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ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Case No. 337/89(L)

Bijwa Sagar

Applicant

versus

Union of India through General Manager,  
N.E. Railway, Gorakhpur.

2. Divisional Railway Manager (P)  
N.E. Railway, Lucknow. Respondents.

Sri M.S. Ilyas

Counsel for applicant.

Sri S.K. Shukla

Counsel for respondents.

Hon. Mr. S.J. Prasad, Member Judicial.

Applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for a declaration to the effect that the date of birth of the applicant is 1.1.1937 and the date of birth recorded in his service record of the applicant is wrong and should be corrected accordingly, and for further direction to the respondents not to retire him on 31.12.89 and in case if he is retired, he be reinstated in service with all consequential benefits till the age of superannuation treating his date of birth as 1.1.37.

2. The facts of the case, briefly stated, inter alia, are that the applicant was initially appointed as Khalasi Group D on 4.1.1955 and with gradual promotions he was doing working in the capacity of P.C.I.-I under the Chief Telecommunication Inspector, Telephone Exchange.

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N.S. Railway, Asstt. Manager, Lucknow. According to the applicant, his date of birth is 1.1.37, according to his school leaving certificate which is accompanied by his affidavit (in Annexure A-1 to the application). As per para 145 (3) (III) of the Indian Railway Establishment Code, Volume I (vide Annexure A-3 which is photo copy of proof) and which was amended vide advanced correction slip No. 303 in which was circulated vide Rail. by Board's letter on 3.12.71 which requires that request for alteration of date of birth should not be entertained after completion of probation period of three years whichever is earlier. The Railway Board extended an opportunity to railway servants who were already in employment and who did not take advantage of the provisions of rules regarding alteration of date of birth as it said before the said amendment to represent against the recorded date of birth upto 31.7.73. Pursuant to the directives of the Railway Administration contained in Annexure A-4 to the application, the applicant submitted his application dated 4th April, 1973 to the General Manager, N.S. Railway, Gorakhpur through proper channel (Vide Annexure A-5 which is a copy of proof), and since that was the special drive by the Railway Administration to alter the date of birth of willing employees and since no refusal in the case of the applicant was communicated to the applicant, it was believed by the applicant in good

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fact that the request for alteration of his date of birth as 1.1.37 instead of 1.1.32 has been made in his service record. At the beginning of the year 1989 it was revealed to the applicant that his application dated 4.4.73, as referred to above, was not acted upon and his date of birth remained unaltered and the applicant shall be retired on 31.12.1989; the applicant submitted appeal (representation) dated 14.6.89 addressed to the General Manager, endorsing a copy thereof to the Chairman, Railway Board (vide Annexure A-6) but the respondent No. 2 vide order dated 4.12.89 (Annexure A-6(B)) rejected the prayer of the applicant, who was not the competent authority, illegally, without considering all pros and cons of the matter and the extant rules and orders of the Railway Board. The applicant has further stated that there are instances viz. the dates of birth of S/uri Wali Ali, ex Waiting Room Bearer, Sitapur, Shaukat Ali, F.I. Kistri Conductor, Rameshwar Driver 'A' (SPE) Loco Shed, Morakpur have been altered even after their retirement and as such the date of birth of the applicant should also be altered in accordance with his date of birth as entered in his School Leaving Certificate (Annexure A-2) as 1.1.37.

3. The respondents in para 4(VII) of the Counter Reply have denied the receipt of any such application dated 4.4.73 alleged to have been submitted to General Manager, Morakpur as mentioned in para 4(VII) of the

application; and it was further been contended that if the applicant did not receive any reply to his filing of application dated 4.4.73, then the applicant should have submitted reminders in this regard but the applicant remained silent for long period of time and submitted a application dated 14.6.89 just a few months before the date of his retirement i.e. 31.12.89.

It has further been contended that seniority list of the applicant along with <sup>the names of</sup> his co-workers was published from time to time showing therein the date of birth of the applicant as 1.1.32 but the applicant never raised any objection about his date of birth as entered in his service book as "1.1.32" and this application has been moved on the verge of retirement only with a view to derive undue advantage. It has further been contended that the representation (Appeal) of the applicant has been correctly and validly ~~been~~ rejected as per order dated 4.12.89, as referred to above, and as such the application of the applicant is liable to be dismissed and the applicant cannot derive any advantage on the basis of the so called School Leaving Certificate and as such the applicant is not entitled to any relief.

4. The applicant has filed Rejoinder Affidavit wherein he has reiterated almost all those very points as mentioned in the application.

5. I have heard the learned counsel for the parties and also perused the service record of the applicant which has been produced by the learned counsel for the respondents.



6. The learned counsel for the applicant while drawing my attention to the circular of Railway Board dated 4.8.72, copy whereof is Annexure A-4, has argued that pursuant to the aforesaid circular of the Railway Board, the applicant had submitted an application dated 4.4.73 which was received by the official concerned on 6.4.73 as would be obvious from the perusal of Annexure A-5, and has further argued that it was obligatory on the part of the respondents to apprise the applicant of the result of the above application dated 4.4.73 but the respondents did not make any communication in regard thereto, and since that was special drive, the applicant in good faith believed that his prayer for alteration of his date of birth has been accepted and necessary correction has been made in his service record, and has further argued that since the respondents did not communicate the result of the aforesaid application of the applicant it shall be inferred that the respondents are at fault; and has further argued that in case the application of the applicant is still pending, a suitable direction be given to the respondents to decide the same ~~very~~ application from proper perspective, and has further argued while advertizing to the School Leaving Certificate (Annexure A-5/2) that since the date of birth of the applicant has been recorded as 1.1.37 in the School Leaving Certificate, his date of birth which has been recorded as "1.1.32" should be altered as 1.1.37 and as such the impugned order dated 4.12.89 whereby

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representative of the applicant regarding correction of  
his date of birth as been rejected being illegal  
and invalid, be quashed and the applicant should be  
given the reliefs sought for.

7. The learned counsel for the respondents, while  
drawing my attention to the aforesaid School Leaving  
Certificate and all other papers annexed to the  
application, has argued that no application of the  
applicant was received and as such the question for  
deciding the same does not arise; and has further  
argued while drawing my attention to the papers contained  
in the service record of the applicant that the  
date of birth of the applicant was correctly recorded  
as "1.1.32" in his service record; and has further  
argued that in the seniority list which was circulated  
in the year 1978 also the date of birth of the  
applicant was shown as 1.1.32 but the applicant did  
not raise any objection and did not submit any  
application for correction of his date of birth, and  
has further argued that with a view to derive undue  
advantage the applicant moved application only a few  
months before his retirement on 14.6.89, and has further  
argued that the school Leaving Certificate is of no avail  
to the applicant, in as much as it shows that the  
applicant had passed Class V in the year 1951 and  
at that time his age was shown as 14 years and had  
this School Leaving Certificate been with the applicant

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in the year 1951, he should have produced the same at the time of his appointment which took place in the year 1955, but, for the reasons best known to him he did not do so and as such adverse inference be drawn against the applicant; and has further argued that the application of the applicant was rejected by the competent authority properly and validly as per order dated 4.12.1989 and as such the application of the applicant should be dismissed.

8. A perusal of the service record of the applicant shows that the seniority list of the applicant was circulated in the year 1978 showing his date of birth as 1.1.32; but the applicant did not raise any objection about his date of birth. It is also important to point out that a perusal of the Leave Account maintained by the respondents from the year 1955 to 1965 also shows that his date of birth is "1.1.32". This fact should not be lost sight of that assuming this that the applicant had submitted an application dated 4.4.73 and in case no communication/intimation was made to the applicant by the respondents about the result of that application for change of his date of birth as 1.1.37, this was obligatory on the part of the applicant to send reminders or to ascertain about the result of his representation regarding alteration of his date of birth as 1.1.37 instead of 1.1.32; but ~~then~~ for the reasons best known to him, he remained silent for a long period of about 15 years

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and from the scrutiny of the material on record it becomes obvious that the applicant submitted his representation dated 14.6.89 to the General Manager, N.S. Railway, Gorakhpur just about 5½ months <sup>before the</sup> ~~of his~~ scheduled time of retirement in accordance with his date of birth as entered in his service record as 1.1.32 and this circumstance also goes against the applicant.

9. This is also significant to point ~~out~~ that the perusal of the School Leaving Certificate (Annexure A-5/2) purports to show that the applicant had passed Class V in the year 1951 and his name was struck off the roll on 9.5.51, and thus it is manifest that the School Leaving Certificate might be available with the applicant at the time of his appointment <sup>~ the</sup> ~~in~~ year 1955, but for the reasons best known to the applicant the aforesaid School Leaving Certificate was not produced before the Officer/authority concerned at the time of his appointment and this circumstance also goes a long way in hitting hard the version <sup>~ alleged ~</sup> of the applicant regarding his date of birth as 1.1.32.

10. Thus, from the foregoing discussions and after scrutinising the entire evidence and material on record and keeping in view the circumstances of the case I find that the above arguments of the learned

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counsel for the applicant are devoid of force and weight, whereas the above arguments of the learned counsel for the respondents are found to be sound and tenable. Consequently, I find no merit in the application of the applicant and the application of the applicant is accordingly dismissed with no order as to costs.



Member Judicial.

26.3.92

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Lucknow: Dated 26-3-92.