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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH AT LUCKNOW

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Registration (C.A.) No. 40 of 1988

Ram Het Tiwari

Applicant

Versus

Union of India & others

Respondents

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Hon'ble Ajay Johri, A.M.

By this application, received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, Ram Het Tiwari, who was working as a Fireman Instructor in the Loco Running Shed, Alambagh, Lucknow in the Northern Railway, has challenged the order dated February, 1988 passed by the Divisional Railway Manager (DRM), Lucknow rejecting his request for the change of his date of birth. According to the applicant he submitted a transfer certificate but on the grounds that it did not deem to be genuine his date of birth was not changed and he is to be retired on the basis of his date of birth as recorded in the service records.

2. Briefly the facts are that after having been appointed as a Cleaner on 9.3.1950 after due selection and medical examination <sup>as applicant</sup> he was never confronted with the fact that his date of birth as recorded in the transfer certificate also submitted by him in September, 1950, i.e. about after a month from his appointment, was at

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variance from the date of birth as per his service record. According to him he was required to submit his proof of date of birth which he did immediately one month after his appointment. He has further alleged that as per records of the Loco Foreman under whom he was working his date of birth was in conformity with the ~~tax~~ transfer certificate, <sup>3/4 is</sup> i.e. 20.7.1932. He came to know for the first time in January, 1986 that his date of birth in the service records was wrong. This was the time when he had asked for a loan of Rs.10,000/- from his Provident Fund. There upon he made various queries and preferred a representation on 24.4.1987 to DRM saying that according to the transfer certificate, which he had furnished at the time just after his appointment, i.e. in September, 1950, his date of birth should be 20.7.1932 and that his age has been incorrectly recorded as 20 years on the date of his appointment. He was given a reply in February, 1988 rejecting his representation and was ordered to be ~~requested~~ retired on 31.8.1988 on attainment of the age of 38 years. The applicant's case is that the Loco Foreman, under whom he has been working, by his letter dated 28.3.1988 addressed to DRM sought clarification about the applicant's correct date of birth, which according to his own record was 20.7.1932. Therefore, according to the applicant, the rejection of his claim <sup>3/4</sup> in ~~in~~ change of date of birth was arbitrary and without application of mind. His transfer certificate has been illegally rejected by

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a cryptic non-speaking order and a max on mere conjectures and surmises. He has, therefore, sought relief for quashing of the order dated February, 1988 (Annexure 'IV' to the application) and for directing the respondents to correct his date of birth as 20.7.1932 as per his transfer certificate dated 6.7.1946 and the certificate of Upper Primary Examination dated 29.4.1941, and to treat him as continuing in service upto 31.7.1990.

3. In the reply filed by the respondents they have said that the transfer certificate indicating his date of birth as 20.7.1932 was not submitted by the applicant in September, 1950 and according to the endorsement in his service record at the time of his appointment his age was recorded as 20 years. This endorsement was signed by the applicant and his signatures appeared on the first page of the service records. According to this his date of birth was taken as 9.8.1930. They have further said that the certificate is a forged document inasmuch as the figure '2' of the year in the date 20.7.1932 has been overwritten. According to the respondents the entries in regard to the date of birth made in the service record are authentic and any endorsement made in the record of the Loco Foreman is not relevant and cannot be taken as the basis of changing a date of birth. They have further alleged that it appears that the changes have been made in connivance with the staff. On the averments made by the applicant in regard to the date of birth, on the basis of which

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he was sent for the periodic medical examinations, the respondents have said that the entries made in the alleged vision test certificate has also no relevance. They have further said that the date 9.8.1930 has also been shown in the seniority list of the staff ~~and~~ <sup>as</sup> circulated on 29.9.1982, so no ~~reliance~~ <sup>acceptance</sup> can be ~~placed~~ <sup>given</sup> ~~to~~ <sup>to</sup> the allegation made by the applicant that he came to know of his recorded date of birth only in January, 1986.

4. In the rejoinder affidavit submitted by the applicant he has reiterated that he was only 18 years ~~when he joined Service~~ old and he was required to submit a certificate. Accordingly he had submitted the certificate showing his date of birth as 20.7.1932 in September, 1950. He has further said that he passed class IV examination from Upper Primary School, Philsar on 20.4.1941. This certificate shows his date of birth as 20.7.1932 and he had submitted this certificate also at the time of his appointment but the transfer being a later document was only accepted and in the record of Loco Foreman his date of birth has been correctly entered.

5. I have heard the learned counsel for the parties. The contentions raised by the learned counsel for the applicant were ~~placed~~ <sup>based</sup> on the reliance placed by him on the transfer certificate and the certificate of the Primary School and the fact that at the time of appointment it was essential for the applicant to submit his proof of age which he had done. The learned counsel had further contended that if the transfer certificate

was considered as not genuine the respondents should have taken up with the applicant and they could not lightly ~~by brush~~ <sup>public</sup> ~~breast~~ aside a document by a cryptic order and slept <sup>over</sup> over the matter for such a long time. According to him if manipulation and forgery were not termed as indiscipline what else could be, but the applicant have never been confronted with this charge and in any case the Loco Foreman (~~Works~~) <sup>is</sup> under the respondents and, therefore, if there is any manipulation in the records of the Loco Foreman it must have been done by him on the basis of some instructions from the respondents and cannot be treated as manipulation. He further contended that it is only the dates which have been alleged to have been manipulated and not the certificates. Therefore, the certificates were available with the respondents and once they were in custody of the respondents the question of manipulation by the applicant <sup>does not</sup> ~~should not have~~ arisen. The learned counsel for the respondents repelled these contentions on the grounds that the applicant was able to get a photo-stat copy of a document which was actually not in his possession and it could have been only possible through connivance or the fact must have been that the original certificate was never filed at the time of appointment. He further submitted that after the medical examination where his age was entered as 20 years the same was entered in his service record as well on the date of his appointment and according to <sup>of this his</sup> them the date of birth came to 9.8.1930. In regard to the documents submitted by the

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applicant purported to have been issued by the Loco Foreman the learned counsel's submission was that a pay certificate is not meant to show any date and if it shows it is <sup>3/</sup> a clear indication of the fact <sup>3/</sup> that it must have been obtained <sup>with an intention of proving</sup> ~~in respect of~~ some manipulation that has been done. The learned counsel for the respondents also produced the original records, the register of the Loco Foreman for the years 1972, 1981 and 1983 which shows that the entries of his date of birth on the basis of which he was sent for vision test. He has further challenged the application by a submission that in case the applicant knew that his date of birth was 1932 in the Loco Foreman's record he should have moved an application earlier. He further pointed out that the applicant had passed class IV in 1941 from the Primary School and was again shown as having entered in class IV in the year 1944. The learned counsel for the applicant explained this difference on the grounds that the applicant's father had been transferred during the relevant period and he was actually in East Bengal, which is now Bangladesh.

6. I have gone through the application as well as the documents filed by the respondents and the two documents on which reliance is being placed by the learned counsel for the applicant. A perusal of the certificate issued by the Upper Primary School on 29.4.1941 shows that the where the age is entered in figures as well as the date which has been entered in the blank space of the certificate both show that there is <sup>3/</sup> a over-writing, part of the paper

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of the certificate has been torn<sup>w</sup> and removed evidently to support the figures which have been entered due to over-writing. This certificate cannot be considered as a reliable document from the very appearance of it and the contentions raised by the learned counsel that this is one of the public documents and cannot be lightly <sup>w</sup> brushed aside by a cryptic order does not hold force because the certificate has clear indications that it has been smudged at the relevant place and the over-writing made. <sup>w</sup> The smudging done is to create the impression that no <sup>w</sup> <sup>w</sup> is to justify that the change have been <sup>w</sup> ~~properly~~ done.

Therefore, this certificate cannot be relied on in any case. The second certificate on which reliance has been placed is the School Leaving Certificate from a school in Redauli. Even in this certificate it is clear that the entry of date of birth has been interfered with and even the original is suspected now evidently because the figure '2' has been written in place of another figure which had appeared earlier. There is clear smudging in space and though the certificate is placed in the service record of the applicant and <sup>w</sup> shows that it was <sup>w</sup> ~~supposed to have been~~ issued on 6.7.1946 this certificate can also not be relied on its face value. On the other hand there is a certificate of medical examination No.244 issued by the Railway Doctor on 5.6.19<sup>46</sup> <sup>w</sup> which carries the thumb impression of the candidate, which declared him fit for appointment in A-1 category. This certificate clearly shows his age as 20 years. In the service record there is a clear entry against the column of date of birth which says 20 years ~~w~~ on the date of appointment. There is no over-

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writing in the original service record and there is a thumb impression of the applicant which has been witnessed by a person. As far as these certificates are concerned No other corroborative evidence has been brought by the applicant before me to support these certificates which as has been said above cannot be relied on in the condition on which they have been produced.

7. On the other hand there is overwhelming evidence available that the applicant's date of birth on the basis of his vision test in the years 1972 and 1981 was definitely 9.8.1930. <sup>✓ In the 1980-81 register ✓ a change made in the figure</sup> There is ~~overwriting against~~ 9.8.1930. It has been scored out in the register which was prepared in 1980 and the entry has been made as 20.7.1932 and thereafter in the register for the year 1983 the entry has been shown as 20.7.1932. So there is no doubt about the fact that the changes have been made in <sup>✓ the Loco Foreman's record in regard to ✓</sup> his date of birth <sup>✓ In the ✓</sup> from 9.8.1930 to 20.7.1932 in 1980, <sup>✓ the Loco Foreman's records</sup> ~~report~~. There is no indication neither any document has been produced to show that this change was authorised by any order from the competent authority. Working as a Fireman Instructor in the Loco Shed during the relevant period it cannot be ruled out that the applicant was able to manipulate the changes to his advantage.

8. The Railway Establishment Code and other relevant documents lay down the procedure for the entry of date of birth at the time of appointment of a person. All Railway servants on joining Railway service have to

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declare the date of birth and this date of birth shall not differ from any date previously declared for any public purpose before joining Railway service. Normally, date of birth is allowed to be recorded on the basis of a Matriculation or Municipal Birth certificate or other authenticated documents like school leaving or baptismal certificate. Horoscopes are not accepted for date of birth in any case. As already observed above the two certificates on which reliance is being placed by the applicant cannot be considered as documents which can be relied on for a change and there is no other evidence to support the application.

9. In regard to the seniority list that has been published the submission made by the learned counsel for the applicant was that the applicant was not asked to sign the same. This cannot be accepted as a plausible cause for the applicant not agitating the matter when the seniority list was published in 1982 which showed his date of birth, specially in the back ground that the changes made in the Loco Foreman's record were made in the year 1980-81 and the applicant alleged that he had submitted his school leaving certificate nearly a month after his appointment. The seniority lists are normally displayed on the notice boards and objections are invited and the applicant has made no objection. The applicant's age was indicated about 20 years at the time of entering into service and the same was entered so in the service record. The Madras Bench of this Tribunal in the case of M. Ashoken v. General Manager (1986 (2) SLR 532) had held that

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certificates issued by private schools as to the date of birth cannot be taken to be substantive evidence. Even on this ground the certificates which have been produced by the applicant before me which are ~~of~~ <sup>from</sup> private schools cannot be taken as public documents or extracts from a public record. I reject ~~this~~ <sup>the</sup> contention of the learned counsel. The applicant's age stood in the service register as 20 years upto nearly the end of his service and the first time he made any representation was in 1986. Moreover, when he was being sent for his vision test prior to the year 1980-81 on the basis of the age as recorded in his service record he had never challenged <sup>by the same</sup> on the basis of an incorrect date. I can also not lose sight of the fact that school authorities make the entries regarding date of birth on information furnished by either the parents or the relation, who accompanies the child to the school for admission. Sometimes this information may also not be accurate. The age entered in the school leaving certificate will not be of much evidential value to prove the age of a person when there is no evidence to show on what material the entry in the register about the age has been made. Moreover, the fact that he was in class IV, losing three years of his valuable life in class IV will also militate against the authenticity of the ~~documents~~ claim made.

10. The applicant had joined service in August, 1950 and on the basis of his date of birth as recorded in the service record as 9x as 9.8.1930 he is due to retire on

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31.8.1988, i.e. after serving the Railways for a period of 38 years. It is, therefore, clear that he will not be suffering in the matter of his pension and he will be able to draw full pension having been 38 years ~~of~~ <sup>38</sup> ~~of~~ <sup>38</sup> service ~~to~~ <sup>38</sup> to his credit. The maximum service that a person can put in if he joins at 18 years of age is 40 years. <sup>38</sup> ~~He has served for 38 years & earned full pension~~ Even on <sup>38</sup> this account I do not think that the applicant ~~will~~ <sup>38</sup> has ~~suffered~~ <sup>38</sup> my case.

11. Having given due consideration to the materials on record and to the contentions raised by the learned counsel for the parties and the facts brought out by the records produced before me I am of view that the request of the applicant for the change of date of birth cannot sustain and is, therefore, liable to be rejected. In conclusion, therefore, the application fails and is dismissed with costs on parties.

*SPV/OKR*

MEMBER (A).

Dated: August 23<sup>rd</sup>, 1988.

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