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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 96 of 1986.

Date of decision	...	September 25, 1987.
Ananta Tahal	...	Applicant.
Versus		
General Manager, S.E. Railway and others	...	Respondents.

For Applicant	...	M/s B.K.Sahu & S.B.Misra, Advocates.
For Respondents	...	Mr. L.K.Mohapatra, Advocate.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
 2. To be referred to the Reporters or not ? No.
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

B.R. PATEL, VICE CHAIRMAN, This application has been filed under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant's case, in brief, is that he has been wrongly retired on superannuation on 31.5.1983 from the post of L.M.B. (Leverman Grade B), Khurda Road under South Eastern Railway basing on a wrong entry in his service book relating to his date of birth. According to him, his date of birth is 21.5.1935 and not 21.5.1925 as recorded in his service book. He has prayed that the order retiring him on superannuation should be quashed and to issue a declaration that his date of birth is 21.5.1935 and not as 21.5.1925 and command the respondents to treat him to be in continuous service since 31.5.1983 and to give him all ^{the} pecuniary benefits.

3. The respondents have maintained in their counter affidavit that in the absence of any documentary evidence produced by the applicant his date of birth was recorded on the basis of a medical examination on 21.5.1955 conducted by the Assistant Surgeon, Grade I, South Eastern Railway, Khurda Road as prescribed by Rule 144 (2) (c) of the Railway Establishment Code, Vol. I 1951 Edn and that the order of retiring him on superannuation with effect from 31.5.1983 should not be interfered with as no illegality has been committed.

4. I have heard Mr. B. K. Sahu, learned counsel appearing for the applicant and Mr. L.K. Mohapatra, learned counsel appearing for the Railway Administration.

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Mr. Sahu by a miscellaneous petition filed before the Bench wanted two documents i.e., personal file and worker's file of the applicant in the possession of South Eastern Railway, Khurda Road to be produced. By order dated 17.3.1987 the Bench required the production of the files on the next date of hearing. The two files have been produced by the learned counsel for the Railways during the hearing of the case. I have gone through these files along with other relevant records.

5. On behalf of the applicant it was urged by Mr. Sahu that the applicant's date of birth is in fact 21.5.1935 as recorded in the Register of Birth maintained by the Tahasildar, Kodla under provision of Madras Act III of 1899 and drew my attention to Annexure-1 which is a certified copy of the entries relating to the date of birth of the applicant. Annexure-1 has clearly stated that the date of birth of Ananta, son of Madan Tahal of village Samal is 21.5.1935. Mr. Mohapatra has questioned the authenticity of the certified copy and has drawn my attention to the report of the Assistant Personnel Officer dated 21.7.1984 who was deputed to the Tahasil Office to obtain information from the Birth Register about the date of birth of the two brothers of the applicant who were also employees of South Eastern Railways and to verify the genuineness of the copy obtained by the applicant in regard to his own date of birth. A copy of this report had earlier been sent to the Court in compliance with the order dated 4.9.1986. This report forms a part of the record.

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This report shows that the register consists of one main sheet and two sheets attached to it. While the seal of the Tahasil Office has been affixed with the date on the attached sheet the main sheet itself has no seal or signature of the Tahasildar. There were in all 51 entries and the entry in respect of the applicant is at serial No.12 showing 21.5.1935 as the date of birth but the dates of birth in the entries are not according to chronological order and the column relating to the date of birth of the applicant has been corrected to 21.5.1935. The register was not kept in the personal custody of the Tahasildar but was kept in the Record Room to which the staff of the Tahasil Office have unrestricted access. In view of the corrections and interpolations, I have grave doubts about the authenticity of the entries. I, therefore, agree with Mr. Mohapatra that the entries in the register, cannot be accepted as proof of the date of birth of the applicant.

6. Mr. Sahu, learned counsel for the applicant then drew my attention to the entry in the service sheet of the applicant produced by Mr. Mohapatra. According to the entries in the sheet the date of birth is 21.5.1925. At the end of ^{the} entries, it has been signed by the Traffic Superintendent of South Eastern Railways, Khurda Road on 31.10.1960. It does not contain the signature of the applicant nor his thumb impression. Mr. Mohapatra has explained that the proforma prescribed at that time had no column for the signature or thumb impression of the employee and that it was only subsequently that the form has been revised providing for a declaration

Handwritten signature

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in regard to the date of birth to be made by the employee concerned below col. 6. Col. 18 also provides for the signature of the Government servant whereas col. 19 is for signature and designation of the Head of Office or other attesting officer. While accepting the submission of Mr. Mohapatra, I cannot but observe that even though there is no column providing for the signature or Left Thumb Impression of the Government servant, since the entry was made solely on the basis of an assessment made by a medical officer, as a prudent course and in order to leave no scope for future controversy, it was necessary to have obtained either the signature or L.T.I. some where on the form or his acceptance should have been obtained separately which would have formed a part of the sheet. Even after the form was revised and additional columns were provided for the declaration to be made by the Government servant himself and his signature and thumb impression, the authority should have obtained the acceptance of the employees in regard to the date of birth entered earlier in the sheet. Since no such precaution has been taken and the Government servant does not accept the date of entry, it is not possible for me to accept the entry as proof of his date of birth even though the entry has been made according to the procedure laid down by the Railway Establishment Code, referred to above. It is also pertinent to mention in this connection that the date of birth as entered in the service sheet should have been brought to the notice of the Government servant for his information thereby affording him an opportunity

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to make representation, if any, to the competent authority for any change in or amendment of the entry. I have found from the file that no such action was taken till 20.4.1983 and that too informing him that he would retire on superannuation on 31.5.1983 (afternoon). It may be stated in favour of the applicant that on receipt of the retirement notice, on 3.5.1983 (Annexure-3) he informed the Railway Authorities that his date of birth being 21.5.1935 he would retire only on 1.6.1993 and requested the authorities to verify the entry in his service sheet, vide Annexure-4. Mr. Sahu also drew my attention to the affidavit produced by the applicant at Annexure-2 . According to this affidavit, Bhagaban Tahal who was then serving as Makadam under the Station Superintendent, S.E.Railway, Cuttack was his elder brother and his date of birth was 16.4.1927 as recorded in his service sheet . This position hasnot been denied by the respondent. In para- 16 of their counter affidavit, they have further stated that the two of the brothers of the applicant Bhagaban Tahal and Dibakar Tahal were in Railway service and the date of birth of Dibakar Tahal has been recorded in his service sheet as 26.1.1946 on the basis of an affidavit declaring his date of birth. The position that emerges from this fact is that Bhagaban Tahal's date of birth is 16.4.1927 and that of Dibakar Tahal is 26.1.1946 . Since the sworn statement of the applicant that Bhagaban Tahal is his elder brother has not been controverted nor his date of birth as recorded in the service sheet , I have no alternative but to assume

Amal

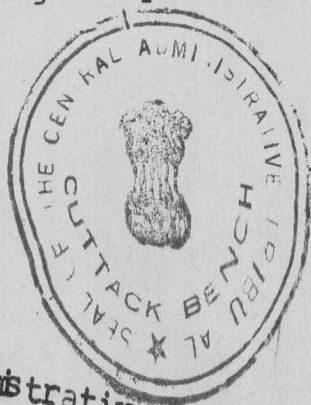
that the applicant would have been born only after Bhagaban Tahal's birth and his date of birth should appropriately be some time after 15.4.1927. I have also seen the station file or the work file of the applicant containing 9 pages obtained from the D.T.I. Khurda Road. In this, the date of birth has been clearly written as 21.5.1935. The entries, however, contain no signature. Mr. Mohapatra has contended that the entry relating to the date of birth in the sheet was made according to the statement of the employee himself without getting it verified with reference to the entry in the service sheet and since it does not contain the signature of the applicant nor of any officer it cannot be accepted in preference to the entry in the service sheet. I have already mentioned the reason which weighed with me in not accepting the entry in the service sheet. There is also no reason for me to accept the contention of Mr. Mohapatra that the entry in this sheet has been made solely at the instance and on the oral statement of the applicant because there is no evidence other than the statement of Mr. Mohapatra. This sheet more over has been in the custody of the authorities ever since the applicant joined the station i.e., 14.4.1957 as recorded in the sheet. They had sufficient time at their disposal all these years to check up the correctness of the entry with reference to the entry in the service sheet. I am, therefore, not convinced that the entry in the sheet should be rejected. Moreover,

[Signature]

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as I have already stated above, a younger brother having been born earlier than an elder brother is a absurdity which should be rejected without further argument about it. The respondents themselves have admitted in their counter that Dibakar's date of birth is 26.1.1946. The date of birth of the applicant can therefore be any time between 16.4.1927 and 26.1.1946 and it is not implausible that it is 21.5.1935 as recorded in the work file or station file of the applicant. I, therefore, hold that the date of birth of the applicant is 21.5.1935 and not 21.5.1925. It is, therefore, directed that the date of birth of the applicant should be corrected to 21.5.1935 and the applicant should be deemed to be continuing in service. He should be given financial benefits accordingly.

7. Thus, the application is accordingly allowed leaving the parties to bear their own costs.



Central Administrative Tribunal,
Cuttack Bench.
September 25, 1987/Roy.

Bushu 25.9.87
.....
Vice Chairman.