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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated : ..23.12.79

Original Application No: 1101 of 1994

Murali Singh, S/O Chillar Singh
R/O Village Nagaw, Post Office Piparauli,
District Gorakhpur.

..... Applicant

By Advocate Shri S.N.Shukla

Versus

1. Union of India through Secretary, Railway Board Rail Bhawan, New Delhi
2. General Manager North Eastern Railway, Gorakhpur.
3. Chief Workshop Manager, North Eastern Railway Workshop, Gorakhpur.
4. Chief Personnel Officer North Eastern Railway, Gorakhpur.

..... Respondents.

By Advocate Shri A.V.Srivastava.

O R D E R

Hon'ble Mr. T.L.Verma, Member-J

This application has been filed for quashing order dated 10.5.1994 rejecting the prayer of the applicant to correct the date of his birth in his service record.

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2. The applicant entered a Railway service under D.R.M. Northern Railway, Gorakhpur on 4.1.1956

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in class IV post as Khalasi. At the time of entry into the Government service, his service book was prepared and the date of birth was recorded as 19.12.1936. He was promoted as Skilled Turner in the grade of Rs. 110-180/- on 7.5.1959. At the time of his promotion, it was detected that ^{his} ~~the~~ service book, prepared at the time, he entered in service in 1956, along with ~~others~~, service records of some other employees was destroyed in a fire. The service book was accordingly reconstructed, ~~and~~ According to the applicant, his date of birth was inadvertently recorded as 19.12.1936 in place of 01.07.1939. The department published seniority list of Turners ^{on} 01.04.1979, in which the date of birth of the applicant was indicated as 19.12.1936. The applicant, on coming to know of the wrong entry of his date of birth in his service record ^{is stated to have} filed representation to the Deputy General Mechanical Engineer, North Eastern Railway, Gorakhpur through proper channel for correction of his date of birth vide Annexure A-4. This representation was followed by a reminder representation dated 11.7.1977 (Annexure-5). The respondents, however, did not pass any order for correction of his date of birth in his service record. Next promotion became due to the applicant and the correction in his date of birth as prayed for had not been ordered, he filed a fresh representation on 6.10.1993 vide Annexure A-6. The applicant has filed photo copy of the letter delivery book which would show that application of Murali Singh, the applicant, for correction of date of birth was dispatched on 29.10.1983 addressed to

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the Additional Chief Mechanical Engineer, Northern Railway. The Chief Personnel Manager (Workshop) vide his letter dated 8.1.1994 published notice indicating date of retirement of the employees which indicated the date of retirement of the applicant as December, 1994 (Annexure A-7). On receipt of the said notice, the applicant made ^{further} representation to Chief Engineer Workshop North Eastern Railway, Gorakhpur on 5.2.1994 and made further representation to General Manager, Northern Railway Gorakhpur and Chief Personnel Officer Northern Railway, Gorakhpur on 24.3.1994 through proper channel vide Annexures A-8 and A-9. The representations submitted by the applicant for correcting his date of birth in his service record were finally rejected by impugned order dated 10.5.1994. According to the applicant, he had shown the School Leaving Certificate of Junior High School and High School in proof of his date of birth to the respondents at the time, he entered the service. But the respondents have arbitrarily recorded 19.12.1936 as the date of his birth contrary to documentary proof. Hence, this application.

3. The respondents have contested the claim of the applicant. In the Written Reply submitted by the respondents, it has been stated that at the time of his initial engagement, the applicant did not produce any certificate or for that matter School Leaving Certificate of Junior High School and High School, he was therefore, medically examined by a competent doctor who found him to be aged about

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19 years on 19.12.1955 and ^{a similar} ~~this~~ declaration was given by the applicant in writing. On the basis of the declaration given by the applicant, after his appointment A-Card was prepared in which the applicant declared his date of birth as 19.12.1936. The respondents have filed photo copy of the A-Card, certificate given by the Medical Officer and a signed declaration of the applicant. A-Card bears ^{Signed} a declaration of the applicant that his date of birth is 19.12.1936. The declaration has been signed by him in presence of one Santoo Prasad, Khalasi as a witness. The ¹⁸ ~~photo copy~~ service record was produced for my perusal by the learned counsel for the respondents at the time of hearing. I am satisfied that the applicant had, at the time of his engagement given his age as 19 years on 19.12.1955.

4. The Supreme Court in Secretary & Commissioner Home Department Vs. R.Kirubakaran, reported in S.L.R. Vol. 91, 1993(5) SLR has observed that;

This court has repeatedly pointed out that correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order ^{must} not be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect. While disposing of any such application, the Court or the Tribunal, has first to examine, whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the Court or Tribunal has to examine, why such application was not made within a reasonable time after joining the service.

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A similar question came up for consideration before the Hon'ble Supreme Court in State of Assam in Daxin Prasad Deka reported in (1970) 3 Supreme Court Cases, page 624. In the said case, it was held that the date of compulsory retirement must be determined on the basis of the service record and not on what the applicant claims to be his date of birth unless the service record is first corrected consistently with the appropriate procedure.

In Union of India Vs. Harnam Singh reported in (1993) 24 Administrative Tribunal Cases page 92, it was held that the applications for correction of date of birth entered in the service book should be made within a reasonable time that is within a period of 5 years from the date of entry in service or within 5 years from the date on which instructions limiting the time for filing such application is fixed.

5. This application has to be disposed of in the premises ^{of law} laid down by the Supreme Court in the decisions referred to above. The first and the foremost question for consideration is whether ~~the~~ a clear case, on the basis of materials brought on record, is made out by the applicant for issuing a direction for correction of his date of birth. The documents relied upon by the applicant are the School Leaving Certificate of the Junior High School and the High School. The certificate of the Junior High School is Annexure A-2. The date on which the applicant is stated to have ^{left} school is not legible. In the

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transfer certificate obtained from TDM, ^{Vidyalay} Gorakhpur, the applicant is shown to have left the institution on 31.12.1955. According to the certificate, the applicant had studied up to 10th Class in the said school and had failed. In both the certificates, Annexures A-2 & A-3, the date of birth of the applicant is shown as 1.7.1939. The question is whether these documents can be treated as conclusive evidence of the date of birth of the applicant. The minimum age for appointment on any Government post is 18 years. If the date of birth of the applicant as given in the School Leaving Certificate and High School Certificate is accepted as correct which is 1.7.1939, the applicant would have been less than 18 years of age on the date, he was appointed as Khalasi and would have been in-eligible for such appointment, ^{on the ground of being under 18} The applicant, it is stated, had obtained permission of the competent authority to appear at the High School examination ~~in~~ privately in 1962 and he claims to have appeared at the examination for the year, 1963 as a private candidate and accordingly permission was given. He appeared at the examination and failed. The school leaving certificate from the High School had been obtained on 12.3.1961, ^{in which} ~~and~~ the applicant ~~has been~~ shown to have left the institution on 31.12.1955. The above documents, in my opinion, cannot now be allowed to be availed of by the applicant after having declared that he was 19 years of age on the date of his appointment.

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6. Coming to the question whether the delay on the part of the applicant in moving the appropriate authority for making correction in his date of birth has any bearing in assessing probative value of the documents, the applicant now proposes to rely upon in support of his claim. The School Leaving Certificate appears to have been obtained by the applicant on 12.3.1961. The school leaving certificate of the Junior High School, according to the applicant, had been obtained even before that for the purpose of seeking admission in TDM Vidyalaya Gorakhpur where he ^{is} shown to have ^{been} admitted on 10.7.1953. The applicant thus was in possession of the above documentary evidence in proof of his date of birth on the date he was appointed as Khalasi on 4.1.1956.

7. The seniority list, that was circulated on 1.4.1975, bore the date of birth of the applicant as 19.12.1936. The applicant will be deemed to have noticed his date of birth in the seniority list and that will be deemed to be the date of knowledge regarding the date of birth recorded in his service record. In the normal course, the applicant should have made a representation for making correction ~~in~~ ^{Service Book} his date of birth recorded in his ~~xxxxxx bookx~~ ^{Service Book} ~~of birth~~ within a reasonable period that is to say within 5 years. The applicant although claims to have made representation for correction of his date of birth in 1966 and 1967 but the respondents ^{have} denied to have received any such representation. There is no material before us as may support the claim of the

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applicants having made the representations. Even assuming for the sake of argument that the representations were made by the applicant, and the respondents did not pass any order then in that case it was incumbent upon the applicant to have moved proper forum for issuing directions to the respondents to dispose of his representation or correct the date of birth recorded in his service record. That not having been done, in my opinion, the application is highly belated and suggest that the documents that have been filed by the applicant in support of his claim are not beyond suspension.

8. The applicant, it was stated, again filed representation on 6.10.1983. The respondents ^{have} denied to have received this representation also. The applicant has, by filing photo copy of letter delivery book annexed to the supplementary rejoinder affidavit, ~~has~~ however, shown that such a representation was received in the office of the respondents. The respondents have chosen not to dispose of the said representation. In the normal course, the applicant ought to have moved the proper forum against the inaction of the respondents in deciding his representation. That also does not appear to have been done ^{by the applicant}. Even if 6.10.1983 is treated to be date on which date the representation was filed by the applicant then also it was expected ^{of the applicant to have} moved the appropriate forum ^{within a reasonable time} for the relief for which he has now come to this Tribunal at the fag end of his career. It would thus appear that the applicant had

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slept over his right either, because it had no substance or for any other reason. Be that as it may, the delay in moving the appropriate forum for the relief on the part of the applicant is vital.

9. The learned counsel for the applicant has argued that the impugned order dated 10.5.1994 has given the applicant fresh cause of action for filing this case. From the perusal of the impugned order, it appears that the representation which the respondents have rejected is dated 21.4.1994. If that be taken to be the date on which the representation for correction of his date of birth was made by the applicant then also it is of no help to the applicant. The representation dated 21.4.1994 which the respondents have rejected by the impugned order was not maintainable as having become barred by limitation. That being so, the impugned order will not extend the limitation to give fresh cause of action to the applicant, for filing this application.

10. It was next argued by the learned counsel for the applicant that the applicant being illiterate and ignorant had signed the A-Card and the declaration without understanding its implication and import. The argument of the learned counsel is neither logical nor sound to say that the applicant even though signed the service book, ~~was~~ saw the seniority list ~~made~~ and ^{did not come} ~~has~~ still ~~come~~ to know as to what his recorded date of birth was. Such a conclusion would ignore the normal human conduct.

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11. In view of the ~~above~~ discussions made above, I find that the applicant has failed to establish by conclusive evidence that his date of birth is 1.7.1939 and that the same has been wrongly recorded as 19.12.1936. Hence, I find no merit in this application and the same is dismissed.

J. Khulmi
Member-J

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