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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 76 of 2007

Thursday, this the 24th day of January, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Jamuna Prasad Son of Laloo Ram, Resident of Mohalla Mallookpur, Chaman Mathia, Bareilly U.P. Presently is working as Senting Driver Diesel Shed, N.E. Railway, Izzatnagar, Bareilly.

Applicant

By Advocate Sri R.C. Pathak

Versus

1. The Union of India through the General Manager (P) N.E. Railway Head Quarter, Gorakhpur.
2. The Divisional Railway Manager, (D.R.M.) N.E. Railway, Izzatnagar, Bareilly.
3. The Senior Divisional Personal Officer, N.E. Railway, Izzat Nagar, Bareilly.
4. The Sr. Divisional Mechanical Engineer (Power Diesel) N.E. Railway, Izzat Nagar, Bareilly.
5. The Chief Crew Controller, Diesel Shed, N.E. Railway, Izzatnagar, Bareilly.
6. The Chief Crew Controller, N.E. Railway, Izzatnagar, Bareilly.

Respondents

By Advocate Sri P.N. Rai

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed challenging the notices dated 22.05.2006 and 13.07.2006 passed by respondent No.3 (Annexure A-1 and annexure A-1A of the O.A.) by which the respondents proposed to retire the applicant on 31.01.2007 on the basis of his date of birth shown in the Service Book ~~as~~⁴ 05.01.1947. According to the applicant, his date of birth is 01.07.1952 and not 05.01.1947, he therefore claims that the notice proposing to retire him on 31.01.2007 ignoring the documents/ record in his favour as incorrect. He has therefore prayed that this Tribunal should quash the impugned order and direct the respondents to correct his date of birth and date of appointment as 01.07.1952 and

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10.06.1974 respectively and not to retire him on the basis of the wrong date of birth of 05.01.1947.

2. The facts of the case of the applicant in brief are that the applicant was initially appointed on 10.06.1974 on the post of Engine Cleaner in N.E. Railway, Kathgodam and his date of birth given at time of his appointment was 01.07.1952. He was served a notice by the respondents on 22.05.2006 intimating him that he was to be retired on 31.01.2007 as his date of birth in the office records was 05.01.1947. A seniority list as on 01.04.1990 was issued by the respondents in which the applicant's date of birth is shown as 01.07.1952 (annexure A-2 to the O.A.) and he is shown at serial No. 115. The applicant submitted a representation on 24.08.2004 and 22.11.2006 to the respondents seeking change in the date of birth to 01.07.1952 and a change in the date of appointment which as per his records is 10.06.1974. The respondents, it is alleged, are yet to dispose off the said representation. On the other hand they have issued the impugned orders dated 22.05.2006 and 13.07.2006 showing the applicant's date of birth as 05.01.1947 and consequently proposing to retire him on 31.01.2007. The applicant thereafter submitted an affidavit dated 27.07.2006 alongwith a T.C. from his school, showing his correct date of birth as 01.07.1952. No action was however taken by the respondents on these representations/ judicial submission. The applicant therefore filed this O.A. seeking the reliefs enumerated in paragraph No.1 above.

3. The respondents in their Short Counter have categorically stated that the applicant was appointed in service on 01.06.1972 and his date of birth as duly recorded in the Service Book is 05.01.1947. These entries were verified as correct under the applicant's own signature dated 06.09.2002. In support of their submission, the respondents have annexed photocopies of the relevant pages of the Service Book (Annexure SCA-1) to the short counter. The respondents further submit that right from the date of appointment till he was served the notice intimating date of retirement, the applicant did not raise any objection with regard to the entries in the Service Book nor did he intimate that his actual date of birth is 01.07.1952. A seniority list was prepared in 1978 (annexure SCA-2) showing his date of birth as 05.01.1947 and date of appointment as 01.06.1972, which is at serial No. 275 of the said seniority list. This list was circulated to all concerned even then the

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applicant did not raise any objections, which goes to prove that the entries in the Service Book and in the seniority list were correct hence no objections were raised by him. Respondents further submit that during these years, the pay slips issued also depicted the date of appointment, date of birth as 01.06.1972 and 05.01.1947 respectively, which again was not disputed by the applicant. It was only after the notice indicating the date of retirement was issued on 28.04.2006, that the applicant for the first time after 34 years raised an objection regarding the date of birth vide his letter dated 08.06.2006. In response the respondents asked the applicant vide letter dated 13.07.2006 to furnish relevant documents in support of his claim. Since there was no response from the applicant reminders were issued on 19.09.2006, 16.10.2006 and finally vide order dated 01.11.2006 the applicant was informed that the date of birth recorded in his Service Book shall continue to be treated as correct and he will stand retired on the basis of the said date of birth (Annexure SCA-5). Respondents claim that these facts have not been brought on record by the applicant in this O.A. The applicant then moved another application dated 26.11.2006 reiterating his earlier stand and since no documentary proof called for earlier was produced, his application was rejected by the respondents on 25.01.2007. Respondents further contend that the impugned letter dated 13.07.2006 was merely a show cause notice asking the applicant to submit relevant documentary proof in support of his claim. Respondents have relied on Railway Board's Circular dated 14.11.1993 wherein under Claus 5 it has inter alia been brought out that in such cases it is essential to bring to the notice of the Railway servants the date of their birth recorded in the Service Book with the advice that the date of birth as recorded in the Service Book having been accepted by him is final and not open to challenge in a court of law. In view of this the respondents submit that the O.A. is without merit and the applicant is not entitled to any relief and the O.A. is liable to be dismissed with costs.

4. This Tribunal heard the matter and vide its Order dated 31.01.2007 ordered that the applicant will ^{be} ~~not~~ retired till disposal of the O.A. Since there were conflicting stands being taken by both parties regarding the date of birth and the applicant denied that the signature on page 21 of the Original Service Book which was shown to him in Court was his signature, the respondents were directed to obtain the expert opinion of the Government Examiner of Questioned documents and file his report in Court. In compliance the respondents have filed

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the report of the Government Examiner of questioned documents with an affidavit on 30.04.2007. The relevant positions of the Examiner's report are as under: -

- (i) "The documents of this case have been carefully and thoroughly examined."
- (ii) "The person who wrote the blue enclosed signatures stamped and marked S1 to S86 and A1 to A10 also wrote the red enclosed signature similarly stamped and marked Q1."

Respondents contend that it is clear that the signature put on page 21 of the Service Book in verification of the entries of date of birth therein are that of the applicant, hence the applicant has accepted the date of birth mentioned therein on 05.01.1947 is correct, consequently his date of retirement i.e. 31.01.2007 cannot be disputed.

5. Heard Shri R.C. Pathak, Counsel for the applicant and Shri P.N. Rai for the respondents and perused the pleadings and other documents on record.

6. It appears from the scrutiny of records that the date of birth of the applicant at the time of initial appointment was recorded as 05.01.1947 in the Service Book and date of appointment as 01.06.1972. Both these dates have been contested by the applicant. Since the main & relevant issue is the date of birth in so far as retirement is concerned, the issue regarding the difference in dates of initial appointment is not being deliberated upon in this Judgment, although the finding, as far as the date of birth issue is concerned is equally applicable to the dates of appointment issue. The respondents issued a seniority list in 1978 (annexure SCA-2) wherein the date of birth has been shown as 05.01.1947. The next seniority list was issued in 1990 wherein the applicant's date of birth was shown as 01.07.1952 and date of appointment as 07.06.1964. Respondents say that this was clearly an inadvertent mistake and when it came to their notice, the same was rectified in the seniority lists issued in 1993 and again in 2002 wherein the date of birth was again correctly shown as 05.01.1947. Interestingly the applicant did not raise any objections on any of these four seniority lists especially when three of them (1978, 1993 and 2002) depicted the date of birth which he is now contesting by relying upon the 1990 seniority list obviously because it was to his advantage.

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7. It was further observed that the entries in the Service Book showing his date of birth as 05.01.1947 was verified and signed by applicant at page 21 of the Service Book on 06.09.2002 i.e. after the seniority list dated 01.04.2002 was published and no objections were raised then. During the hearing of this O.A. on 31.01.2007 when the applicant was specially asked by the Bench to confirm that the signature on page 21 in the Original Service Book which was shown to him in Court was his, the applicant categorically denied that the signature was his. The matter thereafter got referred to the Govt. Examiner of Questioned documents to establish the correct position and the veracity of the submissions made by the applicant in Court. The report of the Govt. Examiner of Questioned documents filed by the respondents on 30.04.2007 clearly indicates that the signature on page 21 of the Original Service Book is that of the applicant. The applicant in his Supplementary Rejoinder dated 21.05.2007 besides denying the submissions made by the respondents in their Supplementary Counter Reply has not been able to conclusively rebut or counter the Examiners report. The Examiners report highlights the deliberate false statement made by the applicant in Court especially after it was explained to him by the Bench the consequences of telling anything other than the correct position in the matter. It, therefore, conclusively establishes that the applicant signed page 21 of the Service Book as having verified the entries in the Service Book which showed his date of birth as 05.01.1947. It is also a fact that the applicant waited more than 34 years to object regarding his date of birth entered in the Service Book.

8. Several submissions and averments have been made by both sides in their Counter, Rejoinder, Supplementary Counter, Supplementary Rejoinder and Miscellaneous Application etc. all revolving around their respective claims regarding the correct date of birth and consequently the date of retirement. I am of the view that no purpose would be served by going into each of these submissions individually and separately especially when it has been established beyond doubt that the applicant was given several opportunities to raise objections about the date of birth entered in the Service Book if he felt so aggrieved. On the other hand he has accepted the entries by virtue of his verification on page 21 of the Service Book dated 06.09.2002. Raising objection at the fag end of his service career and seeking judicial intervention appears to be more of a deliberate exercise to prolong the date of retirement.

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9. There are several settled laws on this subject I would however like to respectfully rely on the following two Judgments of the Supreme Court which to my mind conclusively lays to rest the controversy: -

[a] State of Gujarat and others Vs. Vali Mohd. Dosabhai Sindhi (2006) 6 SCC 537 on 19.07.2006 in which it has been held that alteration/correction of date of birth entered in service record - Request for, made at the verge of retirement cannot be entertained-Request must be made within the period, if any, prescribed under the rules and in absence thereof, within a reasonable period- Request must be in accordance with the procedure prescribed - Onus lies on the employee concerned to make out a clear case for alteration on the basis of material of conclusive nature- Court/Tribunal must be satisfied as regards these aspects and also that there has been real injustice to the employee concerned-Court/Tribunal should be slow in granting interim relief or continuation in service unless there is a prima facie evidence of unimpeachable nature-Court/Tribunal should not issue any direction or make any declaration in favour of the employee merely on the basis of materials which make his case only plausible-Court/Tribunal should keep in mind that alteration of date of birth of an employee at the late stage may affect promotional prospects of those junior to him- Request for change of date of birth made by respondent only after the order intimating date of his retirement was received by him a few months prior to that date, held on facts, cannot be accepted, being in violation of specific Rule applicable to such employee-Bombay Civil Services Rules, 1959, R. 171-Constitution of India, Arts. 226 and 136."

[b] Union of India Vs. Harnam Singh 1993 SCC (L&S) 375, decided on 09.02.1993

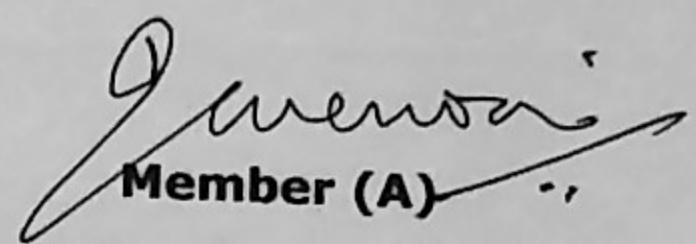
"Retirement - Date of birth - Alteration in - Delay or laches in seeking - Period of 5 years for alteration prescribed in Note 5 to FR 56 (m), as substituted in 1979 - Interpretation of - Held, those already in service prior to 1979, for a period of more than 5 years, obliged to seek alteration within the maximum period of 5 years from the date of coming into force of amended Note 5 in 1979 - Alteration sought in 1991 by respondent 35 years after his induction into the service in 1956 during which period he had several occasions to see the service book but raised no objection regarding his date of birth, held, cannot be allowed in view of unexplained and inordinate delay- Fundamental Rule 56 (m) Note 5 (as substituted by Govt. of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estdt-A dated November 30, 1979 published as S.O. 3997 in the Government of India Gazette dated December 15, 1979) - Practice and Procedure - Delay and laches."

11. In view of the above, ⁹² ~~and as~~ the applicant has not been able to make out a case calling for any interference by this Court with regard to the respondents notice to retire him with effect from 31.01.2007. The O.A. being devoid of merit is accordingly dismissed. I direct that

i) The applicant will be deemed to have retired on 31.01.2007;

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ii) A cost of Rs.1000/- is levied on the applicant for deliberately misleading the Court, when called upon to testify his signature on page 21 of the Service Book especially after being informed about the consequences of making wrong submissions in Court.


J. M. Menon
Member (A)

/M.M/