

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

(B)

..... Date of order : 29.3. 2000

O.A. No. 342/96

Abdul Shakoor S/o Sh. Gehasi Khan, aged about 53 years, Resident of New Masjid, Chandmari Abu Road, Post Sagna, Distt. Sirohi (Rajasthan), at present employed on the post of Senior Khallasi under Loco Foreman Loco Shed, Abu Road, Western Railway.

..... Applicant.

Versus

1. Union of India through General Manager Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.

..... Respondents.

CORAM :

Hon'ble Mr. A.K.Misra, Judl. Member.

.....

Mr. J.K.Kaushik, Counsel for the applicant.

Mr. R.K.Soni, Counsel for the respondents.

-----  
PER MR. A.K.MISRA :

The applicant has filed this Original Application with the prayer that the impugned order dated 9/11-Sep'96 (Annex. A/1) rejecting the representation of the applicant and impugned order dated 20.9.1996 (Annex. A/2) so far as it relates to the retirement of the applicant be declared illegal and be quashed with all consequential benefits. The applicant be continued in service on the basis of his correct date of birth i.e., 24.3.1943.

3/11

2. After hearing the learned counsel for the applicant, notices were ordered to be issued to the respondents. The respondents had filed reply to the Original Application in which it was stated by the respondents that the date of birth of the applicant as entered in the service sheet is 30.10.1938, which was calculated as per the certificate of Medical Officer. The applicant had never submitted copy of any school leaving certificate at the time of entry in service. The applicant is being retired as per the date of birth as entered in the service sheet. The contentions of the applicant are not correct and the applicant cannot take any advantage relating to his date of birth as entered in the seniority lists. It is further stated by the respondents that due to some clerical mistake wrong date of birth seems to have been entered in the seniority list. The applicant is not entitled to any relief and the Original Application deserved to be rejected.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. It was argued by the learned counsel for the applicant that as per the school leaving certificate (Annex. A/3) submitted by the applicant, the correct date of birth of the applicant is 24.3.1943. This date finds corroboration from the seniority lists placed at Annex. A/4. and Annex. A/5 respectively. It is also argued by the learned counsel for the applicant that the applicant had taken Provident Fund loan in the past from time to time. In the application form the date of birth of the applicant had been entered as 24.3.1943 and therefore the contention of the respondents that the date of birth of the applicant was correctly entered in the service sheet is not factually correct. He has further argued that there was no basis for entering 30.10.1938 as date of birth of the applicant by the respondents.

30/1

Therefore the date of birth of applicant as mentioned in the school leaving certificates should be taken to be the correct date of birth.

5. On the other hand learned counsel for respondents submitted that the applicant had entered in the service of the respondents declaring himself to be an illiterate person. If he had studied in any school upto 5th class as is revealed from the school leaving certificate submitted by the applicant in support of his contention, then there was no reason for him in not producing the same at the time of entering in the service. He has further submitted that the school leaving certificates sought to be taken advantage of, were issued prior in time then the appointment of the applicant in service. One such certificate dates back to 11th May 1959 and second certificate dates back to 25th August 1965. If the applicant was in possession of either of the two certificates, he could have produced the same before the appointing authority for entering his date of birth in the service record accordingly but no such step was taken by the applicant. The contention of the applicant that a certificate was submitted by him to the appointing authority is not supported from record. He has further argued that applicant cannot take advantage of date of birth as entered in seniority lists, which were issued in the year 1990 & 1995 respectively because such lists are not the basic and conclusive documents to establish the correctness of the date of birth of the applicant.

6. We have considered the rival arguments viz a viz material available on record. In my opinion the entry of date of birth in the service sheet is the basic entry for determination of the age of the applicant. The applicant cannot claim a different date of birth as a correct date of birth on the basis of entry in the seniority lists or the application

*3/11*

forms for securing loan from the Provident Fund. The applicant as per his own contention had studied in a school upto 5th class and had left the school in the year 1958 due to poverty. In support of these facts he had secured school leaving certificate Annex. R/3 on 11.5.1959. This certificate ought to have been produced by the applicant before the appointing authority in support of his date of birth. The applicant had secured yet another certificate on 25.8.1965 (Annex. A/3) which indicates that he left the school for securing a job. The applicant was appointed on 01.9.1965 by the respondents. The applicant was medically examined on 30.8.1965 i.e., just prior to his appointment. If the applicant had secured a school leaving certificate on 25.8.1965, he could have produced the same before the Medical Officer or before the Appointing Authority for the purpose of entry of date of birth in service sheet to avoid guess work about his age but he did not do so. Both these certificates seem to have been in facts secured or obtained much after by the applicant. The applicant had put his thumb impression in the service sheet and also in the medical certificate. If the applicant had studied upto class 5th at the time of leaving school in the year 1959, he could have put his signature on the service sheet as well as on medical certificate, instead of putting thumb impression. The very fact that applicant had put thumb impression on these forms goes to show that he had not studied in the school and had learned to sign in English subsequently. There is no document on record supporting the contention of the applicant in respect of date of birth other than those issued by the respondents i.e. the two seniority lists

3nw

issued in the year 1990 & 1995 respectively. Provident fund loan forms submitted by the applicant in the year 1984, 1985 & 1989 do contains 23.4.1943 as the date of birth of the applicant but these forms neither can be the conclusive proof in respect of date of birth of the applicant nor the entry in these forms relating to date of birth can be treated to be more authentic than the service sheet. If the contention of the applicant, that the date of birth as entered in the service sheet is conjectural, is taken into account then also I come to the conclusion that at that stage the applicant had submitted no material in support of his date of birth and the same had been entered as per the calculation of the Medical Officer. The applicant had raised dispute relating to his date of birth almost 30 years after his entry in service when his name appeared in the list of persons who were to retire in 1996. Such a delayed dispute in respect of date of birth cannot be treated as a bonafied one. The Hon'ble Supreme Court has time and again decided that controversy relating to date of birth cannot be permitted to be raised at the time of retirement or soon prior to that. In view of this, the claim of the applicant that his date of birth is 24.3.1943 is not acceptable to me.

7. The school leaving certificates submitted by the applicant in support of his contention relating to date of birth being 24.3.1943 are doubtful in my opinion. Entry of date of birth in seniority list and application form for GPF loan are not the conclusive proof in relation to date of birth. The

21

only document which can be relied upon in respect of date of birth is the service sheet, which was filled in way back in 1965 and was attested by the then Assistant Engineer, Abu Road. The date of birth as entered in the service sheet bears no overwriting or subsequent erasure. I have no reason to doubt the entry and correctness thereof relating to date of birth.

8. In my opinion the date of birth " 30.10.1938 " as entered in service sheet (Annex. R/2) is the correct date of birth of the applicant and not the date of birth " 24.3.1943 ", as claimed by him.

9. From the personal file of the applicant produced before me it appears that the respondents had tried to find out the correct date of birth of the applicant by conducting an enquiry. The concerned enquiry officer had tried to get the original record from the school but the record was not available in the old record of the said school, which was closed years ago. There is a practice that school leaving certificate is issued on the basis of scholars admission register and in fact that is the basic record. Entries in the school leaving certificates find place only on the basis of scholars register. Therefore scholar register is the most important and primary evidence. If the same is not available then no reliance can be placed on the school leaving certificate alone. There is nothing on record to show as to where from

2/11

date of birth of the applicant was entered in the seniority list in absence of any such record. This mistake can be attributed as clerical and the applicant cannot claim any relief on the basis of such entry as claimed by him.

10. In my opinion, the applicant has not been able to establish conclusively that his correct date of birth is 24.3.43 and not 30.10.1938 as entered in the service sheet.

11. The Original Application in my opinion is devoid of any merit and deserves to be dismissed.

12. The Original Application is therefore dismissed.

13. The parties are left to bear their own costs.

814  
29/3/2000

( A.K.MISRA )  
MEMBER (J)