

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 138 of 1996

Date of order 26.7.1996

Bal Keshwar Singh : Applicant.

- versus -

The Union of India & others: Respondents

C O R A M

Hon'ble Shri K.D. Saha, Member (Administrative)

Counsel for the applicant : Shri M.M.P. Sinha.

Counsel for the respondents : Smt. Veena Rani Prasad.

O R D E R

Hon'ble Shri K.D. Saha, Member (A):-

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, by a Railway employee, who is aggrieved that he has been prematurely retired from service with effect from 29.2.1996 (AN) taking into account 24.2.1938 as his date of birth as recorded in his Service Book instead of 16.1.1940 as recorded in his School Leaving Certificate. The applicant has sought for the following reliefs :-

"(a) declaration that his date of birth as per School certificate should be recorded in his service register and his date of superannuation be determined accordingly.

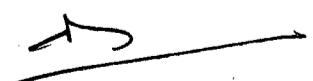
(b) The Annexure A-1, A-2, and A-3 be quashed."

By Annexure-A-1 dated 24.5.1995, the applicant was given notice on behalf of the Divisional Railway



Manager (for short "DRM"), Eastern Railway (for short "E.Rly."), Mughalsarai, that the applicant was due to superannuate on 29.2.1996 (AN). By Annexure-A-2 dated Senior Divisional Personnel Officer, E.Rly., Mughalsarai, rejected the representation of the applicant dated 9.8.1995 for correction of his recorded date of birth, and by Annexure-A-3 dated 19.12.1995, the applicant was advised with reference to his further representation dated 24.10.1995 that the competent authority has decided that the date of birth 24.2.1938 as recorded in his Service Book is correct.

2. The factual matrix lies within a short compass. The applicant was initially appointed to the post of Travelling Ticket Examiner (for short "TTE")/porter, a Class IV post, on 26.2.1958, in a temporary capacity in the Danapur Division of E.Rly. As per the pleadings, the applicant was asked by the respondents in 1960 to submit certificate with regard to his age and in compliance thereto, he is stated to have submitted the certificate  issued by the Headmaster, Ram Dulari Ganga Lal High School, Chenari, dated 28.1.1961 indicating his date of birth as 16.1.40 (Annexure-A-4). The applicant was promoted as Ticket Collector on 1.2.1975, and then as TTE in 1983, and finally as Head TTE in the year 1993, in which post he continued till retirement on 29.2.1996 (AN). Admittedly, the applicant was given notice as at Annexure-A-1 dated 24.5.1995, informing him that he was due retirement on 29.2.1996 (AN) on completion of 58 years of age. The applicant



represented to B.R.M., Mughalsarai on 9.8.1995 pointing out that he was due to superannuate in January, 1988. The above-said representation was rejected by Annexure-A-2 dated 17.10.1995. The applicant submitted further appeal to the Chief Personnel Officer (for short "CPO"), E.Rly. on 24.10.1995 which was also rejected vide Annexure-A-3 dated 29.10.1995. The applicant is stated to have submitted a further representation to the CPO on 12.1.1996 as at Annexure-A-5, to which no reply has been given.

3. The respondents contest the case by filing reply. Their submission is that the applicant was not asked to produce any certificate in 1960 with regard to his date of birth as stated in para 4.2 of the application. It is further submitted that the applicant did not produce any certificate with regard to his date of birth and he was produced before the Doctor who gave certificate vide Medical Certificate No.656 of 1958 dated 9.10.1958, indicating date of birth of the applicant as 24.2.1938, and the Service Book of the applicant was prepared mentioning the date of birth 24.2.1938, and the applicant put his signature in the Service Book in token of his acceptance of the declaration of the above-said date of birth.

4. Mr. M.M.P. Sinha appearing for the applicant submitted that in terms of Rule 225 of the Indian Railway Establishment Code, Volume I, in the case of literate staff, the date of birth is required to be entered in the record of service in the Railway servant's own handwriting, and in this case the date of birth 24.2.1938, recorded in the Service Book of the

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applicant has not been entered in the service record in the applicant's own handwriting. The learned counsel also drew attention to the Railway Ministry's decision (a) below Rule 225 of the Code and submitted that the date of birth as recorded in the School Leaving Certificate (Annexure-A-4) should be taken into account instead of date of birth 24.2.1938, recorded on the basis of the medical certificate ^{issued} ~~at~~ at the time of appointment of the applicant, since there is no provision in the rules for a Medical Authority to determine the date of birth of a Railway servant.

5. The question for decision is whether in the facts and circumstances of the case, the date of birth of the applicant can be taken as 16.1.1940 instead of 24.2.1938 as recorded in his Service Book.

6. The relevant provision relating to recording of date of birth in the service record and any alteration thereto at a later stage are contained in Rule 225 of the Indian Railway Establishment Code, Volume I (hereinafter referred to as 'Code'). The relevant provisions of Rule 225 of the Code (1985 edition) and Railway Ministry's decision (a), as applicable in this case, are reproduced below :

" 225. Date of birth.—(1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own



handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

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(4) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a Group A & B railway servant, and a General Manager in the case of a Group C & D railway servant to cause the date of birth to be altered.

- (i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or
- (ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or
- (iii) where a satisfactory explanation (which shall not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended."

Railway Ministry's decision.-(a) when a candidate declares his date of birth he should produce documentary evidence such as a Matriculation certificate or a

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Municipal Birth certificate. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the School Leaving Certificate, a Baptismal Certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age."

7. In terms of sub rule (1), every person on entering Railway service is required to declare his date of birth which shall not be different from any declaration of date of birth made earlier. In the case of literate staff, the date of birth shall be entered in the service record in the Railway servant's own handwriting.

At the hearing, the original Service Book of the applicant, the Medical Certificate No.656 of 1958 dated 9.10.1958, wherein the applicant's date of birth is recorded as 24.2.1938 and the attestation form filled in by the applicant on 9.10.1958 for the purpose of Police verification were produced. The relevant entry of date of birth 24.2.1938 as also the signature of the applicant in these documents were also shown to the learned Counsel for the applicant. It is evident from the entry in the Service Book that the applicant had put in his signature in English against the opening Column for "Signature or LTI of employee". There is also LTI of the applicant, duly attested by Chief Clerk, Estt. Section. Against the column, date of first appointment '26.2.1958' is recorded. ~~and~~ Against the

column, date of birth, '24.2.1938' is recorded, both in figure as well ^{as} in words and the applicant's signature in English appears immediately below. In the Medical Certificate of fitness for appointment No.656/58 dated 9.10.1958, the Medical Officer has recorded the date of birth of the applicant as 24.2.38. He has not recorded the age of the applicant. The relevant certificate read as under :-

"EASTERN RAILWAY

Form of certificate to be used when a candidate is medically examined for fitness for appointment to a State-managed Railway

(COPY FOR PAY SHEET)

Hospital/Dispensary DNR No.656/58

I do hereby certify that I have examined (name) Bal Keshwar Singh, DB 24.2.38 a candidate for appointment as (designation) TTE's Porter (Class) B, in the ~~optg~~ branch/department, whose thumb impression has been appended below in my presence.

I consider him fit for such appointment

Sd/-

Signature of the railway medical officer

Thumb impression of the candidate

Date 9.10.1958.

The attestation form, which is a self-declaration, has been filled in by the applicant on 9.10.1958. Against the column 7(a), (b) and (c)



entries are () as under :-

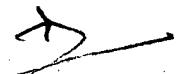
7(a) Exact date of birth - 24th February, 1938.
(b) Present age - 20 years
(c) Age at Matriculation - X

Against column 10 of the attestation form meant for indicating educational qualifications showing places of education with years in the Schools and Colleges since 15 years of age, the following are recorded :-

Name of School/College with full address	Date of entering	Date of leaving	Examination passed.
Ram Dulari Gangalal High School, Chinery, Sasaram.	In the year 1946.	In the year 1954.	Passed Class VIII Standard.

In () the above document () the applicant signed in full in English. From the entries in the attestation form, it appears that the applicant was a student of Ram Dulari Gangalal High School, Chenari, Sasaram, and he was admitted to the above-said School in the year 1946 and he left the School in 1954. It is significant that the entries regarding date of birth and date of admission as given in the attestation form are at variance with the entries in the transfer certificate, said to have been issued on 28.1.1961, a copy of which has been filed as Annexure-A-4. The date of birth recorded in Annexure-A-4 is 16.1.1940 and date of admission to the School is indicated as 14.7.1953.

o The attestation form was filled in by the applicant on



9.10.1958 which is also the date of the Medical certificate issued by the Railway Medical Officer Certifying the fitness of the applicant for appointment as TTE/Porter. It is this medical certificate wherein the date of birth of the applicant is also given as 24.2.1938. The authenticity of the attestation form as well as the Medical certificate is not disputed. There is, therefore, no reason to disbelieve the applicant's own declaration of date of birth (24.2.1938) as given in the attestation form.

8. After giving anxious consideration to the submissions of the counsel for the rival parties, the provision of sub rule (1) of Rule 225 of the Code and the averments on record, I am of the view that although the entry of date of birth 24.2.1938 in the Service Book is not in the applicant's own handwriting, he has put his signature immediately below the entry ~~and~~ the authenticity of the entry of date of birth in the Service Book cannot be disputed merely on technical ground that the entry has not been made by the applicant in his own handwriting. In the Medical Certificate dated 9.10.1958 the Medical Officer has certified the fitness of the applicant for his appointment as TTE/Porter, and in that certificate, the space for age, "D.B.24.2.38" is entered by the Railway Medical Officer concerned, ~~and the certificate contains~~ From the conspectus of facts as given in the averments, it is reasonable to hold that the applicant himself indicated 24.2.1938 as his date of birth to the Doctor, since the same date of birth (24.2.1938) is indicated by the applicant himself in the attestation

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the applicant's
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form, filled on the same date (9.10.1958). Attestation form is a self-declaration for the purpose of Police verification and it is no one's case that the attestation form was filled in a casual manner. All these belies the claim of the applicant that the date of birth 24.2.1938 was recorded in the Service Book behind his back or without his knowledge.

9. Sub-rule (4) of Rule 225 of the Code provides that the date of birth as recorded in the service record shall be held ~~final~~ binding and ordinarily no alteration shall be permitted, but ^{President} ₂ present, in the case of Group A and B Railway servants, and General Manager, in the case of Group C and D Railway servants, have the power to order alteration of the recorded date of birth under certain circumstances, viz:-

(i) Where the railway servant has falsely stated the date of birth to obtain an advantage otherwise admissible, or

(ii) Where the General Manager is satisfied that a clerical error has occurred or

(iii) Where a satisfactory explanation of the circumstances in which the wrong date came to be entered is furnished by the railway servant.

Evidently the case of the applicant is not covered by the provisions in either clause (i) or clause (ii) above. In the third category, referred

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to above, the request for change of date of birth cannot be entertained after completion of the period of probation or three years of service, whichever is earlier. After incorporation of the provision of not entertaining the request for alteration of recorded date of birth after the period of probation or three years' service in the Code by Railway Board's letter No. E(NQ)II-70 BR-1 dated 3.12.1971, by a further letter dated 4.8.1972, persons already in employment on 3.12.1971 were given opportunity till 31.7.1973 to ask for rectification of any mistake in their recorded date of birth. From his representation dated 12.1.1996, a copy of which is at Annexure-A-5, it is clear that the applicant was aware even in 1983 that his date of birth in the service record is 24.2.1938. There is nothing in the record to show that the applicant seriously pursued the matter for alteration of date of birth thereafter till 9.8.1995. His first representation is dated 9.8.1995 seeking alteration of recorded date of birth, after he was given notice of retirement with effect from 29.2.1996 (AN) vide Annexure-A-1 dated 24.5.1995.

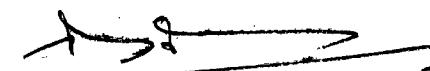
10. By now it is a settled principle of law that normally an application by an employee of the Government towards the fag end of his service seeking correction of the date of birth in the service record with the object of continuing in service beyond the normal date of superannuation is not to be entertained. In Secretary and Commissioner, Home Department and others

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vs. R.Kirubekaram, AIR 1993 SC 2647, the Hon'ble Supreme Court held :-

"Unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out, the Court or the Tribunal should not issue a direction, on the basis of materials which made such claim only plausible. Before any direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed and within the time fixed by any rule or order. If no rule or order has been framed or made prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held reasonable." (emphasis added)

11. In the facts and circumstances of the case, discussed hereinabove, I have no hesitation to hold that no case is made out in favour of alteration of date of birth in the service record of the applicant. The application is wholly misconceived and devoid of merit. It is accordingly dismissed with no order as to costs.


(K.D. Saha) 26.7.96
Member (Administrative)