perusal of the High School Certificate, as referred to above, it is apparent that the petitioner passed the High School Examination in the year 1962 not as a regular candidate; but as a private candidate. This fact should also not be lost sight of that prior to 9.7.1984, the petitioner did not make any objection or representation about the change of his date of birth in accordance with his High School Examination ^{~ certificate ~} of the year 1962. In this [~] context it is also [~] note worthy that for the reasons best known to the petitioner he did not submit the certificate issued by the principal Bhagwant Nagar School, Bhagwant Nagar District Hardoi as referred to above to the respondents either at the time of his initial appointment in January, 1949 or subsequent thereto, as the above certificate purports to have been issued on 13.12.1948 to the petitioner [~] *Dr*.

11. Thus, from the foregoing discussions and after scrutinizing the entire evidence and material on record and keeping in view the circumstances of the case and having regard to the above rulings, I find that the above rulings relied upon by the learned counsel for the petitioner are found to be of no avail to the petitioner as the facts of the present case are found to be different and distinct from the facts of these rulings and the above arguments of the learned counsel for the petitioner are found to be devoid of force and weight; whereas the above rulings relied upon by the learned counsel for the respondents go a long way in supporting the above arguments of the learned counsel for the respondents as the facts of

Contd...11/-

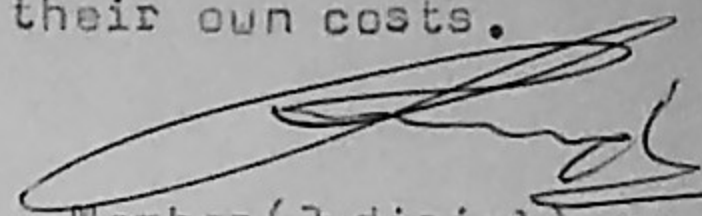


Ar
11

:: 11 ::

these rulings are found to be in much resemblance with the facts of the present case.

12. In view of what has been stated above, I find that the petition of the petitioner is devoid of merit and force and accordingly the petition of the petitioner is hereby dismissed. In the circumstances of the case, the parties to bear their own costs.


Member (Judicial) 31.1.92

Allahabad dated 31st January, 1992.

(RKA)