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(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 30th day of **August, 2007.**

HON'BLE MR. K.S. MENON, MEMBER- A.

ORIGINAL APPLICATION NO. 824 OF 2007

Prahlad Swaroop, S/o Sri Radhey Shyam,
R/o 21, Kawa Bagh, Gorakhpur, presently
Working as Chief Signal & Telecommunication
Engineer, North Eastern Railway.

.....Applicant.

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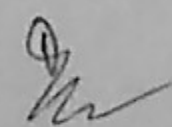
1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur.
2. Chairman,
Railway Board, Rail Bhawan, New Delhi.
3. Secretary (Establishment),
Railway Board, Rail Bhawan, New Delhi.
4. Under Secretary (Establishment) o (II),
Railway Board, Rail Bhawan.

.....Respondents

Present for the Applicant: Sri S.K. Om
Present for the Respondents : Sri P.N. Rai

ORDER

The present Original Application has been filed against the order dated 11.07.2007 passed by the respondent No. 4 whereby he has rejected the request of the applicant for change of date of birth from 08.08.1947 to 06.12.1947.



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2. The facts of the case are that the applicant was initially appointed on 27.03.1974 by a selection process held by Union Public Service Commission as Assistant Signal and Telecommunication Engineer (Class-I service). At the time of entering in the service, the applicant had submitted his High School Certificate, in which his date of birth was recorded as 08.08.1947. He, in due course, draw his increments, promotion and other service benefits based on the above date of birth. In the month of January 2007, the applicant produced an original certificate, written in Urdu, in which his date of birth is shown as 06.12.1947. Learned counsel for the applicant has placed on record the English translation of the said birth certificate and also produced the original copy of the said certificate. (This birth certificate has also been authenticated subsequently by the Government of U.P, Department of Health vide their certificate dated 19.07.2007, Annexure- 5 to the O.A). Based on the birth certificate written in Urdu, the applicant submitted representation on 07.02.2007 to the respondent No. 3 requesting for change in his date of birth. However, the respondent No. 4 being the competent authority, had rejected the said representation vide order dated 11.07.2007 without assigning any reason. Being aggrieved by the said order, the applicant has filed the present O.A for the following relief(s): -

- i. to issue a writ, order or direction in the nature of certiorari quashing the order dated 11.07.2007 passed by the respondent No. 4;
- ii. to issue a writ order or direction in the nature of mandamus commanding the respondents to correct the date of birth of the petitioner as 6.12.1947 instead of 8.8.1947.

3. Learned counsel for the applicant has also relied on the following judgments:

- a. M. Vijay Bhaskar Reddy Vs. High Court of Andhra Pradesh (2002) Vol. 4 (Education and Service Cases) Pg. 507;
- b. S. Sundar Rajan Vs. UOI (1993) ATC 24 Pg. 889;
- c. K.V. Jain Vs. UOI (1989) (11) ATC Pg. 365;
- d. Sachal Mal Vs. UOI & Ors. 1988 (8) ATC 378.

4. Learned counsel for the applicant submits that the date of birth of the applicant dated 06.12.1947 has duly been verified by the Municipal Board, Khurja, hence there should be no doubt regarding its genuineness. He has further submitted that the father of the applicant was also not aware of this being illiterate and due to disturbance at the time of partition in 1947, this birth certificate was lost sight off. Learned counsel further submits that the respondent No. 4 has rejected his representation by a non-speaking order dated 11.07.2007, which is arbitrary and violative of principles of natural justice.

5. The learned counsel for the respondents on the other hand has refuted the claim of the applicant through his submissions made in Short Counter as well as in Counter Reply. He submits that the applicant, at the time he applied for the post, had given his date of birth, which was recorded in his High School Certificate. He at no point of time had moved the representation seeking change in his date of birth. However, after lapse of more than 59 years of age, the applicant, who is due to be retired on 31.08.2007, has chosen to move this Tribunal on 16.08.2007 i.e. merely 15 days before from the date of his superannuation. It is however, seen that the respondents have never questioned the genuineness of birth certificate, which is written in Urdu or its corroboration by the Department of Health, Government of U.P. The respondents' counsel in his Short Counter has drawn attention of

this Court to the fact that the provision of I.R.E.M Vol-I para 225 stated that 'every person on entering railway service, shall declare his date of birth, which shall not differ from any declaration expressed or implied for any public purpose before entering railway service'. In para 'A' the applicant has declared his date of birth as 08.08.1947. Learned counsel has also contended that the applicant in his leave application dated 26.03.2007 and 06.06.2007 had indicated his date of birth as 08.08.1947. This has been countered by the learned counsel for the applicant by stating that there was no other alternative except to indicate his date of birth as 08.08.947 because in his service book, inspite of request to enter the date of birth as 06.12.1947, the respondents have not altered the same.

6. Learned counsel for the respondents states that law is well settled on the subject and produced the judgment of Hon'ble Apex Court in Hindustan Lever Ltd. Vs. Jadhav and Anr. Dated 21.03.2001. On going through this judgment, I find that the facts and circumstances of the judgment of Hon'ble Apex Court are entirely distinguishable from the facts of the present case. However, in the second case law relied on by the counsel for respondents in U.P. Madhamik Shiksha Parishad and Ors. Vs. Raj Kumar Agnihotri dated 21.04.2005, in which the Apex Court after taking other stated case laws in to consideration had held as under:

" As per the existing rule, the date of birth or the age recorded in his service book at the time of entry into the Government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever."

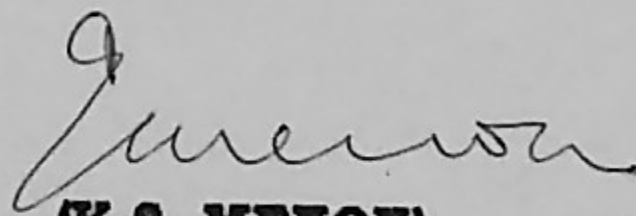
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7. Heard learned counsel for the parties, perused the pleadings on record and other documents produced before the court.

8. I am of the opinion that even though the applicant has produced birth certificate, in which his date of birth has been recorded as 06.12.1947 and there is no reason to disbelieve the genuineness of this certificate the impugned order dated 11.07.2007 does not contain any reasons why the representation was rejected. However, in view of the rule position produced by the respondents during the course of arguments, no individual can be allowed to seek any change in date of birth after such an inordinate delay. In the present case, the applicant has chosen to seek change in date of birth after lapse of 33 years of service particularly on the ground that he came by the so called authenticated birth certificate just six months prior to his retirement. It is seen that even if the date of birth is not altered and the applicant is allowed to retire, he does not stand to lose any significant benefit as ^{in offset} ~~lose~~ of pay would be ^{e 2} ~~affect~~ to a certain extent by grant of pension for the same period.

9. In view of the settled rule position by the Apex Court, the respondents have rightly rejected the application of the applicant seeking change in date of birth. Therefore, the O.A lacks merit and is accordingly dismissed. ⁱⁿ ~~No costs.~~


(K.S. MENON)
MEMBER- A

/Anand/