

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO. 1371 OF 1996

Present : Hon'ble Mr. Justice S. N. Mallick, Vice-Chairman

Sri Gopal
R/o Panagarh Rly. Colony,
P.O. Panagarh Bazar,
Dist. Burdwan

VS

1. Union of India through the
General Manager, E. Rly.
17, Netaji Subhas Road,
Calcutta-700 001
2. Chief Personnel Manager,
E. Rly.
17, Netaji Subhas Road,
Calcutta-700 001
3. Divisional Railway Manager,
Asansol Division, E. Rly.
Asansol
4. Sr. Div. Personnel Officer,
Asansol Division, E. Rly.
Asansol
5. The Sr. Divisional Engineer,
Asansol Division, E. Rly.
Asansol
6. The Chief Permanent Way Inspector,
Panagarh, E. Rly.
P.O. Panagarh Bazar, Burdwan

..... Respondents

For the applicant : Mr. N. Ganguly, Counsel

For the respondents : Mr. C. Samadder, Counsel

Heard on : 18.11.98 & 26.11.98

Order on : 30.11.98

O R D E R

In this application, the petitioner's only prayer is to correct his date of birth as recorded in the service book. His case is as follows :

2. The petitioner joined the respondent railway at Andal in the year 1972. As he had no document to show his age, he was examined by the railway doctor for assessment of his age as per rules. The doctor, who examined him, recorded his age as 25 years 3 months and 29 days as on the date of

examination. Accordingly, the petitioner's contention is that his date of birth would be 27.5.1947 and not 27.5.1943 as noted in the service book maintained by the railways. Sometime in 1994, the respondent authorities issued a notice as per annexure-A dated 25.1.94 asking the Group D staff, amongst others, to get their surname recorded in the service book. On that occasion, the petitioner went through his service book in the early part of 1996 and came to know that his date of birth was recorded there as 27.5.1943 instead of 27.5.1947 as per the medical certificate. He filed a representation for correction of his date of birth to the Chief Personnel Officer, Eastern Railway, Calcutta (respondent No. 2) as per annexure-B dated 8.6.1996. But inspite of his representation, the respondent authorities did not take any step to consider his case and did not correct the date of birth of the petitioner as recorded in his service book. Thereafter, the petitioner gave a notice through his lawyer dated 5.9.96 (vide annexure-C) demanding justice to which no reply was given. Hence the instant application.

3. It has been contended by Mr. N. Ganguly, the 1d. counsel appearing for the petitioner that the respondents should be directed to have the petitioner examined by a medical board for ascertaining his age in the matter of correction of his recorded date of birth.

4. This OA has been resisted by the respondents by filing a reply. It is stated that the petitioner was absorbed as Gangman against an existing vacancy from casual labour in the year 1972. At that time, the petitioner submitted a declaration to the respondent authorities under his LTI stating that his date of birth was 27.5.1943. A few months after his appointment, the applicant was sent to the Asst. Medical Officer, Eastern Railway, Andal for medical examination. He was examined and was given a fit certificate

in A2 category and in the certificate the doctor committed an error by mentioning his age as 25 years 5 months and 29 days. This was calculated by the doctor on the basis of the information given by the petitioner. The said medical certificate was issued on 21.11.1972. But the age as recorded by the doctor was clearly a mistaken one in view of the declaration given by the petitioner himself before the respondent authorities which was duly incorporated in his service book.

5. The petitioner has filed a rejoinder to the reply which does not, however, disclose any new material.

6. I have heard the learned counsel appearing for both the parties and have gone through the materials on record. The departmental records including the service book of the petitioner has been produced before me. The first page of the service book of the petitioner records his date of birth as 27.5.1943. The said entry has been accepted by the petitioner by putting his LTI which was duly attested by a railway official, viz. P.W.I. Eastern Railway, Panagarh. It has been submitted by Mr. C.Samadder, the learned counsel appearing for the respondents that the petitioner's date of birth has been correctly recorded in his service book. The medical certificate dated 21.11.72 forming a part of the service book has been placed before me. It does not show that the petitioner was sent to the Asst. Medical Officer for determination of his age, but only to ascertain his physical fitness. The doctor certified that the petitioner was fit for A2 + below. The certificate stands in the name of the petitioner where his age has been given as 25 years 5 months and 29 days. This insertion is not a medical finding as there is nothing to show that his age was directed to be ascertained. Under such circumstances, I agree with the contention of Mr. Samadder that this portion of the

certificate is wholly redundant, if not incorrect, having no basis.

7. Mr. Samadder has referred to rule 225 of the Indian Railway Establishment Code, Vol. I regarding entries to be made about the date of birth in respect of railway employees. Rule 225(1) provides that in the case of illiterate staff, the declaration of date of birth shall be recorded by a senior railway employee and witnessed by another railway servant. Such declaration is to be made by the employee concerned. From the service book, it appears that the declaration was made by the petitioner, who being an illiterate, the entry was made by the railway official concerned and attested by a responsible railway servant and the petitioner also put his LTI below such entry. Rule 225(2) further provides that a person who is not able to declare his age should not be appointed to the railway service. The inference is irresistible that the petitioner was appointed by the railway authorities on his own declaration about his age. It cannot be stated that the date of birth as recorded in the service book is imaginary one and was not on the basis of the declaration of the petitioner.

8. Mr. Samadder has rightly contended that there is no material to show that there was any clerical or accidental error in recording the date of birth of the petitioner. He has rightly submitted that the medical certificate in so far as it relates to the age of the petitioner is of no consequence.

9. Mr. Samadder's second contention is that the instant application is also barred by limitation. It has been submitted by Mr. Samadder that before filing the representation as per annexure-B dated 8.6.96, the petitioner had already filed another representation for correction of his date of birth on 9.6.94. The said representation has been kept in the service records of the petitioner. In the said

representation the petitioner prayed for correction of his age on the basis of the medical certificate. This representation was rejected by the respondent authorities by their order dated 22.8.94. From the service records it appears that the said order of rejection was duly communicated to the petitioner on that very day. The instant OA was filed on 20.11.96. In view of the above fact, the present OA is also time barred. It is true that the petitioner thereafter filed another representation on 8.6.96 as per annexure-B and also gave a lawyer's notice dt. 5.9.96 as per annexure-C. But by making repeated representations after the railway authorities' order of rejection was duly communicated to him, the period of limitation cannot be extended.

10. Mr. Samadder has referred to a decision of the Hon'ble Supreme Court reported in 1997(2) SCSLJ 118 (Union of India & Ors -vs- C. Rama Swamy & ors. It has been held by the Supreme Court in the aforesaid case that once the date of birth as declared by the employee is accepted by the authorities, the employee would be estopped from challenging the correctness of the said date of birth unless there has been some bona fide clerical mistake in accepting the date of birth. The petitioner in this case is working for long years and he wants to stick to the service longer on the ground that the date of birth as recorded in his service book is incorrect. In the present case, I do not find any clerical error or bona fide mistake on the part of the respondent authorities in recording the correct date of birth in the service book as per the petitioner's own declaration.

11. In view of the above, it is quite clear that the petition itself is devoid of any merit. Furthermore, it is barred by limitation. The application, therefore, must fail. Accordingly, the OA stands dismissed. No order as to costs.

S. N. Mallik
(S. N. MALLICK)
VICE CHAIRMAN