

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO. 454/2011

Dated this the 27th day of July, 2012

C O R A M

HON'BLE Mrs K.NOORJEHAN, ADMINISTRATIVE MEMBER

P.Hamsa, P Man, I/SNP/ERS
PF No.03472243, S.No J/T.980
Ernakulam Junction.

..Applicant

By Advocate Mr.C.A.Majeed.

Vs

- 1 The General Manager, Southern Rly, Chennai.
- 2 The Divisional Railway Manager
O/o the DRM, Southern Rly, Thycadu, Trivandrum.
- 3 The Senior Divisional Personnel Officer
O/o DRM, Southern Rly, Thycadu, Trivandrum.

Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The Application having been heard today, the Tribunal delivered the following:

ORDER

HON'BLE Mrs K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant was initially appointed as Gangman on compassionate ground on 14.6.1973. It is stated that at the time of his appointment he produced the extract of School Admission Register as proof of his date of birth entered as 1.1.1952. According to him for the first time he came to know from the provisional seniority published by the respondents on 9.4.2002 that his date of birth is wrongly recorded as 15.1.1951. On finding an error in his date of birth he submitted a representation on 25.5.2002 through proper channel to the 3rd respondent requesting to correct the



mistake. Thereafter nothing was heard from the respondents. It is further submitted that the applicant was medically decategorised and was found medically unfit he was placed in a supernumerary post. Since the applicant became medically unfit in A-2 class and was placed on a supernumerary post, he sought voluntary retirement and also requested for appointment of his son on compassionate ground by a letter dated 1.8.2009. In response to his request he received Annx.A5 letter dated 17.8.2009 rejecting his request for voluntary retirement and appointment of his son on compassionate appointment on the ground that on verification it is noticed that the applicant has never made any request for correction of his date of birth. It is further stated that at a belated stage his request cannot be entertained. In the rejection letter it is noted that since he has no residual service of 5 years at the time of medical decategorisation, his request cannot be acceded. By Annx.A6 representation he requested that the mistake in the date of birth crept in due to no fault of his as he had submitted the extract of school admission register at the time of his appointment. He further contended that if the mistake in the date of birth is not corrected as 1.1.1952, the applicant will have retire on 31.1.2012 in which case he will not get 5 years of required service in supernumerary post which will entitle his son to get an appointment on compassionate ground. In this O.A. the applicant seeks for a declaration that the respondents are liable to correct the date of birth of the applicant in the official records and direct them to do so with all consequential benefits.

2 The respondents contested the OA by filing reply statement. They have disputed the OA on the ground of delay and laches. They further denied receipt of the representation stated to have been submitted by the applicant on 25.5.2002. It is submitted by the respondents that as per the existing provisions every employee at the time of his appointment shall declare his date of birth with documentary evidence to the satisfaction of the appointing authority. Further in terms of provisions in Rule 225 of the

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Indian Railway Establishment Code, Vol.I, 1985 Edition, a request for alteration of date of birth should not be entertained after completion of probation or three years service whichever is earlier. The applicant had produced documents at the time of his initial appointment in 1973 to the satisfaction of the appointing authority and based on that document only his date of birth in his Service Register was recorded as 15.10.1951. The applicant signed in his service register as a token of acceptance of the recorded date of birth and affixed his left hand thumb impression, witnessed by an official on 11.6.1973. They further submitted that what document the applicant had produced in proof of his date of birth could not be ascertained at this belated time. According to respondents, he should have verified his date of birth in the many seniority lists published between 1973 to 2002. They accepted that Annx.A5 reply proves that the applicant does not have 5 years service counted from the date of his medical de-categorisation on 14.12.2006. They have cited Apex Court judgments in support of their contentions.

3 Heard learned counsel for both the parties and perused the record.

4 The question that comes up for consideration is whether the applicant is entitled to alter the date of birth entered in the Service Register, at the fag end of his service on the basis of an extract of school admission register.

5 Admittedly there is considerable delay on the part of the applicant in seeking correction of date of birth. Indian Railway Establishment Code Vol.I, Chapter-2, Rule (225)(4) deals with the correction/alteration of date of birth of a Railway servant.

(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.

Note below Rule 225(4) The Railway Ministry's Decision - (a)

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When a candidate declares his date of birth he should produce documentary evidence such as a Matriculation certificate or a Municipal birth certificate. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the school leaving certificate, Baptismal Certificate in original or some other reliable document....

Such a request for alteration of date of birth should not be entertained after completion of probation or three years of service whichever is earlier.

6 In this case the applicant was appointed on compassionate grounds. At the time of appointment the applicant should have produced a document to prove his date of birth on the basis ^{of} which only he was offered employment under the Scheme. It is stated by the applicant that at the time of his appointment he produced the extract of School Admission Register as proof of his date of birth entered as 1.1.1952. Further by Annx.A6 representation he submitted that the mistake in the date of birth crept in due to the fault of the respondents. In its reply the respondents have submitted that what document the applicant had produced in proof of his date of birth could not be ascertained by them at this belated time. Further the applicant averred that he submitted a representation on 25.5.2002 through proper channel to the 3rd respondent requesting to correct the mistake followed by several requests. Thereafter nothing was heard from the respondents. On a perusal of Annx.A2 dated 25.5.2002, it reveals that the respondents have received the representation on 25.5.2002 itself and forwarded to the DPO, Trivandrum. It was the duty of the respondents to consider the claim of the applicant and intimate the decision at that point of time. They did not choose to do so. When the applicant became medically unfit in A-2 class and was placed on a supernumerary post, he sought voluntary retirement and requested for appointment of his son on compassionate ground by a letter dated 1.8.2009. Then they woke up and denied receipt of his representation

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and rejected his claim. The moot question which arises is to why the respondents did not deal with the matter when Annx.A2 was received in the year 2002 and mentioned the same only when his request for voluntary retirement and compassionate appointment to his son was received. They could have ^{very} well rejected the claim for alteration of date of birth at that point of time instead ^{of} waiting for his VRS on medical de-categorisation, with request for compassionate appointment for his son.

7 The learned counsel for the respondents brought to my notice the following judgments and argued that belated application for correction of date of birth at the fag end of career should not be permitted:

(i) C.H.Narayana Vs. BHEL, (1996) 1 LLJ 569

(ii) UOI Vs. Kantilal Hematram Pandya (1995) II LLJ 659 (SC)
and

(iii) UOI Vs. Ram Sua Sharma (1996) II LLJ 939 (SC)

8 The Hon'ble Supreme Court in Civil Appeal No. 502 of 1993, in the case of Union of India Vs. Harnam Singh (1993(2)SCC 162) has observed that it will not be appropriate to consider any request for alteration in date of birth if conditions stipulated in Note 6 below FR 56 are not strictly fulfilled. The Apex Court held as follows:

"A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. 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"

The dictum laid down by the Apex Court is that the application for correction of the date of birth should not be dealt with by the Court/ Tribunal unless a clear case on the basis of materials is made out by the

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employee that too within a reasonable time as provided in the rules. Therefore, I do not find any need for judicial interference, for change of date of birth at this juncture when the applicant is no longer in service. However, the purpose for which he was trying to get his date of birth altered is crystal clear. He is short by 6 months of the requisite 5 years of service, to get the case of his son considered for appointment under compassionate grounds.

9 In view of the peculiar facts and circumstances of the case, the first respondent is directed to consider relaxation of six months in the requisite five years of service to consider his son's case for appointment under compassionate ground appointment scheme for such medically de-categorized personnel. This Tribunal in a Full Bench decision held that medical de-categorization can be granted from the date the employee became medically incapable of performing his normal duties due to accident or other illness. The respondents can examine his case from that angle to prepone his date of medical de-categorization, in the alternative in which case relaxation of six months service to fulfill the eligibility condition of five years service left may not be necessary. The relief sought for by the applicant is being moulded accordingly.

10 In the result, the applicant is directed to submit a representation showing the date he fell ill, which resulted in his medical de-categorization and request for the latter from that date or if it is not a viable option, request for six months relaxation in service in the requisite five years service. The respondents are directed to consider his representation, take an appropriate decision and intimate the applicant within a time line of three months. No costs.

Dated 27th July, 2012



K.NOORJEHAN

ADMINISTRATIVE MEMBER