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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

O.A.NO. 57 of 1988

M.M. Sharma Applicant.

Versus

Union of India & others ... Respondents.

HON'BLE AJAY JOHORI A.M.

(Delivered by Hon'ble A.Johori AM)

This is an application received under section 19 of the Administrative Tribunal Act 1985. The applicant who was working on the Northern Eastern Railway at Lucknow, retired as a Carriage and Wagon Superintendent on the ^{by basis} ~~post~~ of his date of birth as recorded by the respondents in the service record i.e. 16.7.1929. He has challenged orders dated 5.5.87 and 11.3.87 passed by the respondents rejecting his representation for the correction of his date of birth. The applicant had joined service in Assam on 16.11.1950 in the Class IV category. ^{3/} Since he was a matriculate and there were vacancies of Train Examiners he applied for the same and was selected as Train - Examiner on 26.11.53 by the Regional Mechanical Engineer, Pandu, he was later on transferred to Izzat Nagar, Bareilly. The applicant's case is that at the time of selection for the post of train examiner he had submitted his High School certificate which

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showed his date of birth as 1.8.32. Later on when he was pressing his case to get an insurance policy from the Railway Cooperation ^{ve} Insurance Society the objection regarding his date of birth being different to the one he had declared was sorted out by his representation made in the year 1955 and the correct date of birth was accepted on 18.1.56. He, therefore, made representation in 1962 and then in 1987 for the correction of his date of birth but his date of birth was not correct ^{3y}. His representation of 1962 was not replied though he had been ^{3y} continuing ^{3y} writing to ^{3y} right his correct age every year, in his declaration for passes etc. His representation of 14.2.87 was rejected by the impugned order on 5.5.87 on the grounds that in the 'A' card he has written his date of birth in his own hand writing and in his leave applications the entries show that he had relied on the date which is recorded in the records. According to applicant, he had submitted the High School certificate in the year 1953 but his date of birth was not correct ^{3y}. His representation to General Manager has also not been replied, he has therefore prayed for the relief that the order dated 5.5.87 be quashed and he should be kept in employment with retrospective effect from 31.7.87 to the end of 30th September, 19⁹⁰ ^{3y}.

The respondents have opposed this application and in their reply they have said that the applicant had entered his date of birth in his own hand writing as 16.7.29 and the date of birth entered in the High

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School certificate which is 1.8.32 is in-correct and mis-guiding. According to the respondents, a date of birth declared in any other department contrary to the date declared in the Railway records cannot be binding upon the administration to accept the same. They have relied on para 225 of the Railway Establishment Code Volume I wherein it is said that the date of birth recorded by the employee at the time of his appointment will hold good. Moreover on 3.2.62 and 20.2.77, the applicant has recorded that his 55 years age will be completed in 1984. His representation of 14.4.87 was correctly replied. They have denied that they have any knowledge in regard to the date of birth as entered in the Railway Cooperative Insurance Company. According to the respondents, at the time of his appointment the petitioner mentioned his date of birth as 16.7.29 on the 'A' card. They have also said that though the petitioner made representation, he did not pursue the matter because of obvious reasons that the date of birth as recorded was correct and so on the point of Limitation, the present application is barred by time and cannot be entertained. They have even doubted the genuineness of the certificate produced by the applicant. According to the respondents, the applicant had joined service on 16.11.50 and he could not be very much wrong in declaring his date of birth, at the time, as he had passed the examination only a few years back and he should have remembered the correct date of birth.

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In the rejoinder, the applicant has reiterated that at the time of his appointment, a wrong entry was made through oversight and that he had submitted his High School certificate for the selection for the post of Train Examiner and since that the High School certificate was considered, the correct date should have been taken into account. Thus according to him the declaration of the date of birth on 16.7.29 should not be fatal to his rights. He has reiterated that he submitted his correct date of birth in 1953 along with original certificate. According to him he represented in 1955 then in 1962 and again in 1971 and thereafter in 1987 but no action was taken by the respondents. According to him he wrote the incorrect date of birth in his various applications because the same had not been corrected and writing a different date would have created problems for him. He has placed reliance on the fact that the matriculation certificate should be relied upon as it is considered to be an authentic document.

I have heard the learned counsel for the respondents. Sri B. Prasad was not present when the case was heard and he was given an opportunity to plead his case lateron. On behalf of the respondents the submissions made were that the petitioner has not stated anywhere in his petition when he passed the High School examination.

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He has also not produced any other School records for example his school leaving certificate from the Primary School. He has entered the date of birth in his own hand writing and his representation of 1962 when it was not replied cannot be a cause of seeking remedy now because it is badly barred by time. Moreover he has been declaring his age, according to the date of birth recorded in the service record and he never pursued his representation for its correction. The learned counsel for the applicant contended that since for promotion as TXR matriculation is the minimum qualification and the applicant has proved his qualification by submission of his certificate which was accepted by the respondents, therefore, they should have taken action to correct their records on the basis of the accepted certificate. He has further relied on the incident when the applicant had sought an insurance cover from the society. According to the learned counsel ^{3/} ~~the~~ ^{3/ always} High School Certificate has ^{3/} been considered as a reliable and authentic document as compared to any other document like horoscope or affidavit and therefore the applicant should not be denied the change of his date of birth to 1.8.32, he has relied on certain decision of the Hon'ble Supreme Court in regard to acceptance of High School Certificate as an authentic document. ^{3/} ~~and discuss~~ ^{3/} ~~these factors.~~

Para 225 of the Indian ^{Railway} Establishment Code
Volume I lays down the method of ^{recording} ~~regarding~~ ³¹ of date
of birth of an employee, this para reads as
follows :-

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 railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3) (a) When a person entering service is made 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, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) 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.

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(4) 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. It shall, however, be open to the President in the case of a Group A & B railway servant, and a General Manager in the case of Group C & D railway servant to cause the date of birth to be altered.

- (i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or
- (ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or
- (iii) where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, which-ever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended.

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This para makes it clear that in the case of literate staff, the date of birth shall be entered

in the record of service in the railway servants own handwriting, in the case of illiterate staff, the declared date of birth is to be recorded by a senior railway servant and witnessed by another railway servant. It is obvious that in the applicant's case, the date of birth is not based on para 3 (a), but in terms of para 3 (b) he must have declared the year and month of birth and not the exact date because according to section 3 (b) when the exact date is not known, 16th of the month shall be treated as the date of birth and the date of birth has been entered as 16.7.29.

3/ In the 'A' card, where the applicant has also given his thumb impression, in his own handwriting the applicant has given a declaration that his date of birth is 16th July, 1929, this declaration has been signed by him on 17.11.54. In the verification roll which was sent to the District Magistrate, Jalandhar on 29.11.54, the date of birth of the applicant was shown as 16.7.29 and his educational qualification as matric of the East Punjab University. The Deputy Commissioner, Jalandhar had confirmed the particulars mentioned in the verification which was returned in original to the respondents by the Deputy Commissioner on 2.2.55. On 13.11.50, while entering his service particulars, were the applicant had given his left thumb impression, his date of birth was shown as 16.7.29.

A photo copy of his matriculation certificate was submitted by him on 6.4.87 ^{with} ~~when~~ a representation which ^{is} ~~is~~ placed in his personal file. This certificate is dated March 1, 1949 and shows his date of birth as 1.8.1932. At page 316 of his personal file, there is an appeal made by the applicant on 31.1.85 wherein he attached a photostat copy of seniority list issued on 1.5.69, this was a seniority list of Senior TXR's grade 205-280 as on 1.5.69 and he has prayed for his correction of his seniority. In this seniority list on which he had relied ~~relied~~ his date of birth has been shown as 16.7.29. On 20.2.77, he has filled up a leave application form wherein he has shown that he will attain the age of 55 years in 1984. On 30.11.73, he has filled up another leave application form wherein he has shown that he will attain the age of 55 years in 1985. Another application filed by him on 3.2.69 shows that he will attain 55 years of age in 1984 and 60 years of age in 1989. While in another application filed by him on 16.11.67 there ^{are} ~~are~~ some over-writings in the information filled by him ^{about} ~~about~~ the dates when he attains 55 years and 60 years of age and he has shown the same and the over written entry in regard to 55 years shows ⁱⁿ 1987 while entry against 60 years shows 1992 while on 13.4.66 the entry against 55 years of age shows 1986 and against 60 years of age 1989 again in June, 1965, the dates shown by

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him are 1987 for 55 years and 1992 for 60 years, there is also a representation made by the applicant dated 29.10.1962 enclosing a copy of the matriculation certificate issued on 1.3.1949. On 1.5.1962, he has shown the dates of attaining 55 years as 1984 and 60 years as 1989, the same figures have been shown in a leave application filled up by him on 19.2.1960 where even the month has been shown as August against the year. In a letter issued on 1.10.1963 by the Assistant Mechanical Engineer, Tindharia to DME, Kalihar, the date of birth of the applicant has been shown as 16.7.1929. His leave record prepared in 1953 also shows his date of birth as 16.7.1929 and date of compulsory retirement as 15.7.1985.

The above details will show that the applicant has, except on one or two occasions, shown his date of birth as recorded in the official records and not the date of birth on the basis of the Matriculation Certificate issued by the Punjab University on March 1, 1949.

3/ The photo-copies of the Matriculation Certificate, which were submitted by the applicant with his representations of 29.10.1962 and 6.4.1987 are photo-copies of a true copy of a Matriculation Certificate. They are not photo-copies of the original. The copy of the original, as submitted by the applicant now, ~~also~~ ³ does not tally completely with the photo-copies of the true copy, which he had submitted earlier. The respondents have also not commented whether they had made any effort to check the genuineness of the Matriculation Certificate, which, according to them, they ^{were} ~~were~~ doubting. But the fact that the duplicate, which the applicant has submitted now, and the photo-copies of the true copy, which he submitted earlier, do not tally in

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language cannot be lost sight of. Leaving aside these facts, there is no doubt that the date of birth entered in a Matriculation Certificate would be more authentic than that declared through affidavit or horoscope, etc. The position in this regard cannot be disputed.

The applicant had made a plea that his service record in his previous employment at Pandu may also be summoned. I have seen the papers in his service record prior to his posting at Izatnagar. When he was working at Pandu there is no doubt that while working under AME, Tindharia as a re-packer the record showed his date of birth as 16.7.1929. Therefore, the applicant cannot say that while working under AME, Tindharia, he had given his date of birth different to what he had declared in his service record subsequently. A date of birth once declared by the applicant, who on his own showing was a literate person, for whatever reason he did so, and which continued to go unchallenged, and was even supported by his own declarations in the various application forms, etc., has, therefore, to be given more reliance. The applicant's plea that he gave wrong declarations because his date of birth was not correct has hardly any force. The seriousness of his intentions regarding the change is also belied by the fact that after 1962 he made the second representation only in 1987 and over this period he kept on declaring his date of birth as recorded in the service records. The applicant, on his own, has not relied on the Matriculation Certificate, which he is now saying that it should be accepted for his correct date of birth. It is not the applicant's case that his date of birth, as recorded in his service record, is not in accordance with the rules. He has himself entered the date of birth in figures and

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words in his own hand-writing. Since he has relied on certain figures all along and ignored his Matriculation Certificate in this respect, he cannot now be allowed to turn back and seek a change on the basis of a certificate which he himself had not relied on at the time he entered the service and for which act no satisfactory explanation is available. Though Matriculation Certificates are considered as authentic documents, yet if a person chooses not to rely on them for some other reasons, which he has not disclosed now, he cannot take advantage on the same at a later stage.

The contention of the learned counsel that since the applicant submitted his Matriculation Certificate at the time of his selection as T&R to prove that he was a Matriculate so the respondents should have corrected the records is a far fetched conclusion. Unless a specific request was made by the applicant for correction of his date of birth based on the certificate the respondents were not bound to take notice of what was mentioned about the same in it. Moreover, it does not appear necessary that even promotees from the semi-skilled or skilled category to the post of T&R Gr. Rs.80-160 were required to be Matriculates. That requirement was/direct recruits only (para 138 of the Indian Railway Establishment Manual). There is no mention in this para that promotees should also be Matriculates. There is no documentary proof also to show that the Certificate was submitted to the respondents in 1953. Be it as it may the facts of the case as mentioned in para supra, ³ ~~however~~, do not help the applicant. ³ ~~xxx~~ By his actions he had acquiesced to the entries made by him in his service record in his own hand-writing.

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On the above considerations I find that the applicant's case has no merit. Therefore, the application is dismissed. His date of birth, as recorded in the service records, will be taken as the correct date of birth. Parties will bear their own costs.

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MEMBER (A).

Dated: December 13th, 1988.

Husain/PG.