

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

Original Application No.172/2014

Reserved on 28.05.2014

Jodhpur this the 09th day of June, 2014

CORAM :

Hon'ble Ms. Meenakshi Hooja, Member (A)

Dilip Kumar Patpatia S/o Late Shri Surendra Pratap Patpatia, aged about 56 years, R/o S-5, New Shiv Bari Road, Bikaner, Rajasthan. Presently posted as Accounts Assistant in the Office of Senior Divisional Finance Manager, NW Railway, Bikaner, Rajasthan.

(Through Adv. Kuldeep Mathur)Applicant

Versus

1. The Union of India through the General Manager, North-Western Railway, Jaipur, Rajasthan.
2. The FA& CAO, General Manager Office, North-Western Railway, Jaipur, Rajasthan.
3. The Senior Divisional Finance Manager, North-Western Railway, Bikaner, Rajasthan.

(Through Adv. Mr. Vinay Jain)Respondents

ORDER

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 04.04.2014 (Annexure A/1) issued by the Divisional Finance Manager, Bikaner whereby the applicant was ordered to be superannuated from services w.e.f. 30.06.2014.

2. The brief facts of the case as averred by the applicant are that the applicant is possessing qualification of 9th pass and he was declared fail in the Secondary School Examination conducted by the Secondary Board of Education Rajasthan, Ajmer in the year 1994. Vide order dated 19.06.1979 the applicant was appointed as Water Man on a Group 'D' post in the Railways and was promoted as Clerk Grade-II on a Group 'C' post w.e.f. 23.02.1983 and thereafter on the post of Clerk Grade-I w.e.f. 26.06.1985. Then, the applicant was promoted as Accounts Assistant vide order dated 11.07.1988 and he is presently working on that post. It has been further averred that the Railway Board issued PS No.10899 dated 20.06.1994 under subject Inspection of Service Book/ Record by employees, wherein, it is stated that signatures on the service book will be obtained by the Railway Servant after showing the same to him. Similar order has been issued by the respondent No.1, General Manager, NWR, Jaipur under subject System Improvement- Orders relating to Service Record and Service Book and following these circulars, the mistake of entering incorrect date of birth in the Service Record could have been noticed. It has been further averred that vide order dated 04.04.2014 (Annexuree-A/1), the applicant has been ordered to be superannuated from services w.e.f. 30.06.2014. After receiving the order dated 04.04.2014 (Annexure-A/1), the applicant immediately requested the respondents to supply him a copy of the service record, but the same was not provided to him and later on he obtained the same under Right to Information Act. The applicant was shocked and surprised to see that in the Service Book his date of birth has been wrongly entered as 02.06.1954

and submitted a representation to the respondents on 21.04.2014. (Annexure-A/4) stating therein that the date of birth recorded in his service book is incorrect and the correct date of birth of the applicant may be entered in the Service Book, i.e. 13.06.1958. In support of his contention, the applicant further stated in his representation that in the School Leaving Certificate of Government Sadul Sr. Higher Secondary School, Bikaner and in the Mark Sheet of Secondary School Examination issued by Board of Secondary Education Rajasthan, Ajmer his date of birth has been mentioned as 13.06.1958 and he further stated that his elder brother Shri Pradeep Kumar is working as Senior Section Officer in the same office and his date of birth mentioned in the service book is 15.05.1956 and prayed to make necessary correction in the Service Book with regard to his date of birth. It has been further averred that when the respondents did not give any reply to his representation dated 21.04.2014, then the applicant again submitted a representation dated 09.05.2014 (Annexure-A/5) to the respondents along with certified copies of the School Leaving/ Transfer Certificate, Mark Sheet issued by the Secondary Board of Education Rajasthan, Ajmer and the Secondary School Certificate of Shri Pradeep Kumar Khatri i.e. elder brother of the applicant. The applicant requested respondents to make necessary corrections in the Service Book and prayed that he may be allowed to continue in service. It has been further averred that in the present case dispute with regard to date of birth has erupted due to the reason that applicant in his entire service career was not shown or given copy of his Service Book, though the Railway Board issued PS No.10899 dated

20.06.1994 under subject Inspection of Service Book/ Record by Employees and in the said PS it is stated that signatures on the service book will be obtained by the Railway Servant after showing the same . But since the circulars were not followed the applicant did not know about incorrect entry of date of birth in his Service Record. Therefore, the applicant by way of this application prays for the following reliefs:-

- "(i) *That the Original Application may kindly be allowed.*
- (ii) *That the order dated 04.04.2014 (Annexure-A/1) may kindly be declared illegal and the same may kindly be set aside.*
- (iii) *That respondents may kindly be directed to enter correct date of birth of the applicant i.e. 13.06.1958 in the Service Record and by accepting his date of birth as 13.06.1958 the respondents may be directed to continue him in service till he attain the age of superannuation.*
- (iv) *Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may kindly be granted.*
- (v) *Costs of this application be ordered to be awarded in favour of the applicant."*

3. By way of reply, the respondent department averred that the applicant was appointed on the post of Waterman in respondent department by order dated 19.06.1979 and at the time of appointment, the applicant submitted his particulars and in which he has shown his date of birth as 02.06.1954 and he has also appended thumb impression. It has been further averred that as per Rules 225 of IREC it is necessary that every person who enters into railway service should declare his date of birth and the date of birth which is recorded in service record will be treated as final and same shall be binding and if any alteration in date of birth is required to be made then same is to be submitted within three years. It has been further averred that the Railway Board has also issued a circular dated 05.01.1972 in respect of date of birth in which also it has been specifically mentioned that date of birth of an employee can be altered after completion of probation period or three years of service,

whichever is earlier and after that no alteration will be permitted. It has also been averred in the reply that the respondent department has also issued Identity Card which are filled by employee himself and applicant has also filled the Identity Card and in which he specifically submitted that his date of birth is 02.06.1954. Further, the respondent department prepared the pay slips every month and in this pay slip the date of birth and date of retirement is mentioned and from perusal of the pay slips at Annexure-R/4, it is clear that date of birth of applicant has been shown as 02.06.1954 and further the date of retirement is also mentioned as 30.06.2014. It has been further averred that for seeking railway pass, railway employee is required to submit family declaration every year and from perusal of the declaration at Annexure-R/5 it is clear that applicant himself has shown his date of birth as 02.06.1954. Further, as per the gradation list issued by the respondent department, which has duly acknowledged by the applicant, it is clear that his date of birth has been shown as 02.06.1954. Thus, the applicant was having the knowledge that in service book his date of birth has been recorded as 02.06.1954 and further applicant himself submitted the declaration for time to time in which also he has shown his date of birth as 02.06.1954. Above all applicant himself has submitted an application on 13.01.2014 in which he himself has categorically mentioned that he is retiring on 30.06.2014, therefore, his pay account should be shifted from SBBJ to Bank of Baroda. From all above facts & position it is clear that applicant was knowing well that in service book his date of birth has been recorded as 02.06.1954 and he himself submitted his date of birth as 02.06.1954 from

time to time but now at the verge of retirement he has submitted an application for alteration in his date of birth. Further, it has been averred that the applicant is also having the PAN card and in which he has also shown his date of birth as 02.06.1954 and it is requested that the applicant should be called upon to produce the copy of the PAN card. It has been further averred that in pursuance to the representation submitted by the applicant the respondent department has replied to his representation by letter dated 15.05.2014 and in which it was categorically informed that at this stage the date of birth cannot be altered. Thus, the respondents department have prayed to dismiss the OA.

4. Applicant has also filed the Additional Affidavit and in which he has submitted that after filing of the OA he received a letter dated 15.05.2014 from respondent No.3 by which his request for correction in date of birth has been rejected (Annexure-A/8). It has been further submitted that the para 225 of the Indian Railway Establishment Manual (IREM) on the subject states that alteration in the date of birth can be permitted by the General Manager, if he is satisfied that a clerical error has occurred n the matter. It has been further averred that the powers for alteration of date of birth have been delegated to the CPO as per Schedule of Powers Part A (Establishment Matters) but the respondent No.3, i.e. Senior Divisional Finance Manager, Bikaner, without any authority of law has rejected his representation.

5. Heard both the parties. Counsel for the applicant contended that the applicant was appointed as Waterman in the regular post of Group 'D'

on 19.06.1979 and promoted to Group C as Clerk Grade-II w.e.f. 23.02.1983 and after subsequent promotions, he is presently working in the Group 'C' post of Accounts Assistant from 11.07.1988. He referred to Annex A/3 (page 14) which are particulars of service he rendered, in which his date of birth has been mentioned as 02.06.54 although as per his marksheets of Secondary School Examination of 1974 (enclosed with Annexure-A/5), his correct date of birth has been mentioned as 13.06.58 as also in the Transfer Certificate (also enclosed with Annexure-A/5) wherein his date of birth has also been correctly mentioned as 13.06.58. When the order dated 04.04.14 Annex. A/1 was issued mentioning his date of retirement as 30.06.2014, apparently based on the erroneous entry of 02.06.54 as his date of birth, he immediately raised objections and submitted a representation dated 21.04.2014 (Annexure-A/4) and followed it with another representation dated 09.05.2014 (Annexure-A/5) enclosing a copy of the School Leaving/ Transfer Certificate as well as copy of the marksheets issued by the Secondary Board of Education of Rajasthan which shows his date of birth correctly as 13.06.58. He also pointed out that his elder brother Shri Pradeep Kumar is working as SSO /Accounts in the same office and his date of birth is 15.05.56 and enclosed a copy of his brother's Secondary School Certificate; therefore as he is younger than him, his correct date of birth is 13.06.1958. Thus, he submitted all genuine documents pertaining to his correct date of birth as 13.06.58 while the date of birth 02.06.54 entered in the particulars of service was not based on any documentary record. He further referred to circular of the Department dated 20.06.1994 as at Annex. A/6 regarding

Inspection of Service Book/ Record by employees, in which it has been mandated that every Head of office will take action to show the service books to Railway Servants (Governed by Pension Rules) under his administrative control every year and obtain their signatures therein token of their having inspected the service book. As the respondents never complied with these directions and he has never been shown his Service Book so he could not raise any objections earlier and only when his retirement order dated 04.04.2014 (Annexure-A/1) was issued he could raise objections and therefore made representations as at Annexure-A/4 & A/5. However, his representations were rejected vide Annex. A/8 order dated 15.05.2014, which he has filed with the additional affidavit. He further referred to para No.225 of IREM (Annexed as Annexure-A/9) regarding date of birth wherein it has been stated in para 225(4) that "*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 case of a Group A&B railway servant, and a General Manager in the case of a Group C & D railway servant to cause the date of birth to be altered.*"

However, his representation was not rejected by the competent authority i.e. General Manager or to any other person to whom powers have been delegated. In the case of the applicant as per Schedule of Powers part 'A' (Establishment Matters) this power regarding alteration of date of birth has been delegated to CPO i.e. Chief Personnel Officer and in the case of applicant's cadre the CPO for Finance is FA&CAO General Manager Office, North Western Railway, Jaipur, Rajasthan but the representation

has been rejected by Senior Divisional Finance Manager, North Western Railway, Bikaner (as at Annexure-A/8) who had no power or authority to decide the issue at his level. Counsel for the applicant contended that in view of the above position the correct date of birth of the applicant i.e. 13.06.1958 may be recorded on the basis of School Examination Certificate and the same may be entered in the Service Record of the applicant and order Annex. A/1 dated 04.04.2014 retiring the applicant on 30.06.2014 may be set aside. In support of his arguments, the counsel for applicant relied upon the judgments of the Hon'ble Apex Court in *R.K. Jangra v. State of Punjab & Ors* reported in AIR 2009 SC (Supp) 1785, and in *Manoj Kumar vs. Govt. of NCT of Delhi & Ors.*, reported in (2010) 11 SCC 702, and also on the judgment of the Rajasthan High Court, Jaipur Bench passed in *Radhey Shyam Jaga vs Rajasthan Rajya Vidhyut Prasaran Nigam & Anr.*, reported in 2007(3) WLC 148.

6. Per contra, counsel for respondents contended that the applicant never submitted any representation within the prescribed time limit against the date of birth 02.06.54 as entered in the Service particulars in which applicant has appended his thumb impression and as per para 225 4 (iii) of IREM such application for correction of date of birth cannot be entertained after completion of probation or period of 3 years of service, whichever is earlier. Counsel for the respondents further submitted that on the other hand number of documents were filed by the applicant himself in which he himself gave his date of birth as 02.06.1954. In this regard he referred to Annex. R/3 which is his Identity Card in which he has himself

written his date of birth as 02.06.54, Annexure-R/5, his own declarations for seeking railway passes, in which he has given his date of birth as 02.06.54, again Annex. R/7, dated 13.01.2014 which is a request for depositing his salary in a particular Bank, in which he has himself mentioned that his retirement is on 30.06.2014 (whereby accepting his date of birth as 02.06.54). Further, in the pay slips as issued by the respondents as at Annexure-R/4 and in the various gradation lists of Accounts Assistant issued from time to time as at Annex. R/6, his date of birth was clearly mentioned as 02.06.54, but he never raised objections at any time. Thus the applicant neither raised any objections to any of the official documents in which his date of birth was correctly shown as 02.06.54, rather on the other hand in several letters/ applications he himself mentioned and gave his date of birth as 02.06.54 as at R/3, R/5. It was contended that just on the verge of retirement the applicant cannot approach the authorities for change of date of birth and his representation has been right rejected because as per para 225 (4) (iii) of IREM such applications can only be entertained after completion of the probation period or three years of service whichever is earlier. The counsel for the respondents further contended that the applicant never submitted any of the documents which he has submitted now with Annex. A/5 at any earlier stage in his service, right from his joining of duty in 1979 in the respondent-department. The applicant cannot also claim any benefit of being illiterate for not only was he appointed on regular Group 'D' post in 1979 but later on was promoted in Group C post in 1983 itself and after further subsequent promotions he is presently holding the post of

Accounts Assistant in Group 'C' category. In support of his argument, counsel for the respondent submitted that there are catena of judgments of Hon'ble Apex Court in which it has been held that applications for allocation of date of birth can be entertained only within the prescribed time limit and not on the fag end or tail end of service and he referred to the Apex Court judgment passed in *Punjab & Haryana High Court at Chandigarh vs. Megh Raj Garg and Anr.*, reported in (2010) 6SCC 482 and *State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & ors.*, reported in (2010) 14 SCC 423. Further, regarding point raised by counsel for the applicant that the representation has not been decided by competent authority. Counsel for respondents contended that the applicant has not challenged the order dated 15.05.2014, and in any case in view of the fact that he has himself mentioned his date of birth as 02.06.14 in several applications and has never challenged any of the official documents issued to him which clearly mention his date of birth as 02.06.54, therefore, he is not entitled to any legal relief. Counsel for respondents also referred to the judgment of this Tribunal in OA No. 516/2013 dated 02.04.2014 in support of his argument and prayed for dismissal of the OA.

7. In response counsel for the applicant contended that he could not challenge the order dated 15.05.2014 because he has filed the OA on the same date and order dated 15.05.2014 was made available later in the day and thereafter he has submitted the same alongwith the additional affidavit.

8. Considered the rival contentions of the counsel for both the parties and perused the record. It is noted from the record, especially Annexures-A/3 & R/5, that as pointed out by the counsel for the respondents, the applicant appended his thumb impression in the particulars of service as Annexure-A/3 himself and in the identity card and applications made in his own handwriting and signed by him, he has mentioned his date of birth as 02.06.54, further in Annexure-R/7 which is dated as recently as 13.01.2014 he has himself written his date of retirement is 30.06.2014, thereby accepting his date of birth as 02.06.54. Further in the pay slips placed before us in the reply by the respondents at Annex. R/4 the date of birth has clearly been mentioned as 02.06.54 and in the gradation list also of Accounts Assistant (Annexure-A/6) the date of birth is mentioned as 02.06.54. Thus, there is consistency in the official records in the date of birth as entered at the time of the appointment of the applicant in particulars of service (Annexure-A/3) and documents issued by the respondents from time to time, as well as in the applications submitted by the applicant in which the applicant himself has mentioned his date of birth as 02.06.54. A belated challenge to his date of birth at the very verge of his retirement by furnishing certain School Examination Certificates or Transfer Certificate which give his date of birth as 13.06.58 is not at all in accordance with para 225 of the IREM and the time prescribed therein in 225 4 (iii). The applicant surely must have had his School Certificates as at Annexure-A/5 all along with him though it is noted that the copy of the marksheet enclosed with Annexure-A/5 says

प्रतिलिपि निर्गमन का दिनांक 29.04.2014 while परिणाम धोषित होने का दिनांक is 24.07.2074 and anyway it is not his case that they were not available with him or were misplaced, and instead of furnishing them to the authorities and making a representation within the prescribed time limit, he rather not only accepted the date of birth as mentioned in several official documents, but himself mentioned it as 02.06.1954 in several of his applications. Further, the contention of the counsel for the applicant that his case has not been decided by the General Manager or the authority to whom the power has been delegated does not carry much force in view of the fact that the applicant has himself mentioned his date of birth as 02.06.54 in several of his applications as brought out above. The judgments referred and relied upon by the counsel for the applicant relate to persistent efforts made by the litigants in the cases to get their date of birth counted as per their certificate but in this case the applicant never questioned or objected to his date of birth as recorded in several official documents, for over 30 years, and did not submit any of school certificates/marksheets as at Annexure-A/5 at an appropriate or prescribed time earlier, but only produced them at the verge of retirement. On the other hand the judgments referred by the counsel for the respondents clearly bring out the position that any attempt to challenge the date of birth at the fag end of the career or verge of retirement far beyond the prescribed time limit in the rules without any real basis is not sustainable in the eyes of law. This Tribunal has also held a similar view in its order dated 02nd April 2014 in OA No.516/2013.

9. Thus, in view of the above position that the applicant has himself mentioned and written his date of birth as 02.06.1954 in several forms and applications, and never disputed the same as mentioned in official records within the time limit, he cannot claim any alteration by making a case at the fag end of his career. Therefore, in view of the facts and circumstances of the case, no case is made out for any change in the date of birth of the applicant i.e. 02.06.1954 as recorded in the Service Book and other official records pertaining to applicant, and there is no ground to set aside Annexure-A/1 dated 04.04.2014.

10. Accordingly, no case is made out by the applicant for grant of relief and the OA is dismissed with no order as to costs.

Mh ✓
(MEENAKSHI HOOJA)
MEMBER (A)

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