

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1508/99

THURSDAY, THIS THE 6TH DAY OF MARCH, 2003

HON. MRS. MEERA CHHIBBER, MEMBER(J)

Abdul Samad,
s/o Sri Abdul Karim,
r/o Mohalla Rafatpur Near Bazar Faizganj
Dist:- Moradabad. Applicant.

(By Advocate:- Km. Sunita Sharma)

Versus

1. Union of India through Secretary
Ministry of Railway, New Delhi.
2. The Chairman Railway Board,
Govt. of India, New Delhi.
3. Divisional Railway Manager,
Northern Railway, Moradabad.
4. Loco, Foreman, Northern Railway
Moradabad. Respondents.

(By Advocate:- Shri P. Mathur)

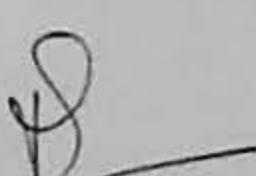
O R D E R

By this O.A applicant has sought a direction to the respondents to quash the order of retirement dated 30-4-1998 and a further direction to the respondents to correct the date of birth in the records of applicant as 12-4-1945 in place of 12-4-1940. He has also claimed a direction to the respondents to take work from the applicant on the post on which he was retired and to pay him his backwages and arrears till it falls due.

2. It is submitted by the applicant that he was appointed in Northern Railway, Moradabad on the post of Call man/Foreman and he has been retired illegally much before attaining the age of superannuation on 30-4-1998 on the basis of wrongly mentioned date of

birth in the service record as 12-4-1940. According to applicant his actual date of birth is 12-4-1945 which is evident from the school leaving certificate issued by the Pradhanadhyapak on 14-7-1957 (Annexure A-I). It is further submitted by the applicant that he fell sick on 15-12-1997, therefore, was advised to take bed rest as he was suffering from bronchitis. (Certificate filed as Annexure A-4) After recovery, he wrote a letter to the Divisional Railway Manager, Northern Railway, Moradabad on 29-10-1999 about the wrong entry of date of birth in the service record stating therein that he had no knowledge about the said date of birth having been entered in his service record. Therefore, he requested the authorities to correct the date of birth as 12-4-1945 in place of 12-4-1940 but the said representation has not been decided till date. Thus, finding no other remedy the applicant had to file the present O.A.

3. Respondents have opposed the O.A, on the ground that applicant had himself given his school leaving certificate at the time of entry in service, which was issued in April, 1960 wherein his date of birth has ^{been} shown as 12-4-1940 (copy annexed as Annexure CA-II). On the basis of his statement his date of birth recorded in the service book is also on 12-4-1940 which was seen by the applicant and he had not raised any objection at that time. On the contrary after having seen the service record he affixed his thumb impression as well as signed the said record (Annexure CA-I) In the said record his date of birth is shown as 12-4-1940. Similarly, even the medical certificate which was duly thumb

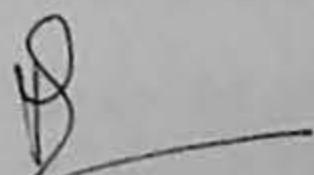


//3//

impression by the applicant and issued as back as, on 03-08-1965, his date of birth has been recorded as 12-4-1940 and a-part from all these the respondents had even issued a seniority list on 12-1-1990 wherein applicant's name figured at Sl. No. 78 and his date of birth is shown as 12-4-1940 (Annexure CA-3). Therefore, they have submitted that applicant can not be heard of pleading that he was not aware about the recording of his date of birth as 12-4-1940 and since he applied at the fag end of his career for change of date of birth which was contrary to the service record available with the respondents, his representation was rejected vide order dated 12-4-1999 which was duly received by the applicant himself. They have, thus, submitted, there is no merit in the D.A., therefore, the same may be dismissed with cost.

12 appeared 12
4. Since none ^{for} the applicant even in the revised call I could have dismissed this matter in default ^{for} non-prosecution but since this matter was pending since 1999 ^{9 thought 8} it would be proper to decide it on merits after hearing the respondent's counsel by attracting Rule 15(f) of CAT Procedure Rule, 1987.

5. I have heard respondent's counsel and perused the pleadings as well. The document annexed by the respondents with their counter clearly shows that at the time of his appointment applicant's date of birth was recorded as 12-4-1940 in the service book which was duly ¹² signed by the applicant and he had approved the same



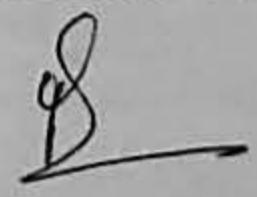
by affixing his thumb impression and by signing the said document. Moreover, the school leaving certificate which was submitted by the applicant himself and was on the records of respondents, was issued as back as on 16-4-1960 wherein applicant's date of birth is shown as 12-4-1940. The certificate which has been filed by the applicant with his O.A at page 14 does not bear any date of issuance but in this certificate his date of birth is shown as 12-4-1945. Interestingly in the said certificate the date for leaving the school is shown as 14-7-1957, that means on the date when applicant was given appointment this certificate would have been with him and he could always have raised the objection that his date of birth is being wrongly entered as 12-4-1940 because he was given the appointment in the year, 1965. But as stated above at the time of his appointment his date of birth is clearly shown as 12-4-1940 which was never objected ^{to} by the applicant. On the contrary it was signed by him. Therefore, applicant is deemed to have accepted his date of birth as 12-4-1940. Thereafter also in 1990 the respondents have issued the seniority list wherein again applicant's date of birth is shown as 12-4-1940 which has not been objected by the applicant and it is only at the time of his

^{the time of his}
~~of career~~ ^{at} his retirement that he gave representation for the first time on 12-1-1998 requesting the authorities to change the date of birth from 12-4-1940 to 12-4-1945.

Therefore, it is clear that applicant was throughout aware of his date of birth entered in the service record and cannot be allowed to change his date of birth or ask for correction of date of birth at the fag end of his career. The Hon'ble Supreme Court has repeatedly held that employee can not raise a dispute regarding date of birth at the fag end of his career

nor can such request at the belated stage be entertained by the Courts. In JT 2001 (4) SC 129 Hon'ble Supreme Court has held that change of date of birth at fag end of career- employee can not raise a dispute. Similarly in 1996(2) SLR Supreme Court 16 ~~up to~~ was held that request for change of date of birth at belated stage can not be entertained and in a case where the Tribunal had directed the respondents to consider the correction of date of birth on the basis of request made after 25 years, Supreme Court held the direction was per se illegal. Similarly in JT 1995(2) SC 365 ^{when P} ~~when P~~ the claim for alteration of date of birth after inordinate and unexplained delay of 25 years on the eve of retirement was made, ~~it was held in P~~ must be scrutinised carefully and interference made sparingly. ~~order~~ In the instant case, it is seen that applicant was appointed in the year 1965 and he was fully aware about his date of birth entered in the service record which is evident from the documents filed by the respondents. Yet he never raised any objection and it was only after more than 32 years that applicant made a request for change of date of birth on 12-1-1998 when he was due to retire on 30-4-1998. Accordingly this case is fully covered by the law laid down by Hon'ble Supreme Court. As such, no case has been made out by the applicant for interference.

6. There is no illegality in the order passed by the respondents. The O.A is accordingly dismissed with no cost


Member (J)