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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 44 of 1987

Mahanth Prasad Applicant.

Versus

Union of India & others Respondents.

Hon'ble Ajay Johri, A.M.

By this application, received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, Mahanth Prasad, who was working in the Loco Workshop at Charbagh, Lucknow, has challenged the order dated 24.6.1986 passed by respondent no.2 refusing to correct his date of birth in his Service Book. The applicant's case is that when he was appointed on the post of a Khallasi on 1.2.1954 his age on the date of appointment was 18 years and 1 month. He was not asked to submit any proof of his date of birth at the time of recruitment or at the time of preparation of the service book. According to him the respondents have, without any basis, filled the column of his date of birth and showed it as 6.1.1929 when as a matter of fact it should have been 6.1.1936. He has alleged that according to 6.1.1929 his age at the time of ³⁸ appointment comes to 25 years and 25 days, so he would have been over aged and would not have been given an employment unless exemption was given to him. It was only in 1983 when he applied for a loan that he realised that his date of birth has been wrongly mentioned and thereafter he made number of representations, the last one being in November, 1984. In his representations his case was that he passed Vth class examination from a school in Siwan (Bihar).

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School leaving certificate.

He filed a photo copy of the ~~same~~. The respondents made an enquiry but the school replied that the record was not available and has been damaged by white ants. When the applicant was asked to submit his original certificate, he did. The department, however, rejected his representation. According to the applicant he should have been asked to sign his service book at intervals of every 5 years but his ^{by this} signatures has not been taken and, ~~therefore~~, he has not verified any entry in his service book. He has, therefore, prayed for relief that his date of birth may be declared as 6.1.1936 and he may be allowed to serve the Department upto 31.1.1994 and the order dated 24.6.1986 passed by the General Manager be set aside.

2. In their reply the respondents have said that as per recorded date of birth in the service record of the applicant he was 25 years and 1 month on 1.2.1954, i.e. on the date of his appointment. The entry of the date of birth in service record was made by the then dealing Clerk supported by the certificate issued by the Doctor, who medically examined the applicant and assessed the age to be 25 years on 6.1.1954. Thereafter the applicant's thumb impression was got affixed on the title page of the service record and the same was witnessed by the Inspector and the Assistant Personnel Officer. They have further said that as per the office letter the applicant was selected for the post of Khallasi in the year 1952-53 and at that time he was within the prescribed age and, therefore, no exemption of upper age limit was necessary. When a request was received from the applicant for the change of date of birth his case was referred to the Headquarters Office but it was rejected on 24.6.1986. The school leaving certificate was never brought to the notice of the respondent before 23.11.1984 and the applicant had also not declared that he had ever studied and passed class V examination. On receipt of the certificate it was sent to the Institution for verification but due to non-availability of original records the Principal

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could not verify the same. Since the age was correctly assessed by the Railway Doctor as being 25 years on the date of his appointment any allegations now made will be wholly preposterous.

3. In his rejoinder affidavit the applicant has reiterated whatever he has said in the application and relied on the school leaving certificate.

4. I have heard the learned ^u counsel for the parties. On behalf of the applicant it was contended that the reply to the application has been signed by the Assistant Personnel Officer of the Workshop, the person who is presently working, and it cannot be replied by him and thus the persons who had made the entry or witnessed the entries should have replied to the application. It was further contended that there is nothing on record to show that the applicant was ever asked to submit the proof of his age and since there is no rebuttal in regard to the certificate submitted by him the certificate has to be considered as proved and, therefore, the date of birth must be changed to 6.1.1936. On behalf of the respondents the submissions made were that the entries made in the service record were on the basis of the medical certificate submitted by the Doctor at the time of appointment of the applicant and his age was assessed as 25 years and the school certificate which was produced in 1984 by the applicant could not be verified by the school authorities due to non-availability of various records. Therefore, a decision was taken to reject his request for the change of date of birth. I have gone through the application and the documents submitted before the Tribunal by the learned counsel for the parties at the time of hearing.

5. The learned counsel for the applicant has produced a certificate from the Mukhia of Gram Panchayat which says that Mahanth Prasad is a resident of Siwan District and according to

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the Paribarik Register and his horoscope he was borne on 6.1.1936. This certificate is dated 25.7.1988. On the other hand, on behalf of the respondents a photo copy of the first page of the service book of the applicant, the letter of appointment dated 24.12.1953 and the copy of the certificate issued by the Doctor on 6.1.1954 have been submitted.

6. According to para 225 of the Indian Railway Establishment Code, Volume I, which deals with the subject of date of birth 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 railway servant's own hand writing. In case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

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The para further says that a person who is not able to declare his age should not be appointed to railway service and that 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. This para further lays down that 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. The para goes on to say that the date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. The Railway Ministry have further decided that when a candidate declares his date of birth he should produce documentary evidence. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such evidence could

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be the School Leaving Certificate, a Baptismal Certificate or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age. In medical certificate a copy of which has been placed by the respondents before me, on 6.1.1984 the Assistant Surgeon of the Loco Workshop Dispensary, Charbagh, Lucknow has certified that he had examined the applicant ³¹ ~~entered~~ and ~~assessed~~ his age ^{as} ~~age~~ 25 years, a candidate for appointment as temporary Khallasi in the Mechanical Branch. There is a thumb impression of the applicant also and there is no evidence of any over writing etc. In his appointment letter, which was issued on 24.12.1953, it has been mentioned that as a result of the selection held by the Selection Board the applicant is offered a temporary post of Khallasi subject to his passing the prescribed medical test and on receipt of the report in connection with his character and antecedents. The page of the service book indicates his date of appointment as 1.2.1954 in the Foundry Shop of the Loco Workshop and shows his date of birth as 6.1.1929. Here also there is no over-writing in the entries. The appointing authority has been shown as APO, Lucknow. In terms of para 225 of the Indian Railway Establishment Code a person who is not able to declare his age cannot be appointed. The medical certificate issued on 6.1.1954 shows the age as 25 years and it will be difficult to believe that the applicant did not give this as his age because if he had not declared his age he could not have been appointed in railway service in terms of this para.

7. The learned counsel for the applicant has relied on a number of cases and circulars. In case of Bhanwarsingh Bhupsingh Rajput v. State of M.P. (AIR 1963 M.P. 335) the Madhya Pradesh High Court had held that where the date of birth of a Government servant,

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as mentioned in his service book, is put down, not on the basis of the information supplied by the servant of any scientific basis or tangible material but on the basis of a surmise of a Medical Officer by only looking at him, and it appears *prima facie* that his date of birth was later than that recorded in his service book, the retirement of the Government servant on the ground of his having reached the superannuation, if his claim about his real date of birth is correct amounts to punishment.

8. In the case of Baijnath v. General Manager, N.E.Railway, Gorakhpur (FLR 1985 (51) 288) the Allahabad High Court on the point that mistake in recording the date of birth of the employee in his service record can be corrected by the railway authorities on his furnishing satisfactory proof and where the petitioner had filed school leaving certificate and the certificate from the Gaon Sabha to prove his age and the evidence had come on record it was incumbent on the railway authorities to have applied their minds to it and record a specified finding as to whether the proof furnished by the petitioner was satisfactory or not, i.e. they should have passed a speaking order. The Allahabad High Court had held that since the rejection was done without assigning reasons the application of the petitioner for correction should have been allowed specially when the error appeared to be apparent on the face of record and since the administration did not follow the established principle. ~~While rejecting~~
While rejecting the representation of the petitioner it allowed the change of date of birth.

9. In the case of R.M. More v. Ministry of Communication and others (1988 (1) CAT 137) the Bombay Bench of this Tribunal in a case where the applicant's recorded date of birth was 15.6.1929 and he had declared it as 15.6.1930 just after his appointment when some particulars were called from him and had been writing so in ~~all communications~~ and produced a certificate in 1987 asking for

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all communications and produced a certificate in 1987 asking for the change of date of birth the plea taken by the respondents that since he did not ask for change within 5 years and the respondents could not prove the basis on which 15.6.1929 was recorded held that the change of date of birth was justified demand of the case.

10. Similarly in the case of Sukumar Roy v. U.O.I. & others (1988 (1) CAT 727) where the applicant's date of birth was recorded as 1.7.1929 and he had given his Matriculation certificate which showed his age as 15 years 3 months on 29.7.1945 it was held that since it was a case of mistaken calculation and nobody attempted to calculate the correct age as per certificate the change was allowed

11. In the case of Champat Singh v. Union of India & others (1986 (1) ATC 75) where a non-Matriculate employee has indicated his age as 20 years and his date of birth was calculated accordingly and two years later the Department asked for documentary evidence and he submitted a school leaving certificate but the Department failed to correct the date a change was allowed when the same came to the notice of the applicant after 36 years of service.

12. Similarly in the case of Radhey Shyam Shukla v. Union of India (1986 (1) ATC 483) the school transferred certificate issued by the Education Department of a Municipality and Primary School Certificate given by a Siksha Khata of a State were taken as public documents and being more than 30 years old and produced from proper custody their presumption of their genuineness was upheld.

13. In the applicant's case I feel that none of the above ratios applies. Not only he never declared that he was educated till Vth class when he joined service but the certificate which he is alleged to have obtained in 1950 and which is placed as Annexure '2' to the paper book has not been ^{3V} ~~served~~ for its authenticity. It is also

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observed from this certificate that where the date is entered there is a print against the year which shows 196-. Therefore, this certificate could not have been issued in 1950 because if the year shown in the certificate is 196- it could pertain to any year of the decade 1960-69. Much reliance, therefore, cannot be placed on this certificate.

In any case and the school has also refused to verify its correctness on account of the non-availability of the records. Therefore, it cannot be said that the applicant has been able to produce a school leaving certificate which can be considered as authentic. As far as the certificate from the Mukhia is concerned it is mentioned that it is based on *certain register and horoscope* and horoscope cannot be relied on in terms of para 225 of the Indian Railways Establishment Code for consideration of cases of change of date of birth. I also find that the respondents have given due consideration to his request made in 1984 for the change of date of birth and have also sent their representative to the school from where the certificate was reported to have been obtained by the applicant. Therefore it canot be said that they had not applied their mind or rejected the request for change of date of birth without any substantial reason.

14. In the case of S.K. Bhattacharya v. State of Bihar & others (1970 PLJR 369) the Patna High Court had held that the date of birth recorded in the Matriculation certificate may not always be ~~the~~ conclusive for determining the date of superannuation. Similarly in the case of Mohd. Aqbar v. Union of India (FLR 1984 (49) 115) the Delhi High Court had held that every person newly appointed to a service is required at the time of appointment to declare his date of birth with as far as possible confirmatory documentary evidence such as a Matriculation certificate or a Municipal Birth Certificate, etc. and if the exact date is not given an approximate date has to be given. The respondents in this case did not accept the date

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of birth recorded in the Matriculation certificate and gave valid reasons for not accepting it. The date of birth given by the applicant at the time of entering into service which was duly verified and accepted was, therefore, accepted by the High Court and it refused to interfere with the application for change of date of birth. ³¹ ~~31~~

Similarly in the case of B.N. Chatterji v. State of Bihar (1977

(3) S.C.C. 491) wherein it was held that the date of birth recorded in official records and admitted by the applicant could not be subsequently changed on the plea that the date of birth recorded was different. So in the matter of date of birth it is a circumstance of the case that will determine whether the date of birth could be changed and each circumstance would be different. No rulli' ³¹ ~~31~~ Specifically can be quoted in regard to request for change of date of birth.

Registration (T.A.) No. 63 of 1987, Union of India v. Ram Chande Prasad, this very Bench had examined the aspect on swearing of affidavit also because of a statement made on behalf of the plaintiff that the horoscope had been lost. In that case the plaintiff had a reliable document which was the Matriculation certificate issued ³¹ ~~31~~ ³¹ ~~31~~ by the Patna High Court. It was held that the applicant should have taken action to have his date of birth changed in the records of the University before any affidavit could be sworn by his uncle. So having considered the various aspects of the case and the fact that each case of change of date of birth depends on the circumstances of the case, I, ³¹ ~~therefore~~ ³¹ ~~consider~~ do not ~~feel~~ that the applicant has been able to justify his case for the change of his date of birth and his request is liable to be rejected.

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15. The contention raised by the learned counsel for the applicant that APO, who had signed the Service Book of the applicant, should have sworn the affidavit and not the person who is presently APO, has not much force. The person who signs the papers ^{3V Rao} have full knowledge of the case and should preferably be one who is dealing with the matter and should be the person authorised to file the reply on behalf of the respondents. It cannot be insisted that the persons, who signed the pages of the Service Book when the applicant joined service and when his Service Record was opened, should be the only person who should now sign the reply in connection with that Service Book. I reject this contention.

16. In the fact that the only alleged proof - the school leaving certificate - on the basis of which the applicant is seeking a change cannot be relied upon and there being clear entries in the Service Book the applicant has failed to justify a change. Though the Service Record has not been verified by the applicant at regular periodic intervals at the original formation of the same he had given his thumb impression and the entries are supported by the medical certificate issued at the time of his appointment.

17. On the above considerations I dismiss the application. I make no order as to costs.

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MEMBER (A).

Dated: August 9/88, 1988.

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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Misc. Application No. 20 of 1988

IN

Registration (O.A.) No. 44 of 1987

Mahanth Prasad

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Applicant.

Versus

Union of India & others

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Respondents.

Hon'ble Ajay Johri, A.M.

In this Misc. Application, filed by the applicant, a prayer has been made that the judgment dated 9.8.1988 delivered ~~by the~~ [✓] ~~3/~~ ^{3/} ~~Tribunal~~ ^{was} ~~undersigned~~ while sitting ^{as} ~~1~~ a Single Member Bench may be sent for fresh decision before a Division Bench on the ground that a Single Member of the Tribunal was empowered and conferred jurisdiction to decide cases relating to change of date of birth while in service and since the applicant on the basis of the recorded date of birth had already retired in January, 1987 this matter could not be adjudicated by a Single Member Bench.

2. I have heard Sri G.P. Singh holding the brief of Sri A.K. Gaur, learned counsel for the respondents, and later on Sri S.C. Dwivedi, learned counsel for the applicant. The main stress in the arguments made before me by the learned counsel for the applicant was that the order dated 21.3.1988 which superseded the order dated 26.6.1987 authorised a Single Member to exercise jurisdiction, powers and authority of the Tribunal in respect of such cases or class of cases as are specified in the order with effect from 1.5.1988. In regard to date of birth, the cases relating to change of date of birth while in service were within the jurisdiction of a Single Member Bench. In OA No. 44 of 1987, Mahanth Prasad v. Union of India & others, the applicant was seeking a change of his date of birth from 6.1.1929 to 6.1.1936. On the basis of

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his recorded date of birth the applicant was retired in January, 1987 on attaining the age of 58 years. He had filed this application challenging the order dated 24.6.1986, passed by respondent no.2, in that Original Application, refusing to correct his date of birth in the Service Book. The application was filed on 23.1.1987, i.e. about a week before the retirement of the applicant. The applicant was, therefore, in service at the time when the application was filed. The relevant point which is to be decided in this Misc. Application is whether the circumstances existing on the date of filing of the application are the guiding factor or on the date when a judgment is delivered. On the date of filing of the application the applicant was very much in service and if the decision would have gone in his favour he would have been deemed to have continued in service till his superannuation on the basis of his claim for the change of his date of birth. The relief claimed in the Original Application was that the order dated 24.6.1986 refusing to change his date of birth may be declared illegal and he may be declared entitled to serve the department till 31.1.1994 along with all benefits attached to the post. It was this relief which was under adjudication ^{by the Tribunal} before ~~the~~. When the case was heard the learned counsel for the applicant had never taken the issue of jurisdiction of a Single Member Bench in cases of change of date of birth of employees ^{by after the filing of the application & before the judgement was delivered.} who have ~~already~~ retired. He had also not sought any amendment to the Original Application seeking relief against his retirement, as ordered by the respondents. It is only through this application now that such a plea has been raised and this application has been filed on 8.9.1988, i.e. within a month from the date of issue of the certified copy of the judgment.

3. It is obvious that on the date of filing of the application the applicant was in service and the matter for adjudication before the Tribunal was the matter as it existed on the date of filing of the application and as the judgment also relates to those

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very reliefs. It is also a fact that the learned counsel for the applicant never took any plea about jurisdiction. Now, it is contended by the learned counsel that on the date the case was heard finally he did not have the knowledge regarding the order of 21.3.1988. This order was very much in existence at the time of hearing. The fact which cannot be controverted is that what was under adjudication was a matter which arose when the applicant was in service, so it was a case of change of date of birth while in service and squarely lay within the jurisdiction of a Single Member Bench.

4. In the above view I do not find any merit in this application and reject it with costs on parties.

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MEMBER (A).

Dated: March 29th, 1989.

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