

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No.152 of 1994

Cuttack this the 27th day of April, 1995

I.Papa Rao

...

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunals or not ? ✓


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

27 APR 95


(D. P. HIREMATH)
VICE-CHAIRMAN

15

102

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 152 of 1994

Cuttack this the 27th day of April, 1995

C O R A M:

THE HONOURABLE MR. JUSTICE D.P.HIREMATH, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

I. Papa Rao, S/o. I. Ganapati Rao,
present working as Gangman,
Gang No. 52/A, S.E. Railway,
At/PO: Bhubaneswar,
Dist : Khurda

...

Applicant

By the Advocate: Shri H.M.Dhal,
Shri C.Pattnaik

Versus

1. Union of India represented through
General Manager, S.E. Railway,
Garden Reach
Calcutta-43
2. Senior Divisional Personnel Officer,
South Eastern Railway,
Khurda Road Division
At/PO: Jatni, Dist: Khurda
3. Chief Pathway Inspector
South Eastern Railway
At/PO: Barang,
Dist : Cuttack

...

Respondents

By the Advocate: M/s. Bijoy Pal
O.N.Ghosh

...

O R D E R

D.P.HIREMATH, V.C.: The applicant, by this application has
sought alteration of his date of birth from 7.8.1936
to 7.8.1946 and also take any action that deemed
proper on the basis of incorrect date of birth and
to quash the order contained in Annexure-7. Having

entered into service as a Gangman under the respondents, the applicant was superannuated on 1.9.1994. This was on the strength of the date of birth entered into the service records as 7.8.1936. The petitioner now claims that he was actually born on 7.8.1946 and hence his date of birth should be directed to be altered and consequential reliefs granted. He had studied upto Class-VIII and was reading in Government Boys High School, Somepetta in the district of Srikakulam. He maintains to have had delivered the original certificate to the respondents and he also maintains that some correction has been made in his service register. In Annexure-7, we find the rejection of his representation named by the Divisional Personnel Officer. This is dated 6.5.1994. The representation made in pursuance of the direction of this Tribunal to consider ~~and that~~ the respondents ^{On the} ~~his case~~ ^{found} no ground to alter the date of birth of the petitioner as ^{for} about two decades he had not made any request to alter his date of birth and hence could not be considered. The respondents by their counter have contended that the petitioner was initially appointed as Casual Labourer on daily rate basis on 24.7.1968 and after completed six months of continuous employment he was admitted to the

authorised scale of pay with effect from 24.12.1970. Subsequently, he was absorbed in the regular cadre of railway after necessary test and he was appointed as a Gangman in the Open Line with effect from 24.4.1984 and was confirmed in the post with effect from 24.4.1985. At the time the applicant was admitted to authorised scales of pay, his service sheet was opened under Permanent Way Inspector, Barang on the basis of the certificate granted by the Sarpanch of Baruva Grama Panchayat, Srikakulam district in Andhra Pradesh and produced by the applicant, and it was entered on that basis that his date of birth is 7.8.1936. His service sheet was also attested by the Assistant Engineer, S.E.Railway. Prior to regularisation, i.e. induction of the applicant to the regular cadre of railway, he was called for screening test which is condition precedent to be absorbed in the regular cadre in the year 1983. The Screening test which was conducted on 27.9.1983 by a Committee of three officers supports the entry in the service sheet of the applicant that the applicant's date of birth was 7.8.1936. A Transfer Certificate said to have been issued by the Government Junior College, Sompetta, for correction of date of birth was not readily traceable. In this behalf the respondents contended that though the petitioner maintains that he was illiterate it would appear ^{incredible} inconsiderable.

VS

that he ~~was~~ studied in Government Junior College, Sompetta and till he actually superannuated, no case of he having been ^{born} turned in the year 1946 was made. He never applied for the change of his date of birth despite Annexures R/1 to R/6 and sitting over the matter for the last 26 years he came forward with this application and though his services were confirmed from 24.4.1985, he never raised the question of there being wrong entry with regard to his date of birth. After attaining Temporary Status he was admitted to authorised scale of pay in 1970. According to them, there is no merit in this application.

2. It may be mentioned here that the ~~averments~~ ^{efforts} made on behalf of the petitioner to get the Principal, Government Junior College, referred to in his application did not fructify because the Principal stated that he had no records to show that he was studying in that College. Therefore, necessarily, the petitioner has to rely on the documents which are filed as annexures to this application. At the time of hearing, the horoscope was sought to be relied upon in support of the case of the petitioner, but in the case of Collector of Madras and another vs. K.Rajamanickam reported in 1995 (2) SCC 98, the Supreme Court clearly held that the horoscope

✓

cannot be taken as evidence of date of birth. In that case the date of birth recorded at the time of joining service on the basis of SSLC register was challenged 35 years later when the representation allegedly made seven years earlier and ^{at} ~~on~~ that belated stage the Supreme Court held that horoscope evidence or oral statements cannot be relied upon.

3. The petitioner's counsel has annexed certain uncertified documents purported to have emanated from the office of the respondents. One such documents is Annexure-4 said to ^{have} been written by C.P.W.I., Barang in which it is stated that the service sheet alongwith school certificate was received by Sri Y.B.Reddy, Ex-APO-Khurda on 19.9.1991 and when requested to withdraw the sheet it was informed that the same has been sent to the head office.

In another document, i.e. Annexure-5, which appears to have been written by a certain CPWI and sent on 21.2.1994, it is stated therein that the application of Shri I.Papa Rao was forwarded to AEN-BBS for remarks and the service sheet of the party not yet received by the office. Suitable action was sought to be taken as retirement was to take effect on 31.8.1994.

When the arguments were complete, the petitioner's counsel came forward with an application for directing the respondents to produce these documents. It may be stated that there appears no authenticity

in these letters and how the petitioner came in custody of them cannot be explained. Even if it is assumed that said letters were sent by CPWI, Barang, how far they would merit consideration is the question.

4. Our attention was invited to the service register by the petitioner's counsel in which we do find that in the matter of recording of the date of birth, there is something like meddling with the word and figure as in the word "Thirty" and figure "30" alphabets 'Thi' do not appear to be in the same ink as rest of the letters. This could be found in the first sheet of the service register. From this it was argued for the petitioner that there has been tampering in the service register and his date of birth has been manipulated. For a movement even if we express our displeasure over the manner of maintaining the service register and particularly the words and letters appearing in the first sheet the main point for consideration is whether there is a case to hold that the petitioner was born in the year 1946. The respondents' counsel invited our attention to the long delay in approaching the Tribunal in not making efforts to approach the official superiors within the time permitted by rules and also the continuous entries made in the relevant records right from 1968 show that his

date of birth has been recorded as 7.8.1936. The ~~one~~ implicit of such record is Annexure R/1 which is an extract from ^{CPWI} Register, ~~Barang~~ showing that the petitioner was appointed on 24.12.1970 and his date of birth has been recorded as 7.8.1936.

In Annexure R/3, the statement showing the seniority list of senior and junior of Class IV permanent staff, the petitioner's name appears second along with two others, wherein his date of birth, date of regularisation and date of confirmation have been shown as 7.8.1936, 24.4.1984 and 24.4.1985, respectively. This Annexure R/3 is the most important material inasmuch as it shows the seniority of different incumbents in the same scale and this seniority-list could have been prepared or finalised without the same having been brought to the notice of the petitioner. Purna-Nata has been shown at Sl.No. 1 and another Narendra, S/o. Lingaraj shown at Sl.No. 3 in their respective position a copy of which was forwarded to CPWI, Barang for information and wide publication to all the staff working under him to see their position shown in the seniority list and complaints, if any, received from such ~~of~~ of the aggrieved persons shown therein be sent to to the office within one month from the date of publication. This is a tell-tale document showing that while fixing the seniority of the petitioner his date of birth was also shown as 7.8.1936.

evenly

In common course of evidence and in natural circumstances one would certainly come to the conclusion that the contents thereof were brought to the notice of all concerned including the petitioner and that there was no objection for the entries made therein including the date of birth. Annexure-R/4 is the extract from the statement of screening of casual labours under PWI, Barang dated 23.3.1983 and even in that the petitioner's date of birth is shown as 7.8.1936, the date of initial engagement on 6.8.1969, date of appointment in CPC scale as 24.12.1970 and the alike. Even here one could presume that these facts noted were not without the knowledge of the petitioner. Lastly fixation of pay under the Third Pay Commission 1973 (Annexure-R/5) shows the same date of birth of the petitioner. The extract of confirmation order dated 25.6.1985 (Annexure-R/6) also makes the statement more clear with regard to the date of birth, date of appointment and date of confirmation etc. of the petitioner. When compared to these documents produced, which reflect ^{on} the service record of the petitioner, it is abundantly clear that at no point of time prior to his retirement, or near about the date of retirement, the petitioner ~~did not~~ moved the concerned authorities to change his date of birth. Our attention was invited to the Railway Establishment Code, Vol-I, Rule 225 relating to date of birth. It is stated

therein 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. In the case of literate staff, the date of birth shall be entered in the record in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant. In Rule 225 (4) (iii) it has been provided that where a satisfactory explanation (which should not be entertained on completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of previous attempts made to have the record amended, then only a date of birth of the railway servant could be altered. Thus under this particular Sub-rule (4) it is stated that the date of birth as recorded and verified shall be held final and no alteration of such date shall ordinarily be permitted subsequently excepting ⁱⁿ the contingencies stated therein, the limitation, however, being three years ^{from} the date of entry into service. These rules came into force in 1985 and it would follow that within three years thereof the petitioner ought to have approached with a request to change his date of birth.

24

5. With regard to limitation in the matter of application for correction of date of birth, the Supreme Court in the case of State of Tamil Nadu vs. T.V.Venugopalan reported in (1994) 6.SCC 302 ruled that where the rules provided for alteration of date of birth would be entertained only if made within five years after entering service, an employee ~~employee~~ already in service at the time of enforcement of such a rule, ~~he~~, should make the application for correction within five years from the date of enforcement of the rule, otherwise he ~~he~~ would lose his right to make such an application. It is also held that alteration of such date of birth could not be permitted to the Government servant at the fag end of his services and so holding the Supreme Court observed that if no application is made after expiry of five years, the Government employee loses his right for correction of date of birth. ^A The word ~~caution~~ ^{sounded} ~~given~~ ^{uttered} in the decision ~~made~~ ^{given} by the Supreme Court in the said judgment. He pointed out that repeatedly the Supreme Court has been holding that inordinate delay in making the application itself is a ground for rejection of correction of date of birth. The Government servant, having declared his date of birth as entered in the service register to be correct, cannot be permitted at the fag end of his service career to raise a

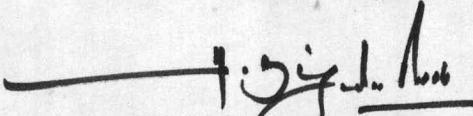
dispute as regards the correctness of the entries in the service register. ^{It} This is common phenomenon that just before superannuation, an application would be made to the Tribunal or Court just to gain time to continue in service and the Tribunal or Courts are unfortunately unduly liberal in entertaining and allowing the Government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it, and rejected on grounds of technicalities questioning them and remain in office till the period claimed for, gets expired.

6. In the instant case when the rules in the Railway Establishment Code came into force in the year 1985, the petitioner ought to have agitated his grievance for alteration of his date of birth within three years therefrom. Though these rules were not in force when he entered into service, but came into force when he was in service, there is no justification on the part of the petitioner to come forward at the fag end of his service with a plea that he was born 10 years later than shown in the service record. Having perused the material placed before us we are satisfied that in the instant case the application is made at a belated stage

23

12

where practically no explanation is coming forth as to why the petitioner did not approach the concerned authorities within three years from the date of rules came into force for correction of his date of birth. Secondly there is absolutely no material to show that his date of birth is 7.8.1946. That being so we find no merit in this application which is liable to be dismissed and is dismissed. NO costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

27 APR 95


(D. P. HIREMATH)
VICE-CHAIRMAN

B.K.Sahoo//