

Central Administrative Tribunal, Lucknow Bench Lucknow

ORIGINAL APPLICATION NO. 43/2009

This, the 12th day of May, 2009

HON'BLE DR. A.K. MISHRA, MEMBER (A)

Bhagwan Prasad, aged about 57 years, son of Late Sri Ram Bharose, R/o Bhola Khera, Alambagh, Lucknow.

Applicant.

By Advocate Sri S.P. Singh

Versus

1. Union of India through Secretary Railway Board, Ministry of Railway, Railway Board, New Delhi.
2. General Manager (P), NE Railway, Gorakhpur.
3. Dy. Registrar, Railway Claims Tribunal, Gorakhpur.
4. Dy. Registrar, Railway Claims Tribunal, Lucknow.

Respondents.

By Advocate Sri Azmal Khan

ORDER

BY HON'BLE DR. A. K. MISHRA, MEMBER(A)

This is an application for a direction to the respondent authorities to correct his date of birth in the official records as 10.7.1952 in place of the current entry of 13.1.1949 on the basis of which he was being superannuated. He has further prayed that the respondents should be directed to allow him to continue on his post till 10.7.2012.

2. The brief facts of the case are as follows:-

The applicant joined the Railways on 3.1.1974 as a Casual Driver. Unfortunately, in his service book, his date of birth was recorded as 13.1.1949. According to him, he was an illiterate person and had to believe in the official entry until he came to know about its incorrectness, when he obtained a duplicate copy of School Transfer Certificate on 30.1.2004 from the Principal of the School, where he was studying in his childhood. This certificate shows his date of Birth as 10.7.1952. On coming to know about the mistake, he made a representation on 4.2.2004 enclosing an affidavit dated 9.2.2004 stating that his actual date of birth was 10.7.1952, but it had been wrongly mentioned as 13.1.1949 on the basis of the original

[Signature]

-2-

school transfer certificate submitted by him. He enclosed a copy of the recent transfer certificate obtained by him from the School to substantiate his claim. However, the respondent authorities did not agree to his request and he was intimated in the letter dated 24.9.2004 of the Additional Registrar of the Railways Claims Tribunal, under whom he was working, that his claim for change of his date of birth was not acceptable to the authorities and that the recorded date of birth of 13.1.1949 would be maintained. Thereafter, he made representations, but to no avail. Hence this application.

3. The respondents have raised the preliminary objection on the ground of limitation.

They have stated that the initial cause of action arose on 24.9.2004 when the fact of rejection of his claim for rectification of the entry was intimated to him. This O.A. has been filed on 28.1.2009 after a delay of 3 years 4 months and 4 days. The settled position of law is that subsequent representations and inaction of the respondent authorities on those representations will not give a fresh cause of action to the applicant. Sufficient cause has not been shown for the delay in filing of this application, neither is there a petition for condoning the delay. The assertion of the applicant that it is filed within the limitation period made at paragraph 3 of his application, on the face of it, is misconceived. This application suffers from laches and delay on the part of the applicant, and it cannot be condoned by this Tribunal.

4. The learned counsel for the respondents further submits that the letter dated 24.9.2004 has not been assailed in this application. The fact of rejection of his representation was communicated to him in this letter. Notwithstanding, his subsequent representation, the decision of the respondent authorities communicated in this letter remains unchallenged. In the absence of challenging the relevant order, the applicant is not entitled to any relief in the matter. The Supreme Court in **Union of India Vs. Harnam Singh AIR (1993) SCC, 1367** has held that the law of limitation may



operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Supreme Court in the case of **Rabindra Nath Bose Vs. Union of India reported at AIR 1970 SC 470** held that making of repeated representation after rejection of one representation could not be considered to be a satisfactory explanation of the delay.

5. The applicant in his Rejoinder Affidavit has stated that since the matter was under active consideration of the respondent authorities, he did not think it appropriate to take any steps for filing of this application. It was only when no decision was communicated to him on his latest representation that he decided to file this application. He has contested that the letter dated 24.9.2004 should treated as a final decision in view of the fact that his claim was being examined even after this date. He referred to the letter No.13.1.2005 of Sr. Personnel Manager at Annexure 8 in which the averment made by the applicant at paragraph 6 of his affidavit (Annexure -7) has been challenged as incorrect on the basis of some inquiry. Nevertheless, the decision communicated in their letter dated 23.9.2004 was re-endorsed in this letter also. In other words, the original rejection of his representation was again confirmed in this letter of the Sr. Personnel Manager.

6. The judgment of Delhi High Court in the case of **Satyavir Singh Vs. Delhi Transport Corporation reported at 2006 (1) ATJ 121** was cited by the applicant to the effect that in the matter relating to the payment of dues such as salary, subsistence allowance etc., the grievance should be treated as a recurring one and the proper approach would be to adjudicate upon merits of the scheme and mould the relief having regard to the circumstances of the case. This judgment is not applicable in the facts and circumstances of the present case. The settled principle that any attempt at changing the date of birth of an employee at the fag end of his

- 4 -

service career should be looked at with circumspection. In the case of **U.P. Madhyamik Shiksha Parishad and others Vs. Raj Kumar Agnihotri** reported at **(2005) 11 Supreme Court Cases 465**, it has been held that date of birth as recorded in service book, duly verified by the competent authority, shall be taken as correct. Supreme Court has also observed in the case of **The Secretary & Commissioner, Home Department and others Vs. R. Kirubakaran** Reported at **1994(1) AISLJ 141** that courts must deal with change of Date of Birth cases more cautiously.

7. It is established from the averment of the applicant himself that he came to know about rejection of his representation relating to change of his date of birth on 24.9.2004. Besides he himself has made a representation on 4.2.2004 (Ann. 5) supported by his own affidavit dated 9.2.2004 (Ann. 4) for a change of his date of birth. It is well established that the subject was in his knowledge as early as 4.2.2004, rather from 30.1.2004 when he got the duplicate certificate (Annexure-3). Therefore, the limitation will have to be computed at least from 4.2.2004. Since a decision was communicated to him on 26.9.2004, the contention of the respondents that the real cause of action arose on this date is acceptable. Therefore, the application should have been filed within one year from this date. Even if we consider that he has made further representation on the subject, 18 months limitation would start from the date of filing of the later representation. Annexure 10 is the last representation made on 10.12.2008. A reference has been made in this letter about his second representation dated 7.7.2005. According to him, this representation has not yet been decided. In that event, the limitation of 18 months will begin from 7.7.2005. Even after taking such a view, I find that there is a delay of about 2 years 21 days and admittedly no application for condonation of delay has been filed. The Supreme Court in the case of **Ragho Singh Vs. Mohan Singh 2001 (9) SCC 717** has held that the court will not have any jurisdiction to condone the delay in absence of any application.



8. In view of the above discussion, I find that this application suffers from delay and laches. Accordingly, it is dismissed as barred by limitation. No costs.

Aligarh 22/05/09
(Dr. A. K. Mishra)
Member (A)

HLS