

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION No. 495/2010

This, the ^{5th} day of October, 2012

HON'BLE SHRI D. C. LAKHA, MEMBER (A)

Shambhoo Dayal Maurya aged about 56 years son of Sri Ramj Swaroop Maurya Resident of Village Ahimamau, Post office ASrjunganj, District Lucknow presently working as M.C.M. Carriage and Wagon Workshop, Alambagh, Lucknow.

Applicant.

By Advocate Sri S. S. Yadav.

Versus

1. The Union of India through the Member Staff, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway Head Office, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Lucknow.
4. The Chief Workshop Manger, Carriage and Wagon Workshop, Alambagh, Northern Railway, Lucknow.

Respondents

By Advocate Sri B. B. Tripathi.

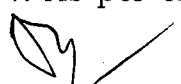
(Reserved On 27.9.2012)

ORDER

By Hon'ble Mr. D. C. Lakha, Member (A)

The applicant has prayed for the change in the date of birth to be recorded as 12.2.1954 instead of 12.2.1951 as already recorded in the service book. In the relief clause, the applicant has also prayed for awarding of the cost of this application in addition to the other directions which the Hon'ble Tribunal may deem just and proper.

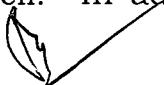
2. The undisputed facts are that the applicant joined the service as Khallasi under Respondent No. 4 in the Workshop on 3.9.1973. The date of birth recorded in the service book is 12.2.1951. The applicant has averred in the O.A. that according to his School leaving certificate, his date of birth is 12.2.1954 and the same should be recorded in the relevant column. In support, the photo copy of this certificate obtained from Adarsh Junior High School Ahimamau is submitted. In addition, his educational certificate from Harishchandra Inter College, Lucknow is also submitted as Annexure-4. As per circular of the Railway Board



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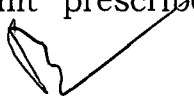
dated 10.2/3.2000 vide letter N. 384-E/O-Bhag-1/T/E-4(Annexure-5), it is provided that the date of birth in the service record should be recorded in accordance with the record supplied by the employee at the time of his recruitment. Hence, it is his right under Article 319 of the Constitution of India to get the same recorded as per Educational Certificate. The petitioner is the regular employee of the department and is also the Member of the O and R Railway Employees' Primary Cooperative Bank Ltd., Lucknow of the Northern Railway where his date of birth recorded as 12.2.1954. But surprisingly, it has been recorded as 12.2.1951 in his service book. The copy of the document showing his membership of Cooperative Bank is available at Annexure-6. The applicant goes on to add that as soon as this anomaly came into his notice, he immediately requested the opposite parties by way of detailed representation (Annexure-7) requesting to change the date of birth according to the school certificate. He also sent one representation dated 10.5.10 through registered post to the Chief Works Manager and General Manager, Northern Railway, Baroda House, New Delhi requesting for this change. But in spite of his repeated requests and ignoring all the facts and circumstances as well as the rules and law laid down on the issue the impugned orders dated 28.2.2006 and 28.3.2006(Annexure-1 and 2 respectively) were passed by the respondents.

3. On notice, the respondents have contested his case by way of filing the CA. At the outset, in the counter affidavit, the respondents have stated that the applicant has been getting the promotion from time to time after joining the service in 1973 and at the time of filing this O.A., he was working as Technician MCM w.e.f. 20.12.2008. At the time of entry to the service, the applicant gave the declaration in writing at column No. 8 of the service book, first page, writing the date of birth as 12.2.1951 and he has also put his signature on all the entries of the service book as mentioned by himself. In addition, on the medical



memo issued, he put his thumb and signature, wherein also, the date of birth is mentioned as 12.2.1951. It is thus evidently clear that the applicant was fully aware of his date of birth as 12.2.1951 right from day one of his service. The photo copy of the service book is annexed as Annexure CR-1 and the Medical Memo is at Annexure CR-2. The applicant made a representation in this regard which was rejected by the General Manager by letter dated 28.2.2006 (impugned order) in terms of Part II (1) (III) of the Master Circular No. 12 of 1990 as well para 225 of Indian Establishment Code Vo.1 which provides that "in case any employee has any grievance with regard to his date of birth, the same may be raised during the probation period or within 3 years of joining the service which ever is earlier." Since, no such request/complaint was made by the applicant as per the above circular and para 225 of the Code at the right time there is no ground for the applicant to claim for the change of date of birth after that. Hence the impugned order has been passed. The photo copy of the Master Circular No. 12 and copy of the extract of para 225 of the Indian Establishment Code are annexed as Annexure-CR-3, 4 and 5 respectively. The applicant again submitted a representation dated 11.5.2010, to the office of the Chief Works Manager with copy to the General Manager, Northern Railway, Baroda House New Delhi which was replied on 9.7.2010(Annexure-7). The representation of the applicant dated 20.12.2001 addressed to Chief Works Manager was also replied by 28.3.2006 (Annexure-6).

4. The Claim of the applicant is denied in the counter affidavit on the ground of limitation stating that the case of the applicant was rejected vide letter dated 28.2.2006, but his original application has been preferred in the year 2010. In the case of **State of Haryana Vs. Satish Kumar Mittal 2010 (9) SCC 337** it has categorically been observed that the request for correction of entry with respect to date of birth must be made within the time limit prescribed in relevant rules

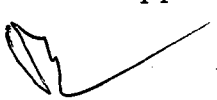


and if no time limit is prescribed, then, within a reasonable period after entry into the service. In the instant case, there is specific rule in regard to making a request for change of birth as has been stated in the counter affidavit with reference to Master Circular No. 12 of 1990 as well as para 225 of the Railway Establishment Code Vol.-1. The applicant has not explained the delay and only on the point of limitation, this O.A. is liable to be dismissed.

5. In the Rejoinder Affidavit filed by the applicant, it has been stated that the issue of date of birth is continuous cause of action till retirement of the applicant and it would be against the principle of natural justice if the case is rejected only on the technical ground of delay, specially so when the Hon'ble Supreme Court has not prescribed any time limit and has observed that the petition should not be dismissed on technical ground only and his cause of action is continuous.


6. I have perused the pleadings of both the parties and have also heard the counsel for the parties. In addition to oral arguments both the counsels requested for putting up written submission along with the relied upon rulings of the Hon'ble Supreme Court and Hon'ble High Court etc.

7. Both the learned counsels have submitted their written arguments/synopsis. The learned counsel for the applicant has, in the written submission, put in only the same points and allegations as already stated in the O.A. as well as the RA. The original documents about school and inter college, Northern Railway Primary Cooperative Bank Ltd., Lucknow and copies of the representations have been submitted along with the written arguments emphasizing in this respect, on the point of right of the applicant. Applicant's counsel has submitted and argued that it is the duty of the respondents to correct the date of birth as per the school leaving certificate in which, it is mentioned as 12.2.1954. The case of the applicant is also not barred




by limitation because, it is a fundamental right which the applicant can resort to and claim at any point of time in his service till retirement. The learned counsel for respondents in his oral and written submissions has emphasized that entry at column No. 8 of the first page of the service book was made with respect to the date of birth by the applicant in his own handwriting and date of birth mentioned is 12.2.1951. Thereafter, as provided in Master Circular NO.12 of 1990, as well as para 225 of IREM Code Vol. 1, the applicant could raise the objection or put up the representation for correction of the date of birth within a period of three years or the period of probation whichever is earlier. This was not done by the applicant and accordingly, the case of the applicant has rightly been rejected by the impugned order. The applicant raised this point for the first time after about 18/19 years of his service. Since, he was fully aware, he had put in his entries, inter alia, into the service book in his own handwriting, including the date of birth. He can not take the plea that he did not know that his date of birth is wrongly mentioned as 12.2.1951. He has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Haryana Vs Satish Kumar Mittal 2010(9) SCC 337** where the Hon'ble Supreme Court observed that the request for correction of entry must be made within the limit prescribed in relevant rules and if no time limit has been prescribed within reasonable period after entry in to service. In the instant case there is a specific rule in regard to making request for change of date of birth. As such the claim of the applicant is not liable to be entertained and the present Original Application is liable to be dismissed.

The Hon'ble Supreme Court in the case of **High Court of Madras Vs. M. Manickam 2011(9) SCC 245** has categorically observed the request for correction of entry must be made within the limit prescribed in relevant rules.



It is also submitted that this Hon'ble Tribunal has dealt with the similar nature of case through **O.A. No. 387 of 1996** and dismissed the Original Application (Annexure No. CR-7).

8. I have given thoughtful consideration to the averments, contentions, arguments and pleadings of both the learned counsels. It is clear from the foregoing paras that the applicant made entry about the date of birth in the service book in his own hand writing at the time of entry to the service. For about 18/19 years he did not raise this issue by way of complaint or request within the time limit prescribed under rules. That means he accepted his date of birth as 12.2.1951. thereafter his case is also barred by the principle of estoppel and acquiescence. In view of the facts and circumstances of the instant case, as per the rules and the law settled down by the Hon'ble Supreme Court, the Hon'ble High Court of Madras (Supra) the learned counsel for the applicant has not, in this O.A, has been able to substantiate his claim. Hence, the O.A. is liable to be dismissed. It is accordingly dismissed. No order as to costs.


(D. C. Lakha)
Member (A)

Vidya