

**Central Administrative Tribunal ,Lucknow Bench,
Lucknow.**

Original Application No.423/2011

Reserved on 4.4.2014

Pronounced on 16th May, 2014

Hon'ble Sri Navneet Kumar, Member (J)

Kashim Ali aged about 54 years son of late Sri Hashim Ali, resident of 58/161, Bagh Aina Bibi, Hussainganj, Lucknow

Applicants

By Advocate: Sri Praveen Kumar

Versus

Union of India through-

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Senior Divisional Electrical Engineer, Northern Railway, Hazratganj, Lucknow.

Respondents

By Advocate: Sri B.B.Tripathi

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present O.A.is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- i) To allow the applicant to continue in service till 31.10.2017 on the basis of date of birth recorded at the time of entry into service as 20.10.1957 with all consequential benefits like salary, revision of pensionary benefits etc.
- ii) to make necessary correction in the service records and date of birth may be mentioned as 20.10.1957.
- iii) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- iv) Cost of the present case as the applicant has unnecessarily been dragged into litigation.

2. The applicant was initially appointed in the respondents organization as Khalasi on compassionate ground in 1978. He came

to know in August, 2011 that he is going to retire on 31.10.2011 when he was asked to submit the retirement forms. The applicant immediately submitted a representation on 25.8.2011 and has also obtained certified copies of the service records prepared at the time of entry into the service. In the said service record, he was shocked to see the tempering in his date of birth. When no action was taken by the respondents, he further submitted representation on 7.10.2011. It is also pointed out by the learned counsel for the applicant that the representation submitted by him were remained undecided and the date of birth of the applicant is shown as 20th October, 1957 but in the service records, it was tempered and shown as 20th October, 1951. The learned counsel for the applicant has also placed reliance of pay slips, PF Card and Identity card in which the date of birth of the applicant is shown as 20th October 1957. Not only this, the learned counsel for the applicant has also issued a school leaving certificate which was issued on 19.7.1977 also shows the date of birth of the applicant as 20th October, 1957. Since the applicant's date of birth was considered as 20th October, 1951, as such he has also retired on 31.10.2011 and also received the retiral dues as well.

3. Learned counsel appearing on behalf of the respondents filed short counter reply as well as counter reply and through which it was indicated by the respondents that as per the original records, the date on which the applicant was given appointment i.e. on 3.5.1978, the date of birth was shown as 20th October, 1951 and the medical certificate also shows the date of birth of the applicant as 20th October, 1951. The applicant has also put in his signature and also put his thumb impression. Not only this, the learned counsel for respondents has also filed the original record and pointed out that in the statement of fixation of pay, the date of appointment of the applicant is shown as 4.5.1978 and has also argued that in the service records, the date of birth is shown as 20th October, 1951. The

leave account also shows the date of birth of the applicant as 20th October, 1951. Accordingly, the applicant was given notice and he retired on 31.10.2011, treating his date of birth as 20th October, 1951. Not only this, it is also argued by the learned counsel for the respondents that at the fag end of his service, the applicant has raised this objection whereas in the entire service records, the date of birth of the applicant is shown as 20th October, 1951/-.

4. Learned counsel for the applicant has filed Rejoinder reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated. However, it is once again emphatically argued by the learned counsel for applicant that there is a clear cut over writing in the first page of the service record wherein the date of birth has been tempered from 20th October, 1957 to 20th October, 1951 and the school leaving certificate annexed along with the O.A. which was issued on 19th July, 1977 also clearly shows the date of birth of the applicant as 20th October, 1957. As such, it is wrong to say on the part of the respondents that the date of birth of the applicant is 20th October, 1951. Therefore, the applicant is entitled to work for further period treating his date of birth as 20th October, 1957.

5. Heard the learned counsel for parties and perused the records.

6. Admittedly, the applicant was appointed in the respondents organization on 3.5.1978 on compassionate ground. In the appointment order the date of birth of the applicant is shown as 20th October, 1951. In the medical memo also, the date of birth is shown as 20th October, 1951, whereas in the first page of the service record there is a over writing indicating the date of birth of the applicant as 20th October, 1951 instead of 20th October, 1957. Not only this, the school leaving certificate annexed by the applicant is dated 19th July, 1977 which shows the date of birth of the applicant as 20th October, 1957. The learned counsel for the applicant has also

relied upon the pay slips issued for the month of November, 2006, March, 2007, July, 2012 as well as the P.F. ledger register which shows the balance as on 1st April, 2006 and also the identity card issued on 16.7.2008 which shows the date of birth of the applicant as 20th October, 1957. There is a discrepancy in the date of birth. In few records, the date of birth of the applicant is shown as 20th October, 1951 whereas in few records, the date of birth is shown as 20th October, 1957.

7. It is explicitly clear that dispute of date of birth cannot be looked into at the fag end of service and in the instant case, the applicant has already retired on 31.10.2011 and has also received the retiral benefits. Be that as it may:-

8. The date of birth of the applicant is shown as 20th October, 1951 in the following documents:-

- i) Appointment order
- ii) Medical Certificate
- iii) Leave account

9. The above first and second documents were issued on 3.5.1978 as well as on 25.4.1978. Whereas the date of birth is shown as 20th October, 1957 in the following documents:-

- i) School leaving certificate issued on 19.7.1977
- ii) Pay slips
- iii) P.F.Card
- iv) Identity card

10. There is an over writing in service record indicating therein the date of birth as 20th October, 1951 tempering with year of birth from 1957.

11. It is explicitly clear that the order of appointment which was issued on 3.5.1978, copy of which was duly given to the applicant, he has not raised any objection at that point of time in which the date of birth of the applicant is shown as 20th October, 1951, as such raising objection at this stage does not appear to be justified.

12. As observed by the Hon'ble Apex Court in the case of State of Madhya Pradesh and others Vs. Premlal Shrivastava reported in (2011) 9 Supreme Court Cases 664, it has been observed that *"Change of date of birth in service record at the fag end of career is permitted only in exceptional cases"*. The Hon'ble Apex Court further observed as under:-

"8. It needs to be emphasized that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any govt. service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correctness of the service book. Time and again this court has expressed the view that if a govt. servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights.

12. *Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex-facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondents 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.*

14. *It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the govt. servant. It is clear that the said Rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the Rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was perhaps inserted with a view to safeguard the interest of employees so that they do not suffer because of his mistake committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said Rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence."*

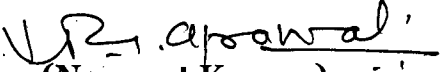
13. In the case of Registrar General, High Court of Madras Vs. M. Manickam and others reported in (2011) 9 Supreme Court Cases 245, the Hon'ble Apex Court has been pleased to observe that *"Change of date of birth in service records, there must be strong, cogent and reliable evidence in support of contention that date of birth entered in service records was wrongly entered by mistake."*

14. In the case of Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and another reported in (2010) 6 Supreme Court Cases, 482, the Hon'ble Apex Court has observed that *"Application for correction of date of birth made to Punjab University after ten years of entering into service is not permissible."*

15. Since order of appointment of the applicant is dated 3.5.1978 and in pursuance of copy of the appointment order the applicant has joined the service, he has not made any objection at that point of time, as such the same cannot be made at this time when the applicant has already retired in October, 2011 and has also received

the retirement dues. Accordingly, I am not inclined to interfere in the present O.A.

16. Accordingly, the O.A. is dismissed. No order as to costs.


(Navneet Kumar)
Member (J)

HLS/-