

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, ALLAHABAD

DATED: This the 24th day of September 1997

Coram: Single Member bench of Hon'ble Mr. S. Das Gupta
A.M.

ORIGINAL APPLICATION NO. 374/1995

Lal Behari Singh son of Late
Paramhansa Singh, Office Supdt., -II
Deputy Controller of Stores,
N.E.Railway, Gorakhpur Depot. - - - - - Applicant

C/A Sri S.K. Srivastava

Sri S. K. Om

Versus

1. Union of India through Secretary

Railway Central Secretariat,
New Delhi.

2. General Manager, N.E.Railway,
Gorakhpur.

3. Chief Personnel Officer,
N.E.Railway, Gorakhpur.

4. Controller of Stores,
N.E.Railway, Gorakhpur.

5. Deputy Controller of Stores,
N.E.Railway, Gorakhpur Depot. - - - - - Respondents

C/R Sri A. Tripathi

ORDER

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

Through this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant seeks alteration of his date of birth on the basis of the date of birth recorded in his High School

1
S

certificate. He also prays that he be allowed to continue in service till 31.1.1997 in accordance with the altered date of birth.

2. The applicant's is that at the time he joined service as Khalasi on 1.4.1960, his date of birth was erroneously recorded in 'A' card as 5.4.1937 by the Establishment Clerk in the Personnel department, although the correct date of birth recorded in the High School certificate is 20-7-1939. Over ^{1/2} years, applicant was successively promoted to the grade of Material Checker, Junior Clerk, Senior Clerk, Head Clerk and finally to the post of Office-Supdt. grade II. All these promotions were granted to him on the basis of educational qualification and every time he was promoted, his educational certificate was scrutinised by the concerned authorities. It was only in 1993 that he came to know that his date of birth was erroneously as 5.4.1937. ^{Tecred} He thereupon submitted successive representations to the respondent no.5 but despite some correspondence between the respondent and the applicant, the applicant's request for alteration in his date of birth was finally turned down by the impugned order dated 4.4.1995. Hence this application.

3. The respondents have submitted in their counter reply that the applicant's date of birth was recorded in 'A' card as 5.4.1937 on the basis of his own admission and this was countersigned by him. It is further stated that the applicant had concealed the fact that he was a literate employee having passed High School examination at the time he entered the service of the respondents and that he did not submit High school certificate at the time of his appointment. It has also been averred that the applicant himself had submitted a loan application from Provident Fund

W.S.B.
on 27.5.1993. He himself mentioned his date of birth as 5.4.1937. Similarly, in the seniority list dated 1.8.1991 his date of birth was shown as 5.4.1937 and though the said list was given to the applicant, he did not raise any objection which he could have done within a period of 40 days from the date of issue of the Seniority list. He submitted his representation only on 4.10.1993 and then on 18.10.1993 requesting that his date of birth be corrected on the basis of High School certificate. The representations were forwarded to the Chief Personnel Officer, who took *L* decision that in accordance with the service terms and conditions and also on the basis of extant circular of the Railway Board, the applicant should have made such a request before 31.7.1973 and not having done so, his request was rejected. They have further averred that request was only made ~~after~~ 2 years prior to his retirement and as such the request could not have been accepted. In the rejoinder affidavit, applicant sought to improve his case by contending that at the time of his appointment, he ~~was~~ declared that his date of birth was 27.9.1939 in the attestation form dated 25.7.1960 sent by the respondents to the District Magistrate, Deoria for the purpose of character verification. He has annexed photocopy of the aforesaid attestation form dated 25.7.1960. He has, therefore, contended that although he had declared his date of birth as 27.9.1939, it was actually entered as 5.4.1937 due to some clerical error. He has further stated that he had no occasion to detect the mistake committed by the *Officer* ~~aforesaid~~ as his service record was never provided for inspection. He, however, submitted representations as soon as he detected the mistake at the time when he was granted loan from the Provident Fund. He

has denied having been shown the copy of the seniority list dated 1.8.1991. The further ground taken by him is that even assuming that he gave wrong declaration of his date of birth, ~~even then~~ the said date of birth should have been corrected on the basis of High School certificate. He has also stated that he is a simple innocent man belonging to a village and, therefore, he could not know the importance of inspecting the service record nor the same was ever made available to him for inspection.

4. In the Supp. counter affidavit, the respondents have averred that the applicant's date of birth was recorded as 5.4.1937 not only in the 'A' card but also in the medical certificate and that date mentioned in the attestation form has been altered and such alteration is quite clear.

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

6. Nowhere in the O.A., the applicant has averred that at the time of his appointment, he had produced before the authorities his High School pass certificate. He has not made any such statement even in the rejoinder affidavit although in the R.A. he has made a statement that at the time of his appointment, he had declared his date of birth as 27.9.1939. On a careful assessment of the averments, it is clear to me that at the time of appointment, the applicant did not make any statement regarding his date of birth nor/he produce his High School pass certificate and, therefore, his age was assessed by the Medical Officer as 22 years on 5.4.1960 as would be evident from the medical certificate at annexure SCA-2. Thus his date of birth should have been recorded as

W.L.

5.4.1937 on the basis of such assessment of his age. There would have been no occasion for such medical assessment of age had the applicant produced his educational certificate as proof of his age at the time of his appointment. The respondents have also annexed the copy of 'A' card as CA-1 to the C.A. In this card, date of birth of the applicant is recorded as 5.4.1937 and it also bears both ^{his} left thumb impression as well as the signature.

7. I have given careful consideration to the fact that the date of birth is indicated as 20-7.1939 in the attestation form. Although the respondents have tried to debunk this date stating that the date actually recorded in the attestation form was 20.7.1939. I have however not been persuaded by the applicant's plea that this attestation form was signed on 25.7.1960, nearly 4 months after his appointment. The fact that the date of birth indicated in the attestation form was 20.7.39 does not, therefore, detract from the conclusion that at the time of appointment, the applicant did not give any declaration regarding his date of birth and, therefore his date of birth was recorded on the basis of age which was medically assessed.

8. In the leading case of Union of India versus Harnam Singh (1992) SC (L&S) 375, the Hon'ble Supreme court had held that although an employee has a right to seek alteration of his date of birth on the basis of irrefutable documentary evidence, the request for alteration must be made within a reasonable time. The law laid down by the Hon'ble Supreme court that such request which suffers from delay and latches shall not be entertained has been consistently followed in subsequent decisions. Mention of which can be made of the case of Shah ^{ent} Tamilnadu versus T.V. Venugopalan and in the case of

W.L.

7

Burn Standard versus Dinabandhu Majumdar JT 1995

(4) SC 23. In the case of Burn Standard, following observations was made by the apex court :

" Entertainment by High courts of writ applications made by employees of the Govt. of its instrumentalities at the fag end of their services and when they are due to for retirement from their services, in our view, is unwarranted. It would be so far the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Govt. or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of govt. or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. "

9. The applicant has sought reliance on the decision in the case of Thaneshwar Barua 1990 (12) ATC 804 and case of Ramjanam Singh 1992 (20) ATC 631. These decisions do not come to any assistance of the applicant in view of the law laid down by the Hon'ble Supreme court in the case of Harnam Singh. There is no doubt that the applicant who was initially appointed in April, 1960 for the first time represented for alteration of his date of birth after more than 33 years and that too on the verge of his retirement.

10. In view of the foregoing, I find no merit in this application and the same is accordingly dismissed. Parties shall bear their own costs.

MEMBER (A)