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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 173 OF 2002  
Cuttack this the 15th day of October/2003

K. Apparao ... Applicant(s)  
-VERSUS-

Union of India & Others Respondent(s)

FOR INSTRUCTIONS

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

  
( B.N. SOMPALLI )  
VICE-CHAIRMAN

V  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 173 OF 2002  
Cuttack this the 15<sup>th</sup> day of ~~Sept.~~ /2003  
Oct.

CORAM :

THE HON'BLE SHRI B.N. SEN, VICE-CHAIRMAN

...

K. Apparee, aged about 59 years,  
Son of Late Surya Narayan,  
At - ESM Gr.I, Palasa,  
Railway Quarter No. 7/103/1,  
P.O-Keshibag, Dist - Sikakolam,  
Andhra Pradesh

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By the Advocates

Applicant

M/s. N.C. Mishra  
R. Mehanty  
S.K. Behera

VERSUS -

1. Union of India represented through  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta
2. Divisional Railway Manager,  
South Eastern Railway, Khurda Road,  
At/P.O/Dist-Khurda
3. Senior Divisional Signal and Telecommunication  
Engineer, Khurda Road, At/P.O/Dist-Khurda

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By the Advocates

Respondents

M/s. D.N. Mishra  
P.K. Mishra  
A.K. Panda

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C R D E R

MR. B.N. SEN, VICE-CHAIRMAN: This Original Application,  
under Section 19 of the Administrative Tribunals Act,  
1985, has been filed by the applicant, Shri K. Apparee,  
praying for direction to be issued to Respondent No. 2,  
viz., Divisional Railway Manager, S.E.Railway, Khurda  
his  
Road to consider his case regarding acceptance of date  
of birth as per the entry in the service book, initial  
Medical Examination Certificate and School Leaving

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Certificate dated 01.01.1944 and to direct further to give him consequential service benefits.

2. The admitted facts of the case are that the applicant was engaged as a casual Khalasi in the year 1961 and made a sub-Khalasi in April, 1964 and his service was regularised and confirmed with effect from 01.01.1970. It was in 1996 some dispute arose with regard to date of birth of the applicant when the Respondents-Railways gave notice to him to explain as to why his date of birth recorded as 01.01.1944 in the Service Book would not be corrected. The applicant represented against the said notice by stating that his date of birth had been reflected as 01.01.1944 in the initial Medical declaration certificate carried out by the Respondents-Department, and therefore, that date could not have been altered. While the applicant did not receive any reply to his representation, the Respondents vide order dated 24.12.2001(Annexure-2) informed him that he would superannuate on 31.12.2001. Aggrieved by this illegal and whimsical order of the Respondents, he has approached this Tribunal with the prayer, as referred to earlier, inter alia questioning the competence of the Respondents to alter his date of birth as recorded in the Service Book at the fag end of his service career.

3. The Respondents-Railways have contested the application by filing a detailed counter. The Respondents, while admitting the fact that on the top of his Service Book the date of birth of the applicant is recorded as

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01.01.1944, they disclosed that this recording was made on the basis of the School Leaving Certificate (in short SLC) issued in the year 1990, submitted by the applicant. However, they have pointed out, while the applicant had produced a SLC showing his date of birth as 01.01.1944, disclosed his date of birth as 12.12.1941 in the application which he had himself filed for employment as Khalasi. Further that his date of birth was notified as 12.12.1941 as early as on 3.4.1970 vide Office Order No. P/C1.IV/Signal (Annexure-R/4) issued from the Office of the Divisional Superintendent, Khurda Road, which he had never challenged. The Respondents-Department have further disclosed that the discrepancy in the date of birth of the applicant was detected by the Senior Divisional Accounts Officer, S.E.Railway, Khurda Road on 08.06.1966 during inspection of the Office of Signal Inspector, Berhampur, where the Service Book of the applicant was maintained. Immediately thereafter, the applicant was asked to explain the reasons for discrepancy in his date of birth vide Junior Engineer (Signal), Berhampur's letter No. BAM/E/KAR dated 18.7.1996 (Annexure-R/5). Not being satisfied with the reply received from the applicant, the Respondents-Department tried to verify the genuineness of SLC, issued by the Headmaster, Gourhari Marijan Bidya Mandir, Hoogly, wherein the date of birth of the applicant was recorded as 01.01.1944, but the School authorities did not oblige on the ground that the records relating to the period in question were not available in the school vide Headmaster's letter dated 23.12.2000 (Annexure-R/8). Then the matter was examined by the Chief Personnel

Officer, East Coast Railway, Bhubaneswar, who opined that the age of the applicant could not have been 01.01.1944 when he joined as casual Khalasi on 25.5.1961, because, <sup>at that time</sup> he could not have been considered for engagement as casual Khalasi being underaged. He, therefore, opined that there was no good/suitable reason to change the date of birth of the applicant as 1.1.1944 instead of 12.12.1941 declared by him at the time of his appointment as casual Khalasi. Under the circumstances, the applicant was allowed to retire on superannuation from service with effect from 31.12.2001.

4. I have heard the learned counsel for both the parties and perused the records placed before me.

5. The applicant has put forth three-fold arguments opposing the decision of the Respondents-Department to alter his date of birth as recorded in the Service Book : - firstly, that his age as recorded in the Service Book at the time of appointment could not be altered at the fag end of his service career; secondly, his date of birth having been recorded as 01.01.1944 in the initial Medical Examination Certificate prepared by the Respondents-Department, it was not open to them to correct it at the end of his service career; and finally, the date of birth recorded in the School Leaving Certificate having been accepted as conclusive proof for valid date of birth of the Government employees, the Respondents-Department are estopped to alter the same.

6. In the face of the objections raised by the applicant against the impugned order issued by the Respondents to correct his date of birth in the year 2001, it is profitable to refer to the observation made by the Guwahati Bench of this Tribunal in the case of Chitta Ranjan Bhowmik vs. Union of India & Ors. (O.A. No.28/97) that "it is unexplainable, because it is now settled that the date of birth entered in the Service Book at the time of initial appointment cannot be altered at the fag end of service, unless there is sternly evidence available". There is also judicial pronouncement that at the fag end of service an employee cannot be allowed to raise the issue of correction of date of birth due to laches, delay and acquiescence on his part. Equally valid is the argument as advanced by the applicant that the employer cannot be allowed to raise such an issue at the fag end of his service being barred by laches, delay and acquiescence. However, as the Courts have held that alteration of date of birth at the fag end of service will be permissible, if stern evidence could be brought out for this purpose. In the instant case, the Respondents have brought to my notice Annexure-R/4 dated 3.4.1970 issued from the Office of the Divisional Superintendent, S.E.Railway, Khurda Road, wherein 113 Substitute Khalasis/Trolleymen in the scale of Rs.70-850- in Signal & Telecommunication Department were empanelled and/or appointed on regular basis/confirmed with effect from 1.1.1970, wherein the name of the applicant Shri K. Appa Rao, S/o. K. Suryanarayana finds place at

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Sl. No. 22, being his date of birth and date of appointment as 12.12.1941 and 30.04.1964, respectively. This order dated 3.4.1970 was neither objected to nor challenged by the applicant and thereby it would be safely presumed that the applicant did accept his date of birth as mentioned therein. Even then, I find that on receipt of the inspection report of the Sr. Divisional Accounts Officer with regard to discrepancy in the date of birth of the applicant, the Respondents-Department carried out a detailed inspection over the matter after giving notice to the applicant to adduce whether his date of birth as mentioned in the Service Book should be corrected. In this view of the matter the first objection of the applicant is not sustainable.

With regard to second objection that the Respondents-Department should have depended upon the initial Medical Examination Certificate to be his correct date of birth, the Mumbai Bench of this Tribunal in the case of T.V. Yadav vs. Union of India & Ors. (O.A. No. 368/97) <sup>had</sup> held that in the absence of documentary evidence in support of date of birth, the date of birth can be recorded basing on medical examination. But in this case, other documentary evidence being available, the Respondents were not obliged to depend on the medical evidence, as referred to by the applicant.

On the third aspect of the matter that the applicant is entitled to the benefit of date of birth as recorded in the School Leaving Certificate dated 5.4.1959 submitted by him, the Respondents have stated that on investigation, they found it to be a fake one. They have doubted its genuineness on two

grounds; firstly that in the said certificate where his date of birth was recorded as 01.01.1944, it has been indicated that he was reading in Class-IX, whereas (Annexure-R/2) in the application form for securing employment as Khalasi filled in his own hand, the applicant had disclosed his date of birth as 12.12.1941, and his educational attainment being Class-VIII (fail). Secondly, that this certificate, the school authority could not verify. The Respondents, having conducted an inquiry with the regard to genuineness of the School Leaving Certificate rejected the same by giving reasons, as stated above. This decision of the Respondents cannot be assailed, as such a procedure has already been upheld by Ernakulam Bench of this Tribunal in O.A. 206/91 (Ramji Bhai Laddha Bhai Chauhan vs. Union of India & Ors.)

Again in another case before the Chandigarh Bench of this Tribunal in O.A. 456/94 (Rajaram vs. Union of India & Ors) it has been held that where the 'A' card prepared at the time of entry into service of a railway employee shows a particular date of birth, the same shall be conclusive notwithstanding a different date in the 'B' card based on a wrong certificate. In the instant case it is the applicant, who had filled in the application for employment where he had disclosed his date of birth as 12.12.1941, which was accepted by the Department and notified accordingly, vide order dated 3.4.1970, issued from the Office of the Divisional Superintendent, S.E.Railway, Khurda Road, and the applicant never objected to that. The Respondents have pointed out that the applicant could not have objected,

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because, had he disclosed his date of birth as 1.1.1944, at that point of time, his initial entry as casual Khalasi in the year 1961 could not have been found legal and thereby he would have faced adverse consequence. In the case of Ramji Bhai (supra) also, the facts of the case revealed that the applicant therein had suppressed his date of birth at the time of initial entry in service, because, as otherwise he could not have taken advantage of entry into service. Since the applicant had been appointed in the year 1961, evidently, he could not have been appointed at that time had he not fulfilled the age qualification and for that purpose, his date of birth could not have been 01.01.1944.

7. Having regard to these facts and circumstances of the case and the case laws referred to above, I see no reason to interfere in the decision taken by the Respondents in justifying 12.12.1941 as the correct date of birth of the applicant, which he himself had recorded in the application <sup>form</sup> at the time of securing employment. Accordingly, this Original Application fails. No costs.

  
( B.N. SOM )  
VICE-CHAIRMAN