

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 21st day of April, 2000
Original Application No. 942/1994

District : Jhansi

CORAM :-

Hon'ble Mr. Rafiquddin, J.M.

Mohd. Sharif son of Shri S.K. Rasool,
at present posted as Office Superintendent Grad I,
Loco Shed Jhansi, Central Railway Jhansi,
Resident of 84, Opposite Tehsil Jhansi.

(Sri MP Gupta/Sri SK Mishra, Advocates)

. Applicants

Versus

1. Union of India through
General Manager Central Railway,
Bombay V.I.
2. Divisional Railway Manager Central
Railway, Jhansi.
3. Senior Divisional Personnel Officer,
Central Railway, Jhansi.

(Sri Prashant Mathur, Advocate)

. Respondents

ORDER

The applicant has challenged the decision of the Senior Divisional Personnel Officer, Central Railway, Jhansi, respondent no.3 and that of respondent no.2 dated 10-6-1994 and 27-5-1994 respectively rejecting the claim of the applicant for change of his date of birth from 13-6-1936 to 14-10-1940.

2. The brief facts of the case as disclosed in the OA are that the applicant was appointed as a Ladder Man on 20-6-1956. The applicant alleges that he was asked to sign at the 1st Page of the service Book ~~Book~~ and other relevant columns were filled in by the officer concerned and his date of birth was mentioned as 30-6-1936. The applicant also alleges that his Service Book was

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attested on 26-5-1974 after 8 years of joining of service. According to the applicant as per Rules, the attestation on the Service Book should be made on the same date i.e. the date of appointment in the Railway Service. At the time of his joining service the applicant had passed High School Examination and his date of birth in the High School Certificate was as 14-10-1940. During the course of his service, the applicant came to be promoted as OS-I in the scale of Rs.2000-3300. The applicant is, therefore, entitled to remain in service till 30-10-1998. whereas on the basis of wrong entries of date of birth in his Service Book the applicant has been forced to retire on 30-6-1994.

3. The applicant had been asked to retire on 30-6-1994, vide letter dated 27-5-1994 (Annexure-A-1) from 30-6-1994 treating his date of birth as 13-6-1936. The applicant, therefore, filed a representation dated 7-6-1994 against the aforesaid notice in which he claimed that his date of birth is 14-10-1940. Hence, he should be retired from service from 30-10-1998. The same has been rejected by the impugned order. Hence, this application.

4. The respondents in their counter affidavit have denied that the first page of the Service Book was ever attested by the officer concerned, ~~and~~ ^{But} Actually the aforesaid attestation was done on 25-5-1994 and not on 26-5-1974. The applicant himself had declared that his date of birth would be 13-6-1996. The respondents have also alleged that the applicant appears to have concealed his qualification in order to avoid refusal of his appointment on the ground of his being minor. It is also emphasised that the column of educational qualification in his Service Book is blank and the applicant has not declared to be High School pass candidate.

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5. I have heard counsel for both the parties and perused the record carefully. It is not in dispute that the date of birth of the applicant as recorded in his Service Book is 13-6-1936 and ~~that~~^R in his High School Certificate the same is recorded as 14-10-1940. It is contended on behalf of the respondents that since the date of birth in the Service Book was declared by the applicant himself at the time of his appointment in the Railway, he is bound by that declaration and he cannot get any benefit of the date of birth mentioned in his High School Certificate. It is further contended that the applicant himself concealed the fact of his having passed the High School ^{and the} Certificate ^{with date of birth} as 14-10-1940 in order to obtain employment in the Railway, otherwise he would not be found eligible being minor at the time of recruitment in the Railway.

6. Learned counsel for the applicant has on the other hand contended that a departmental enquiry was conducted against him for concealing the facts of his correct date of birth in order to obtain employment in the Railway and after conclusion of the enquiry he was exonerated the charge was not proved against him vide Annexure-A-5. It is also contended that the seniority list dated 31-7-1969, 30-8-1975, 8-11-1981 and 26-6-1987 also bear the date of birth of the applicant as 14-10-1940. These seniority lists were duly published by the respondents (Annexures-A-6 to A-9). The applicant, therefore, on the basis of this seniority list has correctly presumed that his date of birth has been correct in his Service Record. It has also been pointed out that in the year 1962-63, the applicant mentioned his date of birth as 10-10-1940 in the papers connected with his promotion and he was promoted after interview. However, I do not find any force ^m of these arguments

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and all these events in the career of the applicant in the Railway do not prove that correct date of birth of the applicant should be 10-4-1940 instead of 10-6-1936.

7. It is clear from the facts of this case that the applicant was well aware of the fact that his date of birth in his Service Book recorded was 13-6-1936. But it is strange that he never made any representation for correction of his service record on the basis of his entry of date of birth in his High School Certificate. In other words, he could have addressed the problem straightway. Instead he wants to take shelter of certain circumstances in his favour to get benefit of his date of birth recorded in his High School Certificate. He made representation as late as in the year 1994 regarding his date of birth only on receipt of notice of his retirement and did not dare to challenge entries of the date of birth in his date of birth earlier. I find force in the argument of the learned counsel for the respondents that the date of birth in the Service Book of the applicant was declared by the applicant himself at the time of his entry in the service and the correct date of birth was concealed by him in order to get employment in the Railway because on the basis of his date of birth recorded in his ^{High School} ~~Transfer~~ Certificate, he was clearly minor. Therefore, He was not eligible for appointment for Government service being minor. At this point, learned counsel for the applicant has urged that there were other candidates (whose names have also been disclosed) ^{as the applicant who was} ~~as the applicant who was~~ ^{recruited as minors} ~~recruited as minors~~ ^{at the time of their entry in the} ~~at the time of his entry in the~~ service owing to the shortage of man-power in the Railway. But it has not been pointed out that in Railways a minor could be recruited as per Rules. If any wrong was done in respect of other persons, the applicant cannot get benefit of such wrong and cannot plead discrimination

in this regard because one wrong cannot justify another wrong.

8. As regards attestation of the first page of the Service Record of the applicant by the officer concerned, it has been pointed out by the learned counsel for the respondents that the first page is never attested by any officer. Actually the first page of the Service Record of the applicant was attested on 25-5-1994, and was sent to the applicant as a proof of his date of birth mentioned in his service record. It is ^{also} evident from the perusal of the copy of the aforesaid paper which is Annexure-A-2.

9. Admittedly, the applicant was literate person having passed High School Examination when he entered in the service. However, I find that column of educational qualification in the Service Book is blank. The signs of the applicant are in very clear English and in these circumstances it cannot be presumed that the date of birth was wrongly mentioned by the officer of the Railway without his knowledge or consent in his service record. The applicant is expected to sign the Service Record after fulfilling all the columns being literate. In these circumstances it cannot be concluded that the date of birth was wrongly mentioned by the officials. On the other hand it proves that the applicant himself deliberately mentioned his ^{wrong} date of birth ^{wrongly}.

10. As regards the date of birth mentioned in various seniority lists issued by the respondents, it has been rightly contended by the learned counsel for the respondents that the applicant cannot get benefit of that unless his service record correctly mentions his date.

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date of birth as per High School Certificate.

11. In view of the above discussion I do not find any merit in this OA. The OA is, therefore, liable to be dismissed. The OA is accordingly dismissed with no order as to costs.

Rafiqul Karim
Member (J)

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