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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.917 OF 1996
Cuttack this the 29th day of August, 2001

G.P. Singh

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.2001

29.8.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.917 OF 1996
Cuttack this the 29th day of August/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Ganga Prasad Singh,
Son of Jayanarayan Singh,
D.Fitter (Mechanical)
Diesel Shed, Bondamunda, S.E.Railway
Sector A, Quarter No.424,
At/PO-Bondamunda, Dist-Sundargarh

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By the Advocates

Applicant

M/s.D.S.Misra
S.Mohanty
S.Behera
D.Ray, S.N.Biswal
B.Acharya

-VERSUS-

1. Union of India represented through Secretary
Railway Board, Rail Bhawan, New Delhi
2. General Manager, South Eastern Railway, Garden Reach,
Calcutta-700 043, West Bengal
3. Divisional Railway Manager, Chakradharapur Division,
S.E.Railway, At/PO-Chakradharapur, Dist-Singhbhum, Bihar
4. Senior Divisional Personnel Officer, South Eastern
Railway, Chakradharapur, District-Singhbhum, Bihar
5. Chief Personnel Officer (M & EL) South Eastern Railway,
Garden Reach, Calcutta-700 043, West Bengal
6. Senior Divisional Mechanical Engineer, South Eastern
Railway, Bondamunda, At/PO-Bondamunda, District-Sundargarh

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By the Advocates


Respondents

M/s.D.N.Mishra
S.K.Panda

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Ganga Prasad Singh, who joined Railway Service on 3.5.1960, challenges the order of the Department retiring him on superannuation on 31.1.1995, on the ground that his date of birth being 7.1.1939 and not 7.1.1937, he should have continued in service two years more.



 The applicant initially joined as Peon under Divisional Operating Superintendent at Chakradharpur on 5.5.1960. While serving there he applied for the post of Diesel Cleaner under D.M.E.(D) Bandamunda. On 17.9.1963 his services were transferred to D.M.E.(D), Bandamunda as Diesel Cleaner, with the approval of the Divisional Operating Superintendent, Chakradharpur. On the date of retirement on superannuation he was serving as High Skilled Fitter (Gr.I) under the Senior D.M.E.(D), Bandamunda. On 31.1.1994, i.e., one year prior to the date of retirement, he represented vide Annexure-R/3 to the Divisional Personnel Officer (Diesel), Chakradharpur stating that his date of birth recorded in the service sheet as 7.1.1937 is ^{some what} ~~some how~~ doubtful as his date of birth is 7.1.1939, as per the School Leaving Certificate. Along with representation, he sent a xerox copy of the School Leaving Certificate. Again on 10.10.1994, vide Annexure-R/4, when asked to submit the original of the School Leaving Certificate he intimated that original was submitted to D.M.E.(D), Bandamunda along with an application dated 2.1.1973, requesting for change of date of birth from 7.1.1937 to 7.1.1939. The Divisional Railway Manager (P), Chakradharpur addressed letter to Chief Personnel Officer (M&EL), Garden Reach, Calcutta vide Annexure-1 forwarding the representations dated 31.1.1994 and 10.10.1994 of the applicant seeking instructions. Ultimately in letter dated 31.1.1995, the Chief Personnel Officer, Garden Reach did not accept the change of date of birth from 7.1.1937 to 7.1.1939 and on the basis of this letter the applicant was made to retire on superannuation.


 According to applicant, the School Leaving Certificate as well as the School Admission Register (Annexure-2) would

reveal that his date of birth is 7.1.1939. His application to the post of Diesel Cleaner also shows his date of birth as 7.1.1939. Even the letter dated 8.3.1965 of the D.P.O., Chakradharpur would indicate his date of birth as 7.1.1939. In fact he applied for the alteration of date of birth on 2.1.1973. For these reasons he seeks to quash the order of superannuation passed under Annexure-7.

2. The Department in their counter filed on 19.4.2001 take the stand that when the applicant joined as Peon on 5.5.1960, in the service sheet (Annexure-R/1) his date of birth was recorded as 7.1.1937, which was duly signed by him. He also gave his L.T.I. in presence of witnesses. Hence 34 years thereafter that too one year prior to the anticipated superannuation retirement, his representation for change of date of birth cannot be entertained, as per relevant Railway Rule-225(4) (iii) (Annexure-R/2), which lays down that either after completion of probation period or three years of service whichever is earlier, the application for change of date of birth is not entertained. The Department specifically deny that the applicant having sent any application dated 2.1.1973 as mentioned under Annexure-R/4. As Sr.D.M.E., Bandamunda was not the competent authority to decide, the representation of the applicant was forwarded to the competent authority for necessary action. As the applicant had directly submitted his application dated 25.5.1962 mentioning his date of birth as 7.1.1939 for the post of Diesel Cleaner and not through Proper Channel, that date has no relevance. When the transfer certificate produced by the applicant disclosed over-written date of birth, the school authorities on being communicated

sent a xerox copy of the Admission Register duly attested by the Headmaster and countersigned by the Education Officer. The date of birth mentioned in the service sheet as 7.1.1937 is binding on the applicant. Hence the order of retirement on superannuation on 31.1.1995 is justified.

3. No rejoinder has been filed by the applicant.

4. However, by order dated 7.8.2000, M.A.240/2000 filed by the applicant for issue of direction to the respondents for production of Transfer Certificate dated 25.8.1955, Medical Examination /Certificates dated 17.2.1959 and 22.8.1963 and his application dated 25.5.1962 was allowed with a direction that in case those documents were available with the respondents, the same should be produced for our reference. Accordingly at the time of hearing Shri D.N.Mishra, the learned Standing Counsel for the Railways produced the relevant file concerning applicant containing those documents.

5. We have heard Shri D.S.Mishra, the learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel for the Railways. Also perused the records and the file produced by the learned St.Counsel Shri Mishra. There is no dispute that in the service sheet dated 3.5.1960 (Annexure-R/1) the date of birth was recorded as 7.1.1937. Besides giving L.T.I. the applicant had also put his signature in this sheet. The L.T.I. was duly attested. The fact however remains that excepting putting signature and L.T.I. the applicant did not fill in the relevant columns of the service sheet. It is the case of the Department in the counter that since the applicant was illiterate, as per rules, it was filled in by some official in the Department. But the School Leaving Certificate dated 25.8.1955 reveals that the applicant had read upto Class-IX

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in a School in the State of Bihar. Even if he is not illiterate it is not his case that he himself had filled in the other particulars of the service sheet. At the same time it is not his case that by the time he put his signature and gave LTI, the service sheet was blank without containing any filled in particulars. It would, therefore, mean that the service sheet was filled in in his presence. Besides his height, personal identification marks also find mention therein. Similarly, besides date of birth (7.1.37) in figures, it also finds mention in words. Even father's name and full particulars of his village find mention. It is not the case of the applicant that particulars with regard to personal identification marks mentioned in the service sheet are not correct. All these would lead to an inference that the particulars in the service sheet were filled in as per the instructions of the applicant, which would mean that he had supplied the date of birth as 7.1.1937, apparently with reference to date of birth originally mentioned in the School Leaving Certificate dated 25.8.1955.

6. Since he had applied for the post of Diesel Cleaner direct and not through proper channel, the date of birth/as 7.1.1939, mentioned therein has no relevance. At this stage in order to satisfy ourselves in regard to correct date of birth, we have referred to the Transfer Certificate dated 25.8.1955, xerox copy of which is available in the relevant file produced by the Department. The date of birth, ^{originally} appears to have been mentioned as 7-1-1937, ^{but} the figure '7' occurring at the last has been clearly overwritten to appear as '9'. Thereafter we have also perused the School Admission Register sent to the Department by the school authorities on request. A xerox copy of this

School Admission Register has been annexed as Annexure-2 by the applicant. Particulars of the applicant figure at Sl.No.70. Even the date of birth under the relevant column has been mentioned in figures. On careful perusal we are convinced that the date of birth was originally therein as 7-1-37 but '7' of '37' has been overwritten as '39'. The overwritten figure '9' does not tally with other No.9 written at other places in this Admission Register. For instance, in respect of the applicant himself, while mentioning the date of admission in ^{number} figures No. 9 is written as '9', so also, the cases with Sl. Nos. 65, 66 and 67. Hence the School Admission Register and the School Leaving Certificate would not establish that the date of birth of the applicant is 7.1.1939.

7. The other document highlighted by the applicant is medical examination report dated 17.2.1959. This report also finds place in the file. It has been issued by the Assistant Medical Officer of Railway Dispensary at Chakradharpur. It is in a printed format which reveals that the Doctor examined Ganga Prasad Singh, aged about 20½ years. This printed certificate as it reveals is issued to assess the medical fitness of a candidate for appointment in the Railways. In this certificate there is some space left for assessment of age. Such assessment is only an assumption by the medical officer with regard to ^{the} group of age of a candidate. Unless specifically pleaded it cannot be assumed that this Asst. Medical Officer estimated this age after conducting the relevant tests. Hence by this assumption of age ^{no} group ^{can} the conclusion ^{arrived} would be derived that by the date of examination on 17.2.1959, the applicant was ^{A margin of 2 to 3 years} exactly 20½ years. ^{an} ~~emergence of ½ years~~ this side or that side can be given under such circumstances.

8 Then comes the Medical Examination report dated 22.8.1963, which is also in a printed format like the one dated 17.2.1959 and is issued by the Asst. Medical Officer, ^{medical} Chakradharpur. This examination appears to have been made at the time of applicant's joining as Diesel Cleaner. At the relevant column 'age' without mentioning the probable estimated age, figures '7.1.1939' find mention. We do not think an Asst. Medical Officer of Railways possesses that expertise even to know the exact date of birth of a person on medical examination. All that a Doctor can mention about the estimated ^{age} ~~average~~ group. Hence it can be presumed that date 7.1.1939 has been mentioned therein apparently at the instance of the applicant.

9 In view of our discussion above, we are of the view that the date of birth of the applicant as mentioned in the service sheet vide Annexure-R/1 is correct and accordingly the plea of the applicant that his date of birth is 7.1.1939 cannot be accepted.

10 Even assuming the correct date of birth of the applicant is 7.1.1939, the Department would not be obliged to entertain an application for correction of date of birth as recorded in ^{service} the service sheet at the end of his career. Rule-225(IV) with regard to General Conditions of Service of Railway Servants (Annexure-R/2) lays down that the date of birth as recorded according to rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. However, in case of Group C & D Railway Servants, it is open to the General Manager to cause the date of birth to be altered, under circumstances as mentioned under I, II & III

under sub-rule-IV. Clause III is relevant for our purpose. It lays down that ^{where a} ~~various~~ satisfactory explanation (which should not be entertained) after 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 servants concerned, together with the statement of any previous attempts made to have made the record amended. In other words it is clear, under the rules, an application for alteration of date of birth as mentioned in the service record is maintainable within the three years of service or on completion of probation period, whichever is earlier. Here is a case where the applicant for the first time represented to the authorities on 31.1.1994 (Annexure-R/3), i.e., just one year prior to his date of superannuation. Of course in his letter dated 10.10.1994 (Annexure-R/4) addressed to Sr.D.P.O., Chakradharpur he mentioned that his School Leaving Certificate in original was submitted to D.M.E./D, Bandamunda along with his application dated 2.1.1973 for change of date of birth from 7.1.1937 to 7.1.1939 and since no action was taken upto January, 1994, on 31.1.1994, he submitted another representation. Even if he had submitted such an application on 2.1.1973, the Department was not obliged to entertain the same as it was submitted about 13 years after he entered ~~into~~ ^{the} service. This apart in Para-9 of the counter the Department specifically denied as to his submission of any such application/representation in 1973 for alteration of date of birth. If indeed he submitted a representation dated 2.1.1973 for alteration of date of birth, ~~and if indeed,~~ as stated in his letter under Annexure-R/4 dated 10.10.1994 that since his

application/representation dated 2.1.1973 was not responded till January/1994, he had to submit another application on 31.1.1994, in that case he would, under normal circumstance have mentioned in his application dated 31.1.1994 about his previous application dated 2.1.1973. But this application dated 31.1.1994 (Annexure-R/4) is conspicuously silent with regard to reference of so called application dated 2.1.1973. We are, therefore, not inclined to accept the version of the applicant that he submitted an application on 2.1.1973 for alteration of date of birth.

11. After discussing the facts as above, we may, as well discuss the legal position in regard to alteration of date of birth. In Union of India vs. Harnam Singh reported in AIR 1993 SC 1367 it was held by the Apex Court that request for alteration of date of birth has to be made without unreasonable delay, in the absence of any limitation. The same principle has been reiterated by the Apex Court in the case of State of Tamil Nadu vs. T.V.Venugopalan reported in 1994 SCC (L&S) 1385; Chief Medical Officer vs. K.Khadri reported in 1995 SCC (L&S) 412; Union of India vs. Kantilal Pandyan reported in 1995 SCC (L&S) 599; Burn Standard Company Ltd. vs. Dinabandhu Mazumdar reported in 1995 SCC (L&S) 952; and Union of India vs. R.S.Sharma reported in 1996 SCC (L&S) 605. Even recently the Apex Court reiterated this view in G.M.Bharat Cooking Coal Ltd. vs. Sib Kumar Dushad reported in 2001 Lab.IC Page 28 and in Hindustan Lever Ltd. vs. S.M.Yadav reported in 2001(2) ATJ 560.

12. As against the settled legal position, Shri D.S.Mishra, the learned counsel for the applicant had placed reliance on the following decisions :

1. AIR 1967 SC 1269 (Binapani Dei's case)
2. AIR 1978 SC 581 (M.S.Gill vs. Chief Election Commissioner)
3. 1976(1) SLR (Manik Chand vs. State of H.P. 402)
4. 1981(1) SLR 517 (P.N.Choudhury vs. State of W.B.)
5. AIR 1984 SC 1527 (G.P.Dheval vs. Govt. of UP)
6. 1987(2) SLR 469 (Dilip Mukhopadhyay vs. Chief Personnel Officer, S.E.Railways)
7. 1987(2) SLR 319 (Hiralal vs. Union of India & Ors)
8. AIR 1990 SC 1402 (Kum.Nilima Mishra vs. Harinder Kaur)
9. AIR 1991 SC 101, (Delhi Transport Corp. vs. D.T.C. Mazdoor Congress)
10. 1987(1) SLR Page 307(

While citing 1987(1) 307 (Supra), Shri Mishra, the learned counsel for the applicant gave out the names of the parties as R.S.Sukla vs. Union of India & Ors. decided by Jabalpur C.A.T. But on verification of 1987 Vol 1, SLR of that Page 307, reference to a case of Ch. Venkatswaralum decided by A.P. High Court in regard to jurisdiction of Civil Court under Section 9 of Civil Procedure Code was ^{found} made. Assuming that by oversight the learned counsel for the applicant might have referred to Vol.1 in stead of Vol 2 of 1987 SLR 307, we had taken pains ^{to go} through Page-307 of 1987(2) SLR, which also does not at all tally either with the names of the parties or the Court deciding that case or with the subject matter. Evidently this wrong citation was cited by the learned counsel for the applicant due to inadvertance

AIR 1993 SC 2155, AIR 1991 SC 101, AIR 1990 SC 1402 and AIR 1978 SC 851 do not deal with the case of alteration of date of birth, but lay down the well-known principles of natural justice, with respect to which there is no controversy at all in the case before us. 1984 SC 1527 (specifically Para-16, as emphasised by the learned counsel for the applicant) is also not ^{connected} connected with the case of alteration of date of birth.

The question for consideration in this reported case was that whether Writ Petition filed 12 years after the publication of provisional seniority list which has not been finalized in spite of representations, can be entertained. The Apex Court held the Writ Petition cannot be dismissed on the ground of limitation.

In 1996 (1) SLR 402 (Himachal Pradesh High Court held that right to get erroneous entry of date of birth corrected cannot be curtailed by executive instructions providing limitation under G.F.R. Rules, 1963. However, in view of the Apex Court decisions discussed above in Para-11, the principle laid down by the Himachal Pradesh High Court cannot be accepted as laying down the correct law.

Dr. Binapani Dei's case (Supra) is distinguishable. Dr. Binapani Dei, at the relevant time of her appointment in June, 1938 under the State Government of Orissa, declared her date of birth as 10.4.1910. Some anonymous letters were addressed to the Accountant General that she ^{concealed} herself stated her ^{real} age. After an enquiry she was required to show cause as to why her date of birth would not be accepted as 4.4.1907. She submitted that her date of birth was correctly recorded. However, by letter dated 27.6.1963, the State Government determined her date of birth as 16.4.1907. Since she was not supplied with a copy of the enquiry report of the Inquiring Officer, the Apex Court held that the order of the State Government violated the principles of natural justice. This is not the case before us. Here just one year prior to his retirement on superannuation, i.e. 34 years after his joining the railway service the applicant himself represented for

alteration of his date of birth as recorded in the service sheet.

The Calcutta High Court in P.N. Chaudhury case reported in 1981(1) SLR 570 held that the date of birth entered in the Matriculation Certificate must be accepted as true. There is no dispute in regard to this proposition of law. But we have already held that the date of birth as mentioned in the School Leaving Certificate was over-written and so also the same in the School Admission Register.

In Hiralal vs. Union of India & Ors. decided by the C.A.T., Principal Bench, reported in 1987(2) SLR 319, the question arose whether an application for alteration of date of birth recorded in the Service Book can be entertained after five years of his entry into Government service, as mentioned under F.R. 56. It was held that five years period was introduced through notification dated 20.11.1979 and since the applicant therein was at the time of such notification was in Government service for more than five years, that five years period of limitation would not be applicable in his case. In this way this reported case is distinguishable.

The case of Dilip Mukhopadhyay vs. Chief Personnel Officer, S.E. Railway, reported in 1987(2) SLR 468 decided by the C.A.T., Calcutta Bench is also distinguishable. The applicant therein first approached the Calcutta High Court in a Writ Petition on 29.11.1977, claiming his date of birth as 1.5.1926 and not 13.5.1920, as recorded in the Service Book. During pendency of the Writ Petition, he retired on completion of 58 years of service on the basis of his date of birth as 1.5.1926, as claimed by him on the basis of his Matriculation

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Certificate. Thereafter the Writ Petition was transferred to C.A.T., Calcutta Bench. The question arose whether he would be entitled to all retirement benefits on the basis of length of service rendered by him. It was held that he would get the retirement benefits of the entire period of service. Neither the Calcutta High Court nor the C.A.T. Calcutta Bench had occasion to decide whether the date of birth as claimed by him was correct. Thus the decisions relied by the applicant will not be of any help to the applicant.

13. In the result, we do not see any merit in this application which is accordingly dismissed, leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.8.2001

24.8.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//