

RESERVED

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad: Dated this the ^{18th} day of ^{July} ~~June~~ 1996

ORIGINAL APPLICATION NO. 1655 OF 1992

Single Bench: Hon'ble Mr. T.L.Verma J.M.

Itwari s/o Pyare Lal, Ticket
no. 08 r/o House No. 36 Madho Wari
Harijan Colony, Bareilly - - - - - Applicant

C/A Sri D.P. Singh

VERSUS

1. Union of India through the
General Manager, N.E. Railway
Gorakhpur.
2. Chief Personnel Officer, N.E. Railway
Gorakhpur.
3. Chief Workshop Manager (P),
N.E. Rly Workshop, Izatnagar.
4. Assistant Personnel Officer,
N.E. Rly, Workshop, Izatnagar.
5. Executive Officer-cum-Registrar,
of Births and Death, Cantonment Board,
Bareilly, Cantt: Bareilly. Respondents

C/R Sri Lalji Sinha

ORDER

(8)

By Hon'ble Mr. T.L.Verma J.M.

In this application filed under section 19 of the Administrative Tribunals Act, 1985, applicant seeks quashing of order dated 22.4.1992 and for issuing a direction to the respondents to alter the date of birth of the applicant as 28.2.1937 in his service record and allow him to continue in service till he attains the age of superannuation with all consequential benefits including arrear of pay together with other benefits.

2. The applicant was appointed as Safaiwala on 3.9.1954. According to the applicant, he had given his date of birth as 28.2.1937. He was under the impression that the same ^{has} would have accordingly, been recorded in his service record. He was, however, surprised to receive notice dated 29.2.1988 for his retirement on 31.8.1988. On receipt of the above notice, he submitted representation to the Dy.Chief Workshop Manager(P), N.E.Rly, Izatnagar with a request to make necessary correction of his recorded date of birth ^{as} 28.2.1937 in his service record and allow him continue in service till he attains the ^{age} date of superannuation. He had annexed with the representation, certificate issued by Shri Kade Ram Member, ^{Municipal Board} Bareilly stating that the date of birth of the applicant was 28.2.1937. The representation of the applicant was rejected on the ground that the certificate was not acceptable. He submitted another representation dated 7.1.1988 against the order dated 1.1.1988 passed on his representation and ^{asserted} ~~asserted~~ that he never gave any declaration of his age and the recorded date of birth was the assessment of the railway doctor, which was an authentic one. The date of birth recorded on the basis of the information of the doctor was not binding. This representation was also rejected and the same was communicated to the applicant.

by letter dated 19.7.1988. The applicant thereafter filed O.A.No.957 of 1988 for correction of date of birth to 28.2.1937 with consequential benefits. The aforesaid O.A. was disposed of by order dated 16.9.1991 with the direction to the respondents to make enquiry and find out whether date of birth as given by the applicant was correct. The respondents by order dated 8.6.1992 informed the applicant that enquiry held in pursuance to the direction issued by the Tribunal in O.A.No.957/88, they have come to the conclusion that date of birth as claimed by the applicant (28.2.1937) is not correct. Therefore, entry in the official record as 1.9.1937 shall stand. This application has been filed for quashing the aforesaid order and issuing direction as already mentioned.

3. The respondents have appeared and resisted the claim of the applicant. In the counter reply filed on their behalf, it has been stated that it was within the knowledge of the applicant that his date of birth has been recorded as 1-9-1930 in his service record and that he had put his signature in "A" card in token of *correction* thereof. The signature of the applicant was attested by Sri T. Abdul ~~Shai~~ the then Head clerk/General of the office of Dy. Chief Works ^Manager, N.E. Railway, Izatnagar. The further case of the ^{respondent's} ~~applicant~~ is that extract of death and birth registered with Contonement Board relied upon by the applicant in proof of his date of birth does not indicate that the same relates to him.

4. We have heard the learned counsels for the parties and perused the record.

5. The main argument of the learned counsel for the applicant is that ~~the~~ enquiry has not been held

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by the respondents in accordance with the direction of this Tribunal. Therefore, the same cannot be based for holding that the date of birth of the applicant is 1.9.1930. Before we advert to the rival contentions, it may be pertinent to refer to the direction issued by the Tribunal in the aforesaid O.A. by the application. Operative portion of the order is as under :

" Accordingly this application is allowed to the extent that the respondents are directed to make enquiry and find out whether the D.O.B. was correct and also what was stated by the applicant is correct. A decision in this behalf shall be taken by the respondents within 6 months. The respondents will fix a date for conducting enquiry in the month of November, 1991. There will be no order as to cost."

A plain reading of the above direction indicates that all that the respondents were required to do was to hold an enquiry to ascertain whether the date of birth as given by the applicant was correct and the same was to be done within a period of six months. The respondents ^{have} held the enquiry, as would appear from Annexure A-1, and Annexure A-2, in pursuance of the direction issued in the aforesaid O.A. The direction issued by the Tribunal did not indicate the manner in which the enquiry is to be held. We, therefore, find no fault with the enquiry held by the respondents. The respondents have taken into account information received from the Executive Officer cum Registrar for birth and death of Bareilly Contonement Board, in holding enquiry for ascertaining the date of birth of the applicant. From annexure A-10 to the Supplementary counter affidavit, it appears that the column of ~~the~~ name, in the birth record, is blank and accordingly mark "X" has been put against the column of name. The letter further reveals that information regarding the name of the child was not furnished as required under rule 11 of U.P. Registration of birth and death 1976. The birth record shows ^{the} father's name as Pyare Lal, which is also the name of the father of the applicant. ~~only has been recorded:~~

The other document relied upon by the applicant, in proof of his contention ~~is~~ that the date of birth, as recorded in his service book is, not correct

as the High school certificate is of his brother Birbal. The certificate from Death and Birth Register, according to the respondents does not reveal the truth. Possibility of there being other person of the name, *Other than father of the applicant;* same cannot be ruled out. Therefore the fact that a male child was born to one Sri Pyare Lal on 28.2.1937 does not necessarily prove that it pertains to the applicant only. It was further stated that the brother of the applicant was born 12 years after his brother on 1.1.1949 as evidenced by ^{High School} ~~the~~ certificate annexure A-3. This document take us no-where. Therefore, cannot be said to be irrefutable in nature. Hence is of no avail.

6. Hon'ble Supreme Court, in a number of cases, has held, that unless a clear case on the basis of the material, which can be held to be conclusive in nature, is made out by the applicant, the court or the Tribunal should not issue direction on the basis of the material, which make such claim only plausible. We have already noticed above that the two documents relied upon by the applicant, in proof of his date of birth, are the certificate granted by the Member of Contonement Board and the High School certificate of the brother of the applicant. The Member of the Contonement Board is not the person duly authorised for issuing such certificate. Therefore, this document cannot be said to be an evidence of conclusive nature.

7. The matter relating to the amendment of the record ^{ed} / date of birth came up for consideration before the Apex Court in the case of UNION OF INDIA V/S

1993 Sec (295)

Harnam Singh reported in ~~M.L.R. 1993 SC 375~~ 375. The Hon'ble Supreme court in the said case has held "Govt. servant, who has declared his age at the initial stage of ^{employment} ~~enquiry~~ is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking ~~the~~ correction of date of birth, govt. servant must do so without any reasonable delay" So far as the question of possession of irrefutable evidence relating to the date of birth as claimed by the applicant ^{is concerned} we have already noticed that the applicant has not filed any such irrefutable proof relating to his date of birth.

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9. In addition to the above, there has been inordinate delay on the part of the applicant in questioning the recorded date of birth as being incorrect. Admittedly the applicant was sent for medical examination on his appointment as khalasi B. grade II, and the certificate issued by the Asstt. Surgeon I after ~~making the~~ ^{the} medical examination of the applicant clearly indicated that the age of the applicant on 1.9.1954 was assessed as 24 years. The respondents have very specifically averred ~~that~~ in their counter reply that as the applicant did not furnish any document in proof of his date of birth, the same was recorded on the basis of assessment of his age, made by the doctor, who examined him. The applicant, it is clear from the material on record, was aware that his recorded date of birth is 1.9.1930. The respondents have brought on record application for ^{loan} ~~leave~~ filed by the applicant on 20.7.1985. In this application date of birth of the applicant is recorded as 1.1.1930.

Respondents have also circulated seniority list of highly skilled grade I (Welders), Izatnagar workshop on 1.4.1975 and 1.4.1985 (annexure 6 and 7) respectively. In both the seniority lists, date of birth of the applicant has been shown as 1.9.1930. The applicant, therefore, is supposed to be aware that his date of birth has been recorded as 1.9.1930 in the seniority list circulated in 1975 and 1985 respectively. The applicant did not challenge the correctness of his date of birth as shown in the aforesaid seniority lists. The date of birth in his application for loan will also be deemed to have been given ^{to his knowledge} ~~with his consent~~ because the application bears his signature. This record came into existence much before the controversy regarding his date of birth ^{Came} ~~on coming~~ to the fore. Respondents ^{have} ~~have~~ further ^{averred} ~~submitted~~ in their counter reply that annexure 8 of the counter reply was issued at the request of the applicant on 22.6.1977 for submission to the Life Insurance Corporation. This certificate also indicates that the date of birth of the applicant is 1.9.1930. There is only a bald denial ^{of} ~~to~~ this averment in the rejoinder affidavit filed on behalf of the applicant. From the above material, it is patently clear that the applicant had ~~the~~ knowledge that his recorded date of birth is 1.9.1930 ^{from} ~~much~~ before the notice of retirement was served on him. He ^{and} ~~having~~ kept mum over the issue, ^{only} ~~made representation~~ on receipt of the notice of retirement, for ~~the~~ correction of his recorded date of birth, which cannot be entertained after such an inordinate delay.

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The learned counsel for the respondent has placed reliance in the decision of Vishakapattam

Facil. no. 10

Dock Labour Board V/s F. Alchannan and others JT(1996)
(3) Sc page 6. In this case respondent had applied for correction of their date of birth after more than 25 years of service, when they received notice for superannuation. The prayer of the applicants for correction of their date of birth was allowed by Andhra Pradesh High court. Hon'ble Supreme court in appeal reversed the judgement of the High court and held " that ^{violate} govt. notification dated 10-7.1979, the respondents were required to take steps within 5 years ^{months} from the date of the notification and that the Single Judge was wrong in giving direction to the appellate authority to refer the respondents to the Medical Board for ascertaining their age. "

Learned counsel for the respondents also placed reliance in Union of India and others V/s Kanti Lal Hemat Rai Pandeya AIR (1995) SC 1349. In this case respondents entered the railway service on 1.7.1955, giving his date of birth as 6.9.1930 at the time of entry into service. That date of birth was entered in his service book. On the basis of the said date of birth, railway administration issued order on 5.2.1988/ 8.3.1988 for the retirement of the respondent with effect from 30.9.1988 on attaining age of 58 years. Respondent protested as according to him his date of birth was 4.9.1934 and not 6.9.1930. The order of railway administration, directing his retirement with effect from 30.9.1988 was challenged before Central Administrative Tribunal, Ahmedabad. The Administrative Tribunal, Ahmedabad disposed of the application with a direction that the General Manager or his delegated Chief Personnel Officer shall inform the petitioner at the earliest about the documents with copy thereof on which reliance is sought by the railway administration ^{for arriving} arrived at a decision for ^{permit} correction of his date of birth and directed the respondent

to produce relevant documents in support of his claim and decide the same within a period of six months from the date of the order by an speaking order. The C.P.O., after holding the enquiry, rejected the claim of the respondent for alteration os his date of birth from 6.9.1930 to 4.9.1934. This order was again challenged by filing another O.A. before Ahmedabad Bench of the Central Administrative Tribunal. The Tribunal found fault with the opinion of the C.P.O. and allowed the O.A. Hon'ble Supreme court relying on the decision of Harnam Singh's case (Supra) allowed the appeal and set aside the judgement and order of Ahmedabad Bench of the Central Administrative Tribunal on the ground that correctness and genuinness of the certificate produced by the respondent in support of his date of birth was not free from doubt and also on the ground of delay in filing application was unexplained and inordinate.

10. Both the decisions of Hon'ble Supreme court relied by the learned counsel for the respondents are fully applicable to the facts and circumstances of the case before us.

11. Inview of the foregoing, we find no merit in this application and the same is, therefore, dismissed. There shall be no order as to cost.

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