

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 6th day of December, 1996

Original Application No. 1078 of 1994

District : Jhansi

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

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Raghunath Singh Son of Shri Ram Das
Resident of 1153, Gondu Compound,
Civil Lines, Jhansi.

(By Sri MP Gupta, & Sri KK Mishra, Advocates)

..... Applicant

Versus

1. The Union of India through the General Manager,
Central Railway, Bombay V.T.
2. The Divisional Railway Manager,
Central Railway, Jhansi.

(By Sri AK Gaur, Advocate)

..... Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

This OA has been filed under Section 19 seeking direction ~~xxxxxxxxxx~~ to record January, 12, 1941 as the correct date of birth of the applicant in his service record in place of 1-1-1936 which was interpolated in the service record on his back without giving him any opportunity of hearing and also to allow him to work on the post of Driver 'A' ~~xxxxxx~~ or to any other higher post to which he may be promoted till 31-1-1999. In the alternative it has been prayed that he be declared to be entitled to the arrears of pay & allowances upto 31-1-1999 by treating him as in service for all purposes. A further prayer is that the respondents be

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directed to give him proforma seniority as Foreman 'A' above Mohd. Ismail with all consequential benefits.

2. The applicant was appointed in the Central Railway, Jhansi as a Ladderman on 25-12-1958. The case set up by him is that at the time of his appointment, he had already passed High School Examination in 1956 and his date of birth indicated in the certificate was 12-1-1941 and this date was recorded as his date of birth in the service record. This date of birth, however, was subsequently changed in his service record as 1-1-1936 and on that basis he was retired from the post of Driver Grade 'A' to which position he had reached after successive promotions, on 31-12-1993. The applicant claims that when he came to know that date of birth in his service record had been changed he submitted a representation on 14-8-1972 and again on 31-5-1973, 6-4-1989 and finally on 6-10-1993 requesting that the date of birth be corrected and the same be recorded as 12-1-1941. However, no action was taken on this representation and he was retired on the basis of his changed date of birth. The applicant has further stated that on 14-8-1972 he was asked to submit a copy of his High School Certificate which he did. He was further directed to submit his original High School Certificate vide a letter dated 19-6-1989 issued by the respondent no.2. This direction was complied with by the applicant but inspite of this, nothing in the matter was done. He, therefore, sent another representation dated 6-10-1993 and appealed that his case be dealt with promptly but still no action was taken and he was retired w.e.f. 31-12-1993 in an illegal and arbitrary manner. His further case is that

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he had not received fair treatment from his officers in the matters relating to his employment as Railway employee. It is stated that in terms of a decision taken by the Chief Personnel Officer, Bombay on the applicant's representation, he was entitled to be assigned proforma seniority as Foreman 'A' above Sri Mohd. Ismail but despite several representations to the authorities concerned, no action in the matter was taken and no heed was paid to the decision of the Chief Personnel Officer, Bombay. Later by the order dated 15-2-1993 issued by the office of the respondent no.2, he was informed that proforma seniority cannot be assigned to him.

3. The respondents have filed a counter reply in which it has been stated that the present application is not maintainable as the applicant has approached this Tribunal after his retirement seeking correction of his date of birth. It has been further stated that the applicant was retired on 31-12-1993 on the basis of an entry made in his service record regarding his date of birth, on the basis of a declaration given by him. It has been asserted that the applicant did not submit his High School Certificate at the time of his appointment. The respondents have also denied that the applicant submitted the representation dated 31-5-1973, 6-4-1989 and 6-10-1993. The further plea taken by the respondents is that at the time of medical examination on 1-10-1958, the applicant's age was recorded as 21 $\frac{1}{2}$ years in Form No. M-18B/A No. 154 issued by the Railway Doctor with full knowledge of the applicant and that he himself had shown his date of birth as 1-1-1936 in various forms relating to the grant of terminal benefits.

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4. The applicant has filed a rejoinder affidavit reiterating his contentions in the OA. It is further stated that the date of birth was initially recorded in his service book as 12-1-1941 but this date was subsequently changed behind his back without giving him an opportunity of being heard. He claimed that this could be verified from the service record of the applicant if produced in the Court. As regards the assessment of age by medical examination, he has stated in the rejoinder affidavit that such examination is not conclusive proof of the age of a person particularly when his High School Certificate indicating the date of his birth is available. As regards signing of various documents pertaining to the drawal of terminal benefits indicating his date of birth as 1-1-1936, his explanation is that he had no option but to write this date as given out by the administration, as otherwise the retirement benefits would not have been paid to him.

5. I heard learned counsel for both the parties and perused the pleadings on record.

6. At the time of hearing on 13-9-1996, the learned counsel for the respondents was directed to make available to me the service book of the applicant within three weeks. Despite repeated reminders, the learned counsel for the applicant did not make the aforesaid document available to me. He submitted that he had made written request to the respondents repeatedly for this document but the same has not been made available.

7. There is a specific averment in the OA as well as the rejoinder affidavit that the applicant's age was initially recorded as 12-1-1941 and the same was subsequently changed to read as 1-1-1936. The truth

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or otherwise of this allegation could have been verified if the first page of the service book in which the date of birth is recorded was produced before me. Since this was not made available to ~~me~~ despite specific directions in this regard, normally it would have been appropriate to take a presumption adverse to the respondents. However, in view of the reasons indicated below, I have not taken such a presumption as it would have resulted in allowing this OA.

8. The applicant admittedly was appointed on 25-10-1958 and presumably his date of birth was recorded shortly thereafter in his service book. According to his own statement, he submitted a representation on 14-8-1972, seeking correction of his recorded date of birth. This would imply that by that time he had already become aware of the change in the date of birth which he alleges was made by the respondents behind his back. The respondents have denied receipt of such a representation. The applicant has not annexed a copy of the said representation nor has he adduced any proof of submission of such a representation. There is also no copy of the subsequent representation dated 31-5-1973 which the applicant claims to have submitted to the respondents nor is there any proof of submission of the same. The respondents have denied receipt of such representation. Thereafter, according to the applicant's case, he submitted representation 16 years later on 6-4-1989 and again $4\frac{1}{2}$ years later on 6-10-1993 and none of these representation is annexed to the OA nor is there any documentary evidence that such representations were submitted. The respondents have also not admitted receipt of such representations. I am, therefore, unable to accept the contention of the applicant that he made

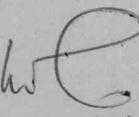
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any representation regarding his date of birth to the respondents in 1972 or 1973 or even thereafter in 1989 or 1993. In other words, for the first time, he seems to have agitated this matter by way of filing this OA only after he retired from service.

9. It is settled law that although an employe has a right to seek amendment to the recorded date of birth, such request must be made within a reasonable time and also on the basis of irrefutable supporting evidence. In the case before us the applicant was appointed on 25-12-1958 and apparently the first time he has raised the question of his date of birth through this OA filed on 14-7-1994 i.e. seven months after he was retired from service. He cannot, therefore, be allowed to ~~adjudicate~~ ^{apply for} adjudicate this matter at such a belated stage. Moreover, he has not effectively rebutted the contention of the respondents that he was medically examined on 1-10-1958 and his age was assessed as 21 $\frac{1}{2}$ years on that date. This tallies with the date of birth stated to have been recorded by the respondents i.e. 1-1-1936.

10. So far as the other relief of assignment of ~~proforma~~ ^{seniority} is concerned, this has no nexus with the first relief. In any case, the learned counsel for the applicant did not press this relief.

10. In view of the foregoing, I find no merit in this application and the same is dismissed accordingly. There shall, however, be no orders as to costs.


Member (A)

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