

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CIRCUIT

BENCH LUCKNOW

Original Application No. 404 of 1990 (L)

Chandra Kant Joyti Prasad Shukla . . . . . Applicant

## Versus

1. Union of India, through Chairman, Railway Board, Baroda House, New Delhi.
2. The Divisional Railway Manager, Central Railway, Solapur (Maharashtra.).
3. The General Manager, Central Railway, Bombay V.T.

Hon'ble Mr. S.N. Prasad, Member (J)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer ~~mainly~~ to quash the retirement order dated 31.1.1988 and to re-instate the applicant with all consequential benefits. It has also been prayed by the applicant that the respondents be directed to decide the representation of the applicant as mentioned in para 6 of the application.

2. Briefly, stated the facts of this case, inter-alia, are that the applicant had been working in the Central Railway on the post of Shunter Grade B in the year 1967 and the applicant was appointed in the year 1960 on the post of Yard Khalasi and his date of birth was wrongly recorded in his service record by the respondents as 21.1.1930, whereas the correct date of birth of the applicant is 21.1.1938. True copy of Junior High School Certificate, High School Certificate and the <sup>~</sup>Transfer certificate to this effect issued by the institutions where the

applicant pursued his studies, have been annexued to this application as Annexure 1, 2 and 3 respectivielly. It has further been stated that the applicant had been making representations since 1975 against the incorrect date of birth of the applicant, but no heed was paid to the representations of the applicant (vide annexure No. 4, 5, 6, 7, & 8 respectively) and thereafter the applicant sent a legal notice dated 25.5.1990 which was served on the respondents, but the applicant was arbitrarily retired by the respondents on 31.1.1988 in accordance with his wrong date of birth as 21.1.1930 as recorded in the service record, though in fact the correct date of birth of the applicant is 21.1.1938.

3. In the counter filed by the respondents it has been, inter-alia, contended that the correct date of birth of the applicant is 21.1.1930 and the same was recorded correctly in his service record on the basis of School Leaving Certificate submitted by the applicant and as per his own statement at the time of his appointment (vide annexure No. R-1 <sup>to the counter</sup>). It has further been contended that the original School Leaving Certificate was returned to the applicant vide letter dated 5.12.58 after keeping a attested copy of the same (vide annexure No. R-3 and R-4 <sup>to the counter</sup>). It has further been contended that the no representation was submitted by the applicant in the year 1975, <sup>and</sup> the first representation regarding his date of birth was submitted by the applicant vide his letter dated 3.3.1982 and his representation was duly considered by the competent authority and the applicant was asked to produce the original School Leaving Certificate of Kanya Kubj Inter college, Kanpur issued in the

AC

:: 3 ::

year 1958 but the applicant did not submit the same till the date of his retirement or thereafter. It has further been contended that in the seniority lists published ~~from time to time~~, the date of birth of the applicant was shown as 21.1.1930 but except the representation dated 3.3.1982, the applicant never agitated the matter till his retirement. It has further been contended that the application of the applicant has no merit and applicant is not entitle to the relief sought for.

4. ~~Rejoinder-affidavit~~ <sup>has been</sup> filed by the applicant wherein the applicant has re-iterated almost all those allegations as mentioned in the application.

5. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

6. Besides other points the learned counsel for the applicant has drawn my attention to the para 6 & 7 of the application and to the rejoinder-affidavit of the applicant (vide annexure A-4 to A-8) and has also drawn my attention to Rule 145 of Indian Railway Establishment Code Vol.-I and has argued that since the very inception, the applicant has been agitating the matter regarding correction of his date of birth according to his scholastic certificate, but arbitrarily and illegally without deciding the representation of the applicant, the applicant was retired, and has further argued that it was bounden duty of the respondents to probe into the matter if they had doubt regarding the authenticity of the certificate

2  
Conti..4/-

X1

:: 4 ::

submitted by the applicant and as such the respondents be directed to decide the representations of the applicant from proper perspective in consultation with the authorities of the School concerned if necessary and in support of his argument has placed reliance on the following rulings :-

(i) U.P. Local Bodies and Educational Cases 1992, Vishwa Nath (applicant) vs. Union of India and others (respondents) at page 23 (CAT, Allahabad) wherein it has been enunciated :-

" Applicant claiming that date of birth recorded on basis of medical examination is wrong and that recorded in school leaving certificate is correct- respondents directed to examine school leaving certificate and do the needful."

(ii) 1990 Labour and Industrial cases, C.A.T. (Hyderabad Bench), FULL BENCH, M.S. Murthy and another (applicant) vs. Union of India and others (opposite parties) at page 547 wherein it has been enunciated :-

" Constitution of India, Arts. 309, 73, 14-Railway Establishment Code (1959), R.s. 145(3), 157-Date of birth-Alteration of-Prescription of time-limit for employees joining after 3.12.1971-Right of employees joining earlier to that date not lost-Subsequent circular dt. 4.8.72 by authorities imposing limitation on such right of employee joining prior to 3.12.71 is an executive order in conflict with sub-rule (3) of R.145-Illegal-Also held violative of Art. 14." 1/92

7. The learned counsel for the respondents while drawing my attention to the contents of the application, counter-affidavit, rejoinder-affidavit and other papers, has argued that no other representations excepting the representations of the applicant

Conti....5/-

scholastic certificates submitted by the applicant and the accuracy of the date of birth of the applicant as 21.1.1938 as contended by the applicant and decide the representation of the applicant dated 3.3.1982 (annexure-4 to the application) from proper perspective in accordance with the extant rules by a reasoned and speaking order, within a period of three months from the date of the receipt of copy of this judgement, and in case the version of the applicant about his date of birth as 21.1.1938 is found to be correct then in that case the respondents shall re-instate the applicant in service with all consequential benefits and shall give him the benefit of the continuity in service till the date of his superannuation accordingly; and I order accordingly. It is made clear that the applicant shall co-operate with the respondents No.2 and 3 and furnish the requisite papers during the period of enquiry to enable the respondents to complete the enquiry and to decide the representation dated 3.3.1982 (annexure 4 to the application) within the aforesaid stipulated period of three months.

10. The application of the applicant is disposed of as above with no order as to the costs.

  
Member (J)

24.4.92

Lucknow dated 24th April, 1992.

(RKA)