

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(12)

D/13

O.A. No. 144
T.R.-No.

1996

DATE OF DECISION 11.7.96.

Vijendar Bharti Petitioner

Mr. S. R. Bhandari Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondents

Mr. S. S. Vyas,

Advocate for the Respondent (s)

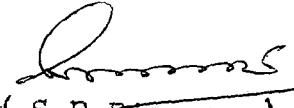


CORAM :

The Hon'ble Mr. S. P. Biswas, Member (Administrative)

The Hon'ble Mr. -

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(S.P. Biswas)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

O.A. No. 144/1996

Date of order : 11th July, 1996

Vijendar Bharti

...

Applicant.

Versus

Union of India & Ors.

...

Respondents.

Mr. S.R. Bhandari, counsel for the applicant.

Mr. S.S. Vyas, counsel for the respondents.

CORAM :

Hon'ble Mr. S.P. Biswas, Administrative Member.

* * *

THE COURT :


Applicant, presently an Office Superintendent Grade I under respondent No. 3, District Controller of Stores/Jodhpur Division of Northern Railway, is highly aggrieved by the allegedly unreasoned order at Annexure A/1 (dated 1.4.1996) by which his representation dated 31.10.1995 for alteration in the recorded date of birth has been rejected. Consequently, he has prayed for issuance of direction to the respondents to treat his date of birth as 5.2.1940 instead of 1.7.1938 and to allow him to continue in service till 4.2.1998 with all consequential benefits.

2. Heard learned counsel for the parties.

The applicant has filed a rejoinder to the reply submitted on behalf of respondents. In view of the urgency, the case was taken up for final hearing on 28.6.1996 with the consent of learned counsel for the parties.

3. The brief facts are that the applicant entered Railway Service on 12.7.1957 and alleges that the officials filled in his

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date of birth in Service Record as 1.7.1938 without demanding any document from him. He claims that when he discovered the mistake in early 1973 that a wrong date of birth has been entered, he requested for correcting the same. But he was told verbally that there is no provision. However, when the Railway Board vide it's letter dated 4.8.1972 (A2) offered an opportunity for rectification of mistakes in this respect, he submitted his representation well before the expiry of last date i.e., 31.7.1973. As there was no reply from the respondents, the applicant alleges to have perused his case as under :-

- (a) 1st reminder - on 6.11.80
- (b) 2nd reminder - on 18.6.88
- (c) 3rd reminder - on 29.4.94
- (d) 4th reminder - on 12.8.94
- (e) Last reminder - on 31.10.95



According to the applicant, the impugned order at Annexure A/1 was pursuant to his representation (Annexure A/3) dated 11.4.1973 followed by reminders aforementioned.

4. The case of the applicant is that as per Rule 145-R-I of Railway Establishment Code Volume I (for short, Code-I), the date of birth should have been incorporated in the service record by demanding from him relevant documentary evidences. Though Annexure R/1 "declaration form" and R/2 "Service Sheet" bear his signatures but the details were filled up at the threshold of his career when he did not know the intricacies of service procedures. In any case, they do not constitute legally valid declarations. The School Leaving Certificate is the only legal basis for accepting requests for alteration in date of birth. Such relevant documents, as at Annexure A/6 and A/8, evidenced by him to prove his date of birth being 5.2.1940 have been ignored. But similar documents have been accepted by the respondents while considering favourably an identical case of Shri Madan Lal Sharma. The

respondents have thus, acted not only arbitrarily but also discriminately, the applicant would submit.

5. The counsel for the applicant cited decisions of the High Court in Manak Chandra Vaidya Vs. State of Himachal Pradesh, 1976

(1) SLR 402 HP; and of this Tribunal in S.V. Narsimha Murthy Vs.

G.M. S.E. Railway, ATR 1987 (1) CAT 123 Hyderabad, to support his

contention that there is no estoppel in moving Courts or Tribunals

for corrections of erroneous date of birth, that respondents are

duty bound to verify/determine an employee's true date of birth and

that right to get wrong entry as regards the date of birth

corrected cannot be curtailed by executive instructions such as

the Railway Board's order at Annexure A/2. Quoting the directions

of Hon'ble Supreme Court in Dwarka nath Sharma Vs. Union of India

& Ors., 1991 SCC (L&S) 947, (para 12) the counsel argued that

the plea of limitation will not hold good in the facts and

circumstances of the case. This is because the claim was already

pending before the competent authority and hence the applicant was

entitled to make representations, the rejection of which could

have only given a cause of action. And that arose on 1.4.1996 when

his representation was rejected by the impugned order. Arguing

against the law of limitation, the counsel drew my attention to

the decision in the case of Mallela Sreerama Murthy & Anr. Vs.

Union of India & Ors., Full Bench CAT, Hyderabad 152 (decided on

17.8.1989) wherein it was held that Railway Board's order dated

4.8.1972 which is an executive order conflicts with sub-rule 3 of

Rule 145 of Code I and as such cannot have the force of law.

Consequently, an application by a Railway employee for correction

of his date of birth cannot be rejected on the ground that it is

not filed within the period prescribed. Reliance was placed on the

decisions of the Apex Court in Union of India Vs. Harnam Singh,

1993 SCC (L&S) 375 and Vimla Sharma Vs. State of U.P., 1991 SCC

(L&S) 704 to add strength to applicant's stand that such

corrections are to be allowed when evidences are 'irrefutable' as

in the instant case, that relief cannot be denied because of

delayed decisions by competent authority and that there cannot be

any discriminatory treatment while dealing with two identical



employees. A duplicate certificate could be taken as original for deciding similar cases. In this context, he referred to the decision of Jammu & Kashmir High Court in the case of Mohd. Sultan Vs. State & Ors., (1986 (3) SLJ 119).

6. In answer, counsel for the respondents submitted that representations dated 11.4.1973, 6.11.1980 and 18.6.1988 are all fabricated. Records establish that these representations could not have been submitted in the manner claimed herein. These are only tricks to get over the problem of limitation. It has also been submitted that the date of birth as recorded in both R/1 and R/2 was filled in by the applicant and the same was authenticated by his signature. School Leaving Certificate adduced as main support is only a duplicate copy with clear over-writings. The certificate issued by the Secondary Education Board, Rajasthan in 1995 can hardly be taken as unmotivated evidence at this stage as the applicant had already started agitating the issue since 1994. The counsel also argued that the candidate was absent in all subjects at the time of examination of the above Board and this was a pre-planned nefarious attempt to obtain a suitable certificate showing his date of birth to be 5.2.1940. The applicant woke up on 29.4.1994 after 21 years (26 months before his retirement) and that Court/Tribunal at this belated stage cannot entertain a claim for correction of date of birth duly entered in the service record. The counsel further contended that a delayed request for correction cannot be entertained in the light of the decisions of the Apex Court in Burn Standard Co. Limited & Ors. Vs. Dina Bandhu Majumdar & Ors., AIR 1955 SC 1499.

7. As is evident, the contentions raised hereinabove involve a few important legal issues. These relate to (i) can a duplicate Secondary Leaving Certificate with apparent over-writings or a Secondary School Board Certificate procured long after joining

service
 /be taken into consideration for altering date of birth ? (ii)
 applicability of the law of limitation and doctrine of estoppel ;
 (iii) role of the Tribunal/Court in determining disputed
 claims/appreciation of evidences ; (iv) entertainability of such
 original application only two months before superannuation ; (v)
 legality of claim that because in one case a particular order has
 been passed, the same must be repeated in another case claimed to
 be of
 /identical nature.

8. I will now advert to the provisions of law/rules relating to the correction of date of birth. As far as Railway employees are concerned, for those who were in service already as on 3.12.1971, the relevant provisions stood as under :-

"Indian Railway Establishment Code - Vol. I, 1951

Rule 144. Date of birth :- (1) "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 before entering Railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the employee's own hand-writing."

Indian Railway Establishment Code - Vol.I, 1971

Rule 145. Date of birth :- (1) "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 before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own hand writing."

(3) "The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case a gazetted railway servant, and General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered -....."

3(iii) "Where a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the records amended."

Circular No. 93E/O-II (EIV), dated 23.8.1972

" Sub : Procedure for recording date of birth on entering Railway service and its alteration.

Attention is invited to advance correction Slip No. 303 to the Indian Railway Establishment Code Vol. I forwarded with Railway Board's letter of even number dated 3.12.1971 which requires that requests for alteration of date of birth should not be entertained after completion of the probation period or three years service whichever is earlier.

2. It has been represented that the above amendment would cause hardship to the railway servants who were already in employment on 3.12.1971 and who did not take advantage of the provision of the rule regarding alteration of date of birth as it stood before the above amendment.

3. The Board have considered the matter and have decided that such employees may be given an opportunity to represent against their recorded date of birth up to 31.7.1973. Such requests should be examined in terms of the rule as they stood before the amendment."

Thus, the rule making authority gave an opportunity to seek correction of date of birth by 31.7.1973 to those Railway servants who had joined the service prior to 1973, but restricted it to three years or upto the time of completion of probation for those who entered after 1973 (emphasis added).

9. The single most important question that falls for determination herein is whether A/3 representation was really submitted on 11.4.1973 as alleged by the applicant. It is true that a Government servant has a right to seek correction of date of birth by placing a reliable evidence before the competent authority. The present application suffers a serious draw-back in this respect. The applicant claims to have represented his case on 11.4.1973, but the respondents have categorically denied it. The applicant admits of not having submitted/shown the original Secondary Leaving Certificate at any stage (emphasis added). The duplicate one evidenced here is a photocopy only with clear overwriting. The said duplicate certificate (Annexure A/6) was apparently obtained in 1955 from the School Authorities on the plea "to join service", but the opportunity to correct the date of birth on the basis of the said certificate was not availed while authenticating the initial service declaration form (R/1) in 1958 or even at the time of filling up the particulars of the service



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record (R/2) in 1965 (emphasis added). On 11.4.1973, for the first time, the applicant made an application for correction of date of birth without adducing any trustworthy documentary evidence in support of the claim, without the case being forwarded by his immediate controlling officer and without in any manner explaining as to why he had taken no action for over a decade and half. The applicant has failed to provide any unpeachable evidence in support of his claim regarding submission of A/3 representation or subsequent reminders dated 6.11.1980 and 18.6.1988 (emphasis added). That apart, no explanation, much less a satisfactory one, has been furnished by the applicant as to why he took seven years and to issue the first reminder on 6.11.1980/yet another eight years for the second reminder on 18.6.1988. It also eludes comprehension that the applicant being a literate employee continued to agitate over the recorded date of birth since 1973, and yet there was no objection whatsoever as regards his date of birth shown in seniority list dated 14.9.1987 meant for the ministerial staff or even the subsequent seniority list of 11.8.1990 meant for the Head Clerks (emphasis supplied).

10. However, the representation made on 29.4.1994 (third reminder as per applicant) for the change of date of birth has not been disputed by the respondents. This was a little over two years before retirement. Surprisingly, the Annual Confidential Reports (Reports, for short) of the applicant for the last three years - 1992-93, 1993-94 and 1994-95 - recording his date of birth as 1.7.1938 in the first part stands unrefuted even though the applicant countersigned the second part in each of the reports separately. In this respect, it is apposite to remember the decisions of the Apex Court in the case of *Burn Standard Co. Ltd. & Ors. Vs. Dinabandhu Majumdar & Anr.*, (1995) 30 ATC 206 (supra)

wherein their Lordships held :

"The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of nonraising of objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications".



11. I shall now turn to the reliance placed by the applicant on the newly found Annexure A/8 document. Although a mark sheet, the date of birth of the applicant on this fresh document issued by the Secondary Education Board has been shown as 5.2.1940. The stand taken by the respondents appears to be correct that the applicant for ulterior reasons to get benefit in service had indicated in the relevant application form submitted for appearing in the above examination, his date of birth as 5.2.1940. Neither the applicant took prior permission to appear in the said examination nor the relevant form was submitted through proper channel. Thus, the age indicated in this new certificate will not off-set the declaration of the date of birth made by the applicant at the time of his entering into the service. On this aspect, I find that the judgement in the case of R.S. Mehota Vs. Central Government Industrial Tribunal, 1991 (63) F.L.R. page 76, is squarely applicable. The relevant portion is reproduced below :-

" In the said case the petitioner therein had passed the High School Examination during service period after joining the service. The High School Certificiate bore another date of birth than the date of birth initially recorded. The learned single Judge in the said case had observed that "it was very easy for the petitioner to mention another date in the papers while doing High School and thus on the documents which came in existence subsequently no reliance can be placed." The same situation obtains in the present case. 2

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"It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

It could not be the intention of Rule making authority to give unlimited time to seek correction of date of birth. Permission to re-open the accepted date of birth of an employee especially on the eve or shortly before superannuation of the Government employee would be an impetus to produce fabricated record. That is why the Hon'ble Supreme Court observed that ordinarily an attempt to correct age at the fag end of service cannot be countenanced. The matter of age of retirement and the determination thereof are matters of vital interest affecting the right of an employee, as the  Apex Court has pointed out in the State of Orissa Vs. Dr. (Mrs.) Binapani Dei & Others, AIR 1967 SC 1269. One crucial fact namely that the first ever record on the subject (R/1), accords with the case of applicant cannot be left out of consideration. This has found favour with the Government after scrutiny and cannot be allowed to be challenged except without unassailable proofs.

13. I also find that the competent authority has considered various facts and circumstances in the light of the procedures circulated to all under Serial No. 5719 dated 23.8.1972 and rejected the claim on 1.4.1996. The evidences were found not unpeachable or irrefutable. Nor was the appeal submitted within the time limit provided. The Tribunal in its judicial review will not be justified in trenching into the field of re-appreciation of evidence and reach a conclusion on merits as it is not a Court of appeal.

14. The applicant has also taken the plea of discrimination in ^a that similar relief claimed by him has been given to Shri Madan Lal

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Sharma allegedly placed in an identical situation. Details of that case was not placed before me. However, it is distinguishable in the sense that the case was supported by un-peachable original documents. Each such claim has to stand on its own merit. It is fraught with dangers, in terms of law, to apply the decision of a particular case to the facts and circumstances of another case alleged to be similar. I find this submission is clearly fortified by the preposition of law laid down by the Hon'ble Supreme Court in the case of Chandigarh Administration & Anr. Vs. Jagjit Singh & Anr. Etc (JT 1995 (1) S.C. 445). In this case, it has been held :

"The mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order."



Applicant's contention on discrimination, therefore, cannot be sustained in law.

15. The materials on record establish that after obtaining Secondary Leaving Certificate in 1955-56, the applicant got first opportunity to correct his date of birth in 1958 when filling in the service declaration form, second opportunity in 1966 after receipt in 1960 of the duplicate copy of the original certificate, made representation for correction of his date of birth only in 1994, but failed to substantiate his claim that he had taken appropriate actions earlier. The applicant allowed the matter to rest till he neared the age of superannuation. He thus slept over his rights to get the date of birth altered for more than 36 years and woke up from his slumber barely two years before retirement.

The law laid down by the Apex Court in Harnam Singh's case is, thus, fully applicable to the present case (emphasis added). Entertainment of stale claim and belated application for alteration of date of birth recorded in the service book at the time of initial entry, made after unexplained and inordinate delay at the eve of retirement, is unwarranted. This view finds support from the decisions cited by the learned counsel for respondent in the two recent judgements of the Apex Court in Visakhapatnam Dock Labour Board Vs. E. Atchanna & Ors., JT 1996 (3) SC 06 and Union of India Vs. Ram Sua Sharma, JT 1996 (3) SC 72 (supra).

16. In the background of the discussions aforementioned, the application fails on the grounds/acquiescence, inordinate delay and laches and is accordingly dismissed but with no order as to costs.


(S.P. BISWAS)
MEMBER (A)

c.v.r.