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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH

Kundan Lal Applicant

Versus

Union of India & Others Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr. K.Chayya, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for a declaration that the applicant's date of birth is 17.3.38 and not 17.3.32 as recorded in the service record and that the applicant will not retire from service with effect from 31.3.90 and is entitled to continue in service till 31.3.1996.

2. The applicant's case is that his correct date of birth is 17.3.38 as recorded in his High School Examination Certificate on passing that examination in the year 1952. It is said that he had even passed the intermediate examination of the U.P. Board when he entered into service as Permanent Way Mistry for the Northern Railway on 20.8.55 in the scale of Rs.130 - 212. Under the orders dated 30.8.89 he was informed by a letter dated 11.9.89, Annexure-A2 of respondent No.3 that he would retire from service with effect from 31.3.90 on the basis of his date of birth as 17.3.32. By his application, dated 14.9.89, Annexure -3, he informed the Senior D.P.O. through respondent No.3 that while entering into service he had submitted the original High School Certificate alongwith attested copy thereof in proof of the correct

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date of birth as 17.3.38. His representation dated 30.11.89, Annexure-4 for correction of his date of birth was rejected. On 18.1.90 he filed the present application.

3. The respondents' case in the Counter Affidavit is that the applicant was initially appointed on 20.8.53 as Chowkidar at Rs.30/- per month plus allowances. It was stated that he did not file his High School Examination Certificate nor disclosed that he has passed any such examination. It was said that the recorded date of birth 17.3.32 was duly certified by the applicant himself by affixing his thumb impression on the service record. At the time of appointment as Chowkidar the column for special qualification in the service record was marked as nil signifying that he was illiterate. It was further stated in the Counter Affidavit that the recorded date of birth 17.3.32 had been communicated through seniority lists of 1975, Annexure-R2 and 1980, Annexure.R3 published from time to time and the applicant never raised any objection against it. It was pointed out that the applicant's submission that he had submitted the original High School Certificate to the Department is self-inconsistent with his own stand in his letter dated 30.11.89, Annexure-4. It was lastly said that the applicant appeared to get his date of birth changed by overwriting in the service record in collusion with some staff.

4. The applicant said in his Rejoinder that he had not been appointed as Chowkidar on 20.8.53 and that, in fact, he had been appointed only as Permanent

Way Mistry on 20.8.55 after medical fitness certificate. He complained that the respondents did not produce the medical examination certificate nor letter of his appointment as Chowkidar. He added that having passed High School and Intermediate Examinations even before entry into service, he had submitted the High School Examination Certificate in proof of age in accordance with Rule 225 of the Indian Railway Establishment Code. He added that the corrections in the service record do not bear any initials of any authority nor the applicant himself. He said that no seniority list had been served upon him nor his acknowledgement had been obtained. He alleged that the service record relied upon by the respondents is bogus record manipulated, and whatever overwritings appear thereon may have been carried out by the concerned staff and not by the applicant as alleged. He lastly said that the D.P.O. was not competent authority to dispose of the representation regarding the date of birth because the competent authority was the General Manager.

5. We have heard Shri J.P.Mathur for the applicant and Shri B.K.Shukla for the respondents and have carefully gone through the material on record. We will deal with the service record itself. The respondents have filed photo copy of the service record and have also produced the original before us. The service record begins with a printed sheet in which, after the applicant's name was written, his designation on appointment is mentioned as 'Chowkidar'. In particulars of his service his date of birth is recorded as 17.3.32 in figures of which the figure 2 has been overwritten as 8; the date is also written in English language and reads as 17.3.32. There

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is no overwriting in the date of birth as written in the English language. The date of appointment is mentioned as 20.8.53; the figure 3 in the unit place is overwritten as 5. Pay on appointment is mentioned as Rs.30/- plus usual Dearness Allowances. The signature of the employee is also contained on the paper; on the left hand side top, there is a left thumb impression mark of the employee.

6. The applicant's case is that this service record is bogus and manipulated. He has not been able to point out where the true record is to be found. When the case was taken up on 14.9.90, the applicant denied the genuineness of his thumb impression mark on this document. He offered to have it compared by the Thumb Impression Expert. Accordingly, the orders were passed to call for the services of the U.P. Govt. Finger Print Expert for which the requisite samples were taken from the applicant. The required papers were furnished to the Expert who, after examination, submitted his report in which he has clearly stated that the thumb mark found on the record of service is of the applicant himself. There is no evidence to the contrary on behalf of the applicant. The validity of the report of the Finger Print Expert has not been questioned by the applicant. Settled law as laid down by the Supreme Court in the case of Jaspal Singh Versus State of Punjab 1979 SC 1708 that the thumb impression science is an exact science & does not admit of any doubt. We must hold therefore that the thumb impression which is found on the service record belongs to the applicant himself and therefore the service record in question is not a bogus document but is a genuine and reliable document.

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7. A significant feature of this document is that although there is an overwriting in the year of the date of birth of the applicant in the figures, there is no overwriting in the date as recorded in English language. Another very important evidence in this connection is the record of the particulars of promotions, increases, punishments and transfers of the applicant recorded on the back side of this very document. The important point is that the particulars of promotion etc. are not recorded on a separate sheet; they are recorded on the reverse side of the service record bearing the applicant's thumb impression and referred to above. The upshot is that the particulars recorded on the reverse of the service record are not capable of being separated from the latter and therefore go a long way to establish the genuineness of the service record. In these particulars the applicant's first appointment is mentioned as Temporary Chowkidar on 20.8.53 in the scale of Rs.30/- - $\frac{1}{2}$ - 85. The date of appointment and the rate of pay is described respectively as 20.5.53 and Rs.30/-. The expression 'Chowkidar' has been overwritten as P.W.Mistry. The scale of pay is overwritten as Rs.55 - 130. In the date of appointment the figure 3 in the units place is overwritten as 5. All these overwritings are to be found in the first entry; but in the subsequent and following entries there is no overwriting. The second entry is the applicant's promotion as Temporary P.W.Mistry on 1.2.55 in the scale of Rs.55-3-130 with rate of pay as Rs.55/-. The third entry is of the applicant's being reverted as Temporary Chowkidar on 9.7.55 with the pay of Rs.30/-. The fourth entry again is of the

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applicant's promotion as Temporary P.W. Mistry on 26.7.55 at the salary of Rs.55/-. The fifth entry is of his reversion as Temporary Chowkidar on 26.9.55 with the pay of Rs.30/-. The sixth entry is regarding the increase of his pay by increment from Rs.30/- to Rs.30/8/- in consequence of an increment list dt.7.7.56 raising his salary to Rs.30/8/- with effect from 20.8.54; here the figure of 4 in the units of 55 is overwritten as 5. The seventh entry is of raising the pay from Rs.30/8 to Rs.31/- vide increment list dated 7.7.56 to Rs.31/- on 20.8.55. There are further entries on his being promoted as Keyman and then as Mate with effect from 20.4.56. It is not necessary to set out the later records. The particulars referred to by us would show that the applicant having been appointed as Chowkidar was temporarily promoted to the post of P.W. Mistry and again reverted as Chowkidar more than once and his salary was varied accordingly from time to time according to the applicable scale for the appropriate post. It is difficult to hold that all this record is bogus. The applicant's case that in the absence of a formal letter of appointment as Chowkidar he should not be treated to have been appointed as Chowkidar has no substance because the evidence indicated above unmistakably established that he was appointed as Chowkidar initially. It is futile for the applicant to contend that the overwritings in the service record were done by some person in collusion with the concerned staff with which the applicant has no connection whatsoever. It will be immediately appreciated that the overwritings were calculated to bring some benefit to the applicant inasmuch as the date of birth recorded as 1932

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was sought to be overwritten as 1938. The beneficiary of this overwriting is the applicant and in the course of human nature and natural conduct it is impossible to believe that the applicant had no interest or hand in the overwritings. It is of course not expected to bring direct evidence of the overwritings because that is an act done in secrecy; but the person who gets the benefit of it will normally be considered to be concerned in obtaining the overwritings, namely the applicant. There is worth in the contention of the respondents that the applicant did not file the High School Certificate at the time of his original entry into service. If the applicant had produced the High School Certificate containing the date of birth as 17.3.38 he would have been only 15 years and five months of age when he was first appointed on 20.8.53 as Chowkidar. The learned counsel for the applicant has not been able to show that at that young age the applicant could have been eligible for appointment to railway service. The applicant's counsel, however, says that the Railway Administration is competent to relax the minimum age prescribed; that may be so, but that is not the applicant's case. There is nothing to show that the applicant's real age was only 15 years and five months at the time of the entry and that the prescribed minimum age for eligibility had been relaxed by any authority. It has been held in the case of Union of India Vs. Wing Cdr. R.R.Hingorani (1987) 1 SCC 551 that relaxation must be done by specific orders of the Govt. for reasons to be recorded. The learned counsel for the respondents has emphasized the defence case in para 4.10 of the Counter Affidavit and has urged that in the applicant's application, Annexure-A.3 dated 14.9.1989 the applicant had stated that having filed the original High School Certificate at the time of appointment on 20.8.1955 he failed to

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understand as to what had happened to that certificate. It was further stated in the application that he had applied for a copy of the High School Certificate which he would submit to the office as soon as it is received. But with his ~~copy~~ application dated 30.11.89, Annexure.4 the applicant enclosed a photo copy of the original High School Certificate. It is urged therefore that the original High School Certificate had always ^{been} within the custody of the applicant and he had never handed it over to the department. It is noticeable that the attested copy of the High School Certificate filed alongwith this application does not indicate it to be a copy of the duplicate. There is nothing on the certificate to show that it is a duplicate document. It bears the original date of issue namely 7.6.52; there is no endorsement that it is a duplicate. The explanation given in para 4.10 of the Rejoinder Affidavit is that the original High School Certificate alongwith attested copy had been furnished to the Department at the time of appointment, that on learning that the attested copy was missing from the service record, the applicant started searching for the High School Certificate and in the meantime had applied for a duplicate copy. It is added that on intense search the applicant found the High School Certificate and then attested copy thereof was filed. It is plain therefore that the High School Certificate had remained in the custody of the applicant himself, and the theory of obtaining a duplicate High School Certificate is false. The applicant has not been able to show as to why his date of birth should have been recorded wrongly at the time of his entry into service if he had really submitted

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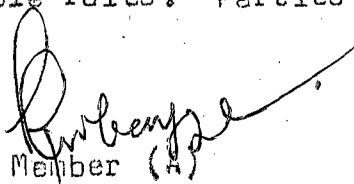
the High School Examination Certificate. He has not been able to point out who the persons were to cause some sort of a harm to the applicant at that stage. In the seniority lists of Annexure-R2 of 1975 and Annexure-R3 of 1980 the applicant's date of birth is recorded as 17.3.32. The applicant's statement that he was never communicated of those entries is stated only to be rejected. After all, he received promotion from time to time in which the question of his seniority would have been material and it is impossible to believe that he would not have cared to know how his seniority was recorded whenever the occasions for his promotion arose. Since the Department did issue the seniority lists in 1975 and 1980 the reasonable conclusion should be that the applicant would have found out the seniority list and would then have noticed that his date of birth was recorded as 17.3.32. Of course, the applicant never made any representation for correction of his age before 14.9.89 i.e. after the letter dated 11.9.89, Annexure-2 on the basis of the order dated 30.8.89 by which he was informed that he would retire with effect from 31.3.90. It may be mentioned that the applicant would have been ineligible to enter into railway employment ~~and~~ on 20.8.53 if he had disclosed his High School Certificate containing the date of birth as 17.3.38. It appears to us that the applicant by suppressing the age according to the High School Certificate had managed to get employment by stating himself to be eligible for employment on the basis of his date of birth as 17.3.32. Having obtained that benefit he could not be permitted now to rely upon the entry contained in

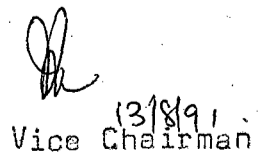
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the High School Examination Certificate. A Four Member Bench of this Tribunal sitting at Calcutta in the case of S.K.Sen Gupta Vs. Union of India & Others SLJ 1986(1) CAT 111 has held that where deliberately wrong date of birth is disclosed for the purposes of employment, that act is fraudulent and the employee cannot be encouraged to rely upon the revised date and even the Matriculation Certificate may be ignored. The present case falls in the same category and therefore the applicant's case for correction of his date of birth from 17.3.32 to 17.3.38 must fail.

8. We find from the record that this petition was admitted on 19.1.90 and after the respondents had made appearance and put in contest, this Tribunal had passed an interim order on 21.3.90 and directed the respondents not to evict the applicant from the quarter occupied by him till the adjudication of this application. We think that since the applicant has been allowed to continue in occupation under the orders of this Tribunal, he may be charged for rent only at the normal rate till the date of disposal of this application.

9. For reasons indicated above, this application is dismissed and the interim order is vacated subject to the condition that the respondents shall charge rent from the applicant for the accommodation in the applicant's occupation only at normal rates till the signing of this judgement; for the period subsequent to the signing of this judgement the respondents should be at liberty to charge such rent as may be recoverable from the applicant under the applicable rules. Parties shall bear their costs of this case.


Member (A)


13/8/91
Vice Chairman

Dated the 13th August 1991.