

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 62 OF 2009

wednesday, this the 14th day of October, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

S. Rengan,
residing at T.C. 24/800,
Lekshmi Bhavan, Muttakada,
Thycaud P.O., Thiruvananthapuram,
working as Technician III, Mechanical
Department of T.V.C. Division,
Thiruvananthapuram.

... Applicant

(By Advocate Mr. M. Ramaswamy Pillai)

versus

1. Union of India, represented by
the General Manager, Southern Railway,
Headquarters, Park Town P.O., Chennai.
2. The Senior Divisional Manager,
Southern Railway, Divisional Office,
Thycaud, Thiruvananthapuram.
3. The Divisional Personnel Officer,
Southern Railway, Divisional Office,
Thycaud, Thiruvananthapuram.
4. The Assistant Personnel Officer,
Southern Railway, Divisional Office,
Personnel Branch,
Thiruvananthapuram-14.

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 15.09.2009, the Tribunal
on ...14-10-2009..... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Date of birth is the issue involved in this case. The applicant, who is
at present serving as Tech III/C&W/NCJ had joined the Railways as Khalasi



Helper on 07-04-1979. According to the applicant, his date of birth is 16-11-1949. However, the Respondents had, through Annexure A-1 communication dated 12-12-2008 informed the applicant that his service would stand terminated w.e.f. 31-01-2009 on superannuation (60 years of age). The applicant therefore, penned a representation dated Nil addressed to the DPO, Thiruvananthapuram as per the documents issued by the Railways themselves— Service particulars issued on 18-08-199, Salary Slips for various months, Medical Identity card issued by the DPO, Identity card, all carry the date of birth uniformly 16-11-1949, whereas, by the Annexure A-1 order, he was sought to be relieved of his duties on 31-01-2009, taking his age as 60 by then. As there was no response to the representation of the applicant, he had moved this OA seeking inter alia the following main relief and also the interim relief as under:-

"Relief :

Declare that the applicant is entitled to continue in the service till 30.11.2009 on the basis of the records produced alongwith the application."

"Interim relief :

This Hon'ble Tribunal may be pleased to direct the respondents 3 and 4 not to terminate the service of the applicant on account of superannuation as stated in Annexure A1 till final disposal of the O.A."

2. At the time of admission hearing, before considering the interim relief, the service book was called for and on perusal of the same the following order was passed vide order dated 30-01-2009:

"The applicant has prayed for an interim relief. Prima facie there appears a strong case in favour of the applicant in as much as the documents he relies upon in support of his claim have already been issued by the respondents. If only the Service Book is complete in all respects, the case of the respondents would have



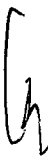
been much stronger whereas it is not. A lot of entries have to be completed in the Service Book. As such, the same cannot be taken as a solid evidence as to Date of Birth of the applicant. Considering all balance of convenience and interest of justice are in favour of interim relief being granted to the applicant. As the applicant is holding only a Technical III post, his continuance may not cause any problem or inconvenience to any other individuals.

Respondents are therefore, directed not to act on Annexure A-1 order dated 12.12.2008 in so far as the applicant is concerned.

The Divisional Personnel Officer, Respondent No.3 is directed to update the Service Book and produce the same on the next date of hearing. He shall also produce other documents, if any, on the basis of which the entry as 16.01.1949 has been made in Service Book of the applicant."

3. Respondents have contested the O.A. According to them, the applicant has not referred to the date of birth as contained in Annexure R-1 and R-2 seniority lists. Again, as per para 225 of IREM Code I, Vol. I, 1985 Edition, alteration in the date of birth should have been within the first three years of entry into service. Of course, as a one time exemption, the Railways extended the same in 1971 upto 31-07-1973 even if it were beyond 3 years. However, after 31-07-1973, requests for alteration of date of birth cannot be entertained if the same happens to be after three years of service. The applicant has not produced any authentic document to substantiate his contention as to the date of birth. Again, he had waited till 3 days of his retirement as per the date of birth recorded.

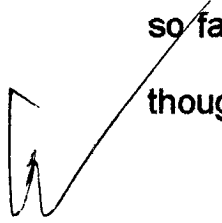
4. Counsel for the applicant argued that the service book did not contain any particular at the time of verification by the Tribunal, save an unauthenticated entry as to date of birth. There was no signature taken from the applicant as to the correctness of the entry made therein. The seniority



list stated to have been circulated are all issued in 2002 and thereafter, while the earliest document containing the date of birth as 16-11-1949 issued by the Coaching Depot Officer, Trivandrum is dated 17-08-1999, vide Annexure A-IV. furnished by the applicant. Again, all the documents produced by the applicant have been issued only by the respondents, under their ostensible authority. The pay slip is one of computerized statement and the particulars fed to the same cannot but be with the full knowledge of the personnel department. As such, the applicant's date of birth should be taken only as 16-11-1949 and not 16-01-1949.

5. Counsel for the respondents submitted that the authentic document submitted would be only the service book or the Educational certificate and the applicant did not produce any such authentic document, even when he was asked to furnish the same. (Reference was made to para 17 of the counter). As such, the applicant cannot be allowed to continue any longer. His continuance is only in pursuance of the interim order.

6. Arguments were heard and documents perused. Service book perused did not contain full details as already indicated in the earlier order at the time when interim prayer was allowed. That the documents at Annexures A-2 to A-5 have all been issued by the respondents' organization has not been denied, though it was attempted to make a difference between a document issued by the personnel branch and the one by others. The respondents' plea in this regard may have to be rejected since, Pay slips cannot be issued without the due vetting of the personnel branch. Again, in so far as other documents such as educational certificates, the respondents, though claim in para 17 that they had called for the same, did not mention



that in response to the representation of the applicant, they had called for the same in writing. In fact, when the representation was filed, evidently they had not even cared to verify the service book, which had blank spaces in the very first page. The respondents have stated that the documents are seen and returned and the entry made in the service records. In fact the applicant had completed only fourth standard of education and he had joined the services on 7th April, 1979. Had his date of birth been 16-01-1949 as contended by the respondents, he would have been above 30 years of age as on 07-04-1979 and in all expectation the age limit for a general candidate at the relevant point of time would not have been more than 30 years. Thus, at the time of entry in April 1979, the applicant would not have been selected had his date of birth been January 1949. The 1979 entry in the service book (see the attached communication issued by the Head Train Examiner, Trivandrum addressed to Divisional Railway Manager, Trivandrum) does not clearly go to show that the date of birth entered was 16-11-1949. The clear space to accommodate one letter between "-" and "1" (i.e. 16- 1-1949) leaves a clear doubt that the entry made was only 16-11-1949 and the same had not been properly printed in the carbon copy.

7. As regards the time limit for effecting alteration in the date of birth, the same in this case cannot be applied for, the applicant had been made to believe that his date of birth as per the records had been only 16-11-1949, as could be evidenced by various documents as contained in Annexure A-2 onwards. As such, the applicant had every right to believe his date of birth had been correctly reflected and it was only when Annexure A-1 communication was issued that the applicant had to make the representation, which also remained unanswered.

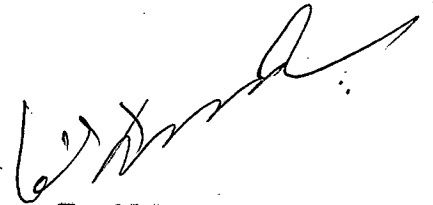
8. In view of the above, the OA deserves to be allowed. From the documents furnished by the applicant, which dates from 1999 onwards upon 2006, it is evident that the actual date of birth as entered in various documents save the seniority lists (which were published in 2002 and later) is the correct date of birth i.e. 16-11-1949. Respondents are directed to accordingly superannuate the applicant on the basis of the said date of birth. The interim order has thus been made absolute. The applicant shall superannuate on 30th November 2009. All the consequential benefits, arising out of the same would follow.

9. Original Application is allowed to the extent stated above. No costs.

(Dated, the 14th October, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

rkr