

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 732 of 1988

Allahabad this the 04th day of June 1996

Hon'ble Dr. R.K. Saxena, Member (J)

Dr. Vishwa Mohan S/o Sri Lakhi Ram , D.M.O., N.E. Rly.
Workshop, Izatnagar (Bareilly).

APPLICANT

By Advocate Sri B.P. Srivastava

Versus

1. Union of India through Ministry of Railways, Railway Board, through its Chairman, Rail Bhawan, New Delhi.
2. General Manager, North-Eastern Railway, Gorakhpur.

RESPONDENTS.

By Advocate Sri P. Mathur.

J U D G M E N T

By Hon'ble Dr. R.K. Saxena, Member (J)

This O.A. has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking directions to the respondents to correct the recorded date of birth 4.1.1939 as 8.6.1940 of the applicant.

2. The facts of the case are that the applicant had joined as Assistant Surgeon Grade I in N.E. Railway on 6.8.1964 on the basis of the appointment letter annexure A-2. In compliance with the said appointment letter, the original medical degree and registration certificate were submitted to the D.M.O., Gonda. Thus, the applicant continued in service and was promoted from time to time.

3. It is said that the applicant's date

of birth according to the High School Certificate annexure A-1 was 8.6.1940 and the same date was furnished in column-3 of the form which was filled in pursuance of the letter no.E 210/II/Medical dated 20.1.73 based on G.M.(P), Gorakhpur's letter no.E 210/1/Pt IV(1) dated 29.12.72. But it was incorrectly entered 4.1.1939. The applicant avers that he gave several representations starting from 30.5.1975 to 9.1.1987 but all in vain. Hence this O.A. with the relief already disclosed, was filed.

4. The respondents resisted the claim on the grounds that it was barred by limitation; that the employees were asked in the year 1971 to represent their cases by 31.7.73 if their date of birth was incorrectly recorded; that the applicant failed to represent at that time; that the classified list of Gazetted Officers was published in the year 1966, and in that list the date of birth of the applicant was shown as 4.1.1939 ; that the said date of birth was entered in the service record of the applicant, and no objection was made to those entries.

5. It is further averred that in the 'A' Card which is now found missing but whose photostat copy is C.A.-3, shows that the date of birth of the applicant was recorded as 4.1.1939. Thus, there is allegedly no substance in the contention of the applicant. The O.A. is, therefore, pleaded to be dismissed.

6. The applicant submitted rejoinder restating the facts which were brought in the O.A.

7. I have heard the learned counsel for the parties and have perused the record.

8. It is an admitted fact that the applicant had joined service on 6.8.1964. He admitted in the O.A. that at the time of joining the service, he had furnished medical degree and registration certificate to the D.M.O. Gonda because that was indicated in the appointment letter. He nowhere averred if he had given his date of birth prior to filling in the form in pursuance of the letter no. E/210/II/ - Medical dated 20.1.73. If any credence can be attached to their averment, it means that he worked as Assistant Surgeon Grade I or on other posts of promotion without disclosing the date of birth and other particulars which are necessary to be entered in the service book. The respondents have filed the photostat copy of service card-annexure C.A.-III in which all the details including the date of birth, of the applicant were given. The date of birth shown in this card is 4.1.1939. It is said that this card is prepared at the time of entry in service. As the service period advances, other details are added therein.

9. The learned counsel for the respondents has also filed the extract annexure C.A.-II of the

classified list of Gazetted Establishment of Indian Railways which is published by Government of India, Ministry of Railways(Railway Board) in 1966. In this list which is in a book form and has been produced during arguments, there are eight columns giving information of name, railway, where lien held before regrouping, date of birth, date of appointment to class, date of appointment to service, date for increment on time scale, pay and remarks. The name of the applicant is shown in the sixteenth line at page 196. The date of birth of the applicant was shown as 4.1.39. It is strange that the applicant who is a medical graduate kept quiet at the time when card annexure C.A.-III was prepared and his date of birth was shown as 4.1.39. He also kept silence when the classified list of Gazetted Establishment of Indian Railways was published in the year 1966- only two years after joining the service by the applicant. Any information which is published in the Gazette, is supposed to be known by all. Also its authenticity cannot be easily challenged. The fact that the applicant did not taken any action from the year 1966, makes his recorded date of birth unchallengeable.

10. No doubt, the applicant is placing reliance on the photostat copy of High School Certificate annexure A-1 in which date of birth is shown as 8.6.1940. The question then arises as to why the applicant failed to mention this date of birth at the time when he entered in the service, or at the time when card-annexure C.A.-III was prepared or when the list was published in the year 1966.

@@their declared ages or dates of birth. When on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his 'Service and Leave Record' to be opened that will amount to acceptance by the employer of such date of birth, as correct, be it the Government, or its ~~emp~~ instrumentality."

12. Thus it is clear thant once the date of birth is recorded in the service book and was accepted by the employer, it cannot be allowed to be changed. The concurrence of the employee about the date of birth which was recorded, may be gathered by direct or indirect act. In this case, the applicant never opposed the recorded date of birth till 30.5.1975 when the first representation was made. He did not avail of the opportunity. When the Railway Board had called for the the applications by 31.7.1973. Thus the belated action on the part of the applicant cannot be allowed, because any action about the correction of date of birth at the fag end of career will mar the chances of promotion of his juniors. Not only this, it will prove to be an undue encouragement to other employees to make similar applications with the object of preventing their retirement when due.

13. On the consideration of the factual as well as the legal position on the point, I hold the view that no relief can be given to the applicant. As such, the O.A. is dismissed. No order as to cost.

Typed and compared.
/M.M./

(Br. R.K. Saxena)
Judicial Member

The matter does not end here. The Railway Board had issued a letter dated 4.8.72- Annexure C.A.-I about the procedure for recording date of birth on entering Railway Service and about the alteration of the same. The last date for alteration of date of birth was 31.7.1973. Here again, the applicant missed the opportunity. These circumstances do suggest that the applicant believed recorded ~~date~~ date of birth i.e. 4.1.1939, as correct.

11. The learned counsel for the applicant placed reliance on the decisions in the cases 'Nrusingha Charan Hota Vs. State of Orissa and Others 1990(3) SLR 302, ' R. Sankarnarayanan Vs. Union of India 1990(7) S.L.R. 646, ' Vinayak Ram Chandra Vs. Union of India and others 1987 (4) SLR 203'. These are the decisions of Orissa Tribunal and Central Administrative Tribunal Madras and Jabalpur Benches. In these cases, the correction in the date of birth was allowed. In my opinion, the legal position is altogether changed with the decisions given by their Lordships of Supreme Court in the Cases Burn Standard Co. Ltd. and Others Vs. Shri Dinabandhu Majumdar and Anr.J.T. 1995(4) S.C.23, and S.L.P.(Civil) No.18322 of 1995 The Senior Horticulturist and Others Vs. Mallaiah decided on 21.11.95. In Shri Dinabandhu Majumdar's case, the following was the observation of their Lordships:

"Therefore when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and ~~to~~ support ~~the~~ the same by production of appropriate certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of