

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No. 290/00258/16**

**RESERVED ON: 24.05.2016**

Jodhpur, this the <sup>27<sup>th</sup></sup> day of May, 2016

**CORAM**

**Hon'ble Mr. U.Sarathchandran, Judicial Member**

**Hon'ble Ms. Praveen Mahajan, Administrative Member**

Parsa Ram s/o Sh. Tiku Ram, aged about 56 years, r/o Quarter No. B-4-C North Western Railway, Railway Station Sujangarh, District Churu. Presently working on the post of Black Smith II in the office of Section Engineer (P.Way), North Western Railway, Sujangarh, District Churu.

.....Applicant

By Advocate: Mr. S.K.Malik

**Versus**

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur

.....Respondents

By Advocate : Mr. Vinay Jain

**ORDER**

**Per Ms. Praveen Mahajan, Administrative Member**

In the present OA, the applicant approached this Tribunal claiming correction of his date of birth.

2. Brief facts of the case are that the applicant entered in the service as Casual Labour on 17.10.1978. He was granted temporary status of Group-D w.e.f. 18.2.1979 and his date of birth has been entered as 1.7.1960. In 1987 the applicant submitted an affidavit dated 24.3.1987 mentioning date of birth as 1.7.1960. At the time of granting temporary status in the year 1992, the same date of birth has been entered. After passing the VIII class in the year 1990-91, the applicant produced a school certificate wherein also the date of birth is recorded as 1.7.1960. The applicant avers that he has never given any other document other than the ones which mention his date of birth as 1.7.1960. He was taken by surprise when the respondents vide letter dated 23.12.2015 (Ann.A/1) circulated the list of retirees for the year 2016 wherein the date of retirement of the applicant was shown as 30.06.2016 instead of 30.06.2020. The learned counsel for the applicant produced pay slips for the month of August, 2014, June, 2015 and March, 2016 in support of his averment (Ann.A/7, A/8 and A/9). In response to the impugned letter dated 23.12.2015, the applicant filed a representation to respondent No.3 enclosing proof of date of his birth as 1.7.1960 (Ann.A/10), However, the same was rejected vide impugned order dated 26.4.2016 (Ann.A/2) hence he has approached the Tribunal for redressal of his grievance praying that:-

- (i) By an appropriate writ, order or direction impugned order dated 23.12.15 at Annx.A/1 qua the applicant and impugned order dated 26.04.16 at Annx.A/2 be declared illegal and be quashed and set aside.
- (ii) By an order or direction respondents may be directed to keep the applicant in service till 30.06.20 i.e. the date of superannuation with all consequential benefits.
- (iii) By an order or direction exemplary cost may be imposed on respondents for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice, which this Hon'ble Court deem just and proper.

3. The main stand of the respondents by way of reply, is that as per service conditions, the date of birth recorded in the service book is treated to be final unless and until the same is corrected on submission of application within a period of three years from the date of initial entry into service. Therefore, the stand taken by the respondents is correct as the date of birth entered in the service book of the applicant is 1.7.1956. The respondents have relied upon Rule 225 of the IREC Vol.I and produced the same in the reply.

4. Heard both counsels and perused the record.

5. The issue was hotly contested by the learned counsel for the applicant, who painstakingly took us through the facts of the case.

It was averred that after his appointment as a Casual Labour w.e.f.

D Khallasi on 18.02.1979. In Ann.A/3, where personal details are to be filled up on the first appointment, date of birth of the applicant at Sl.No.3 has been shown as 1.7.1960. Similar date has been reflected in the affidavit filed by the applicant on 24.3.1987 (Ann.A/4). The learned counsel for the applicant has further submitted that in the year 1992, the applicant's name figured for regularisation of Group-D employees at Sl.No.58. This regularisation order, was subject to verification of date of birth, caste certificate etc. The applicant averred that regularisation was granted to him only after due verification of his date of birth which was based on the documents submitted by him to the respondents – again reflecting his correct date of birth as 1.7.1960. The applicant had passed Class-8<sup>th</sup> in the year 1991 and produced the school certificate to this effect wherein his date of birth is recorded as 1.7.1960. Accordingly, the applicant's services were regularised as Group-D employee w.e.f. 18.02.1979 i.e. the date from which he was granted temporary status. The learned counsel for the applicant emphasized, that the applicant had never given any other document, than what has been stated above, in support of his date of birth, to be entered in the service book. He submitted that vide impugned letter dated 23.12.2015 (Ann.A/1) when the list of retirees for the year 2016 was circulated, the applicant came to know that his date of

30.6.2020 (Ann.A/1). This came as a rude shock to him, since this calculation is based on wrong facts as his date of birth is 1.7.1960 and not 1.7.1956. In support of his contention, the learned counsel submitted that the monthly pay slips provided to the employee showing personal details and other details of salary also show the date of birth as 1.7.1960 and date of retirement as 30.6.2020. As an evidence, the learned counsel produced the pay slips for the month of August, 2014, June, 2015 and March, 2013 for perusal of the Bench (Ann.A/7, A/8 and A/9).

On receipt of impugned letter dated 23.12.2015, the applicant represented to the respondents on 25.12.2015 stating that perhaps by clerical error his date of birth has been written as 1.7.1956, whereas, there is ample proof showing his date of birth as 1.7.1960. A request was made by this representation to correct the date of birth vide Ann.A/10. The respondents vide impugned order dated 26.4.2016 (Ann.A/2) stated that since the date of birth has been entered as 1.7.1956 in the service book, no correction can be allowed at this stage. The applicant was informed that as per Rule 225, para 4(iii) of Indian Railway Establishment Code, Vol.I, an employee can contest/request for change of his date of birth within a period of three years after his date of initial appointment. Since the applicant had been appointed in the year 1992 and he had not contested his date of birth till 1995, hence his

request for change of date of birth at this stage cannot be considered.

The learned counsel for the applicant prayed that the impugned order dated 23.12.2015 qua the applicant (Ann.A/1) and 26.4.2016 (Ann.A/2) may be quashed and declared illegal and set-aside. It has been submitted that on account of submissions made and the documentary proof submitted to the respondents, the correct date of birth of the applicant may be taken as 1.7.1960 and the respondents may be directed to keep the applicant in service till 30.6.2020 with all consequential benefits.

The learned counsel for the applicant also cited the following judgments in support of his contention:-

- i) Jiwan Kishore vs. Delhi Transport Corporation and Anr., 1980 (2) SLR 513
- ii) S.S.Sandhu vs. Union of India and Anr., 1982 (3) SLR 777
- iii) Jagan Nath Sharma vs. Union of India, 1987 (1) SLR 745

It is seen that the ratio of these judgments is not applicable to the facts and circumstances of the present case.

6. The learned counsel for the respondents submitted the averments already made in his reply to the OA. He stated that it has been categorically mentioned in the service book that the date of birth of the applicant is 01.07.1956 (Ann.R/1). It was also

submitted that the applicant has inspected his service book from time to time and lastly on 8.3.2014 with his signature marked in the front page. The applicant, at no point of time contested about the veracity of entries made in the service book. The learned counsel stated that the Department has been publishing seniority list of its employees from time to time. The seniority list of the year 2000 shows the name of the applicant at Sl.No.219 along with date of birth as 1.7.1956. The seniority list of 2005 contains similar facts. The applicant has never come forward with the plea that particulars of date of birth shown in the seniority list are wrong. The learned counsel for the respondents stated that as per **Rule 225 of the Indian Railway Establishment Code Vol.I (IREC Vol.I)** the date of birth entered in the service record attains finality unless the employee agitate against it within a period of three years. Rule 225 (4) provides as under:-

"225. Date of Birth.

(1)....

(2)....

(3)....

(4) 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 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.

....."

7. In the present case, no such correction was ever sought by the applicant within the stipulated time, as provided under Rule 225 of the IREC Vol.I. To the contention of the applicant, that date of birth cannot be different from the date of birth entered in the casual labour card, respondents submit, that correction can only be made within the period as specified under the Rule 225 - referred to above. Respondents aver that **date of birth recorded in the service book is conclusive and binding, if no correction is sought within three years from the date of regularisation.** In view of above, the representation of the applicant has rightly been rejected by the Department. In support of his contention, the learned counsel for the respondents cited judgments of the Hon'ble Supreme Court in the case of State of UP and Ors. Vs. Gulaichi (Smt.); State of Maharashtra and Anr. Vs. Gorakhnath Sita Ram Kamble, (2010) 14 SCC 423 ; Union of India vs. Harnam Singh, (SCC pp.172-73, para 15); State of T.N. Vs. Venugopalan (SCC p.307, para 7); Secretary and Commissioner, Home Deptt & Ors. Vs. R.Kirubakan, (1994) Suppl(1) SCC 155 etc.

8. In all these cases inaction on part of the applicant regarding correction of date of birth in service record preclude him from showing that entry of his date of birth in service book is incorrect.

“..... The Government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or Court just to gain time to continue in service and the Tribunal or Courts are unfortunately unduly liberal in entertaining and allowing the Government employee or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, get expired.”

9. In all the citations, it has been held that Courts should be extremely careful when applications for alteration of date of birth is filed on the eve of superannuation or near about that time and lastly, it has been held in the case of Home Deptt. Vs. R.Kirubakaran (SCC pp.158-59, para 7) that:

“.....the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and **within the time fixed by any rule or order, the onus is on the applicant to prove the wrong recording of his date of birth, in his service book.**”

10. On going through all the facts and record carefully, we find that both sides have shown sufficient proof of the respective, but contrary, stands taken by them. The applicant has given pay slips, school certificate etc. in support of his contention that his date of birth is 1.7.1960. On the other hand, the respondents have relied

entail stipulated time limit to contest the incorrect entry in service record as three years only. Both sides have relied upon citations of different courts and a catena of judgment pronounced from time to time. Ultimately, we are left with no option but to follow the law on the subject, which, in this case, is in favour of the respondents. Going by the spirit of Rule 225 of the IREC Vol.I, we find no reason to interfere with the impugned orders.

11. The Courts are to administer the law as they find it, however inconvenient it may be. A court has no power to ignore a statutory provision to relieve what it considers a distress resulting from its operation. The same is the case here. We are bound by the provisions of Rule 225 of the IREC Vol.I. A statute must of course be given effect to whether one likes it or not as it is said *dura lex, sed lex* (law is hard, but it is the law).

12. In view of above, the OA being devoid of merit is dismissed with no order as to costs.

(PRAVEEN MAHALAN)  
Administrative Member

(U.SARATHCHANDRAN)  
Judicial Member

R/