

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.940 of 1988

Shri Ramdas Madhavrao Salunke,
House No.115, Sindhi Colony,
Near Hanuman Mandir,
Chalisgaon,
Dist: Jalgaon.

.. Applicant.

V/s.

1. Union of India through,
The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bhusawal. .. Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri

Appearance:

1. Shri D.V.Gangal
Advocate for the
applicant.
2. Shri J.G.Sawant
Advocate for the
respondents.

JUDGMENT:-

Dated: 30.1.1989

(PER: Shri P.S.Chaudhuri, Member(A))

This application was filed before this Tribunal on 20.12.1988 under Section 19 of the Administrative Tribunals Act, 1985 ('the Act'). The applicant's prayer is that his date of birth in the Railway record be corrected from 3.1.1931 to 31.3.1935 with consequential benefits.

2. The applicant is working as Chief Booking Clerk

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at Chalisgaon on Central Railway. His case is that he was born at 9.30 p.m. on 31.3.1935 at Sinnar, District Nasik. He passed his High School Examination in March, 1951 from Lashkar, Gwalior. He is the son of an ex-Army man who served for about 10 years at the time of the Second World War. He applied to the Railway Service Commission, Bombay on 9.11.1955 for the post of Commercial Clerk. On selection, he was appointed as a Commercial Clerk on Central Railway on 2.7.1959. In all these three documents (viz. High School Examination Certificate, application to the Railway Service Commission and entry in the Railway Service Record) his date of birth was recorded as 3.1.1931. His contention is that this mistake occurred due to inadvertance of his parents, who were poor and un-educated.

3. It is the applicant's case that some time in about 1983 in the course of deposition as a witness in a case, a doubt and objection was raised regarding his correct date of birth. As there was no record in the Sinnar Municipal Register in regard to his date of birth and as his parents had died a long time ago, his maternal uncle named Lakshman Gopalrao Deshmukh was called for and filed an affidavit before the Judicial Magistrate First Class, Sinnar on 18.4.1983 testifying that the applicant had been born at 9.30 p.m. on 31.3.1935. On this affidavit the Judicial Magistrate First Class passed the following order:

"Perused affidavit, issue letter to Municipality Sinnar for registration of name of Rāmdas in birth register."

4. The birth was accordingly registered on 19.4.1983 in the Sinnar Municipality Register under Section 13(3) of the Registration of Births and Deaths Act, 1969. This registration has to be considered in terms of the provisions of this sub-section which is quoted below:

"Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee".

5. It is the applicant's contention that this is the first time that he came to know that his date of birth was 31.3.1935 and not 3.1.1931. On 23.3.1984 he made an application to the Chief Personnel Officer, through the Divisional Railway Manager, Bhusaval requesting him to correct the applicant's date of birth in the applicant's service record from 3.1.1931 to 31.3.1935. This was replied to by the Divisional Railway Manager on 4.4.1984 stating that the request could not be accepted, as the last date for making such an application was 19.11.1973. On this the applicant made another application dated 23.8.1985 stating that "I was not on duty at that time and that I was busy in my son's operation at Pune in Sancheti Hospital. Due to this the above Gazette did not come to my notice". In a reply dated 16.5.1986 he was sent a copy of the earlier reply and told that no correspondence would be entertained regarding this matter in future. Thereafter, on 13.7.1987 he made a representation to the Chief

Personnel Officer in which he brought out that it was only in 1984 that he came to know about his correct date of birth. This was replied to on 7.4.1988 informing him that his request had been examined by the competent authority but it was regretted that it could not be agreed to. Thereafter, the applicant made applications to the Minister for Railways on 4.6.1988 both directly and through an M.L.A. He was finally sent a comprehensive reply by the Chief Personnel Officer on 2.12.1988 in which he was told:- "You were appointed in 1959 as clerk, after being selected by Railway Service Commission (now Railway Recruitment Board). You had recorded your date of birth yourself in your service Register which was on the basis of your School Certificate. The same date of birth was indicated by you in the form which you had filled while applying to Railway Service Commission (now Railway Recruitment Board). You did not ever represent for a change in your recorded date of birth during your service period even though such an opportunity was extended to all railway employees till 31.7.1973."

6. The respondents have contested the application by filling their written statement. I heard Mr.D.V.Gangal, learned advocate for the applicant and Mr.J.G.Sawant, learned advocate for the respondents.

7. Before starting his oral submissions Mr.Gangal submitted that he offered the applicant's uncle, who is present in the Tribunal, for examination on oath in

terms of Section 22(3) of the Act. In support thereof he cited Section 11(3) of the Industrial Disputes Act and quoted extensively from the commentary thereon at pages 728 to 730 of Malthotra's "The Law of Industrial Disputes", Vol.I, 1981 Edition. It was his submission that the uncle's evidence was, in fact, material. He bolstered his arguments by citing A.I.R. 1964 SC 719 and A.I.R. 1979 SC 1652. These two cases, however, deal with the dismissal and termination of service of employees and hence do not help him at all.

8. Mr. Sawant opposed this submission on the ground that the uncle's affidavit was a matter of record and this affidavit was not at issue in this case. It was his contention that Rule, 225 of the Indian Railway Establishment Code, Volume I specifically dealt with the question of "date of birth" and it was in terms of this rule alone that the applicant's prayer had to be examined. It was Mr. Sawant's submission that the procedure and powers of this Tribunal is governed by Section 22 of the Act and that Section 11 of the Industrial Disputes Act is not relevant. It was his further submission that, in any case, the uncle's examination on oath was not at all material as the case could just as easily and fairly be examined on the basis of the uncle's affidavit already available on record. In view of his submission, I do not see any force in Mr. Gangal's arguments and I do not see any reason to examine the applicant's uncle. The applicant's uncle, was therefore, not examined.

9. Mr. Sawant submitted that the application deserves to be rejected at the threshold on the ground of limitation under Section 21 of the Act. He submitted that the applicant had no statutory right of appeal against the Divisional Railway Manager's rejection of his request on 4.4.1984. Even if he had, he should have challenged it within a reasonable period thereafter. He also submitted that this Tribunal has held on more than one occasion that the period of limitation is not revived by making repeated departmental representations. He further added that the applicant had failed to pursue the matter between 19.4.1983 and 23.3.1984, again between 4.4.1984 and 23.8.1985 and finally between 16.5.1986 and 13.7.1987.

10. It would be relevant to mention at this point that the concept of a last date for applications regarding change of date of birth as mentioned at para 5 above arose because of an amendment to the Railway's rules regarding alteration of recorded date of birth. By this amendment which was issued under the Railway Board's letter dated 3.12.1971 it was laid down that requests for alterations of date of birth should not be entertained after completion of the probation period or 3 years service, whichever is earlier. After the issuance of this amendment it was represented to the Railway Board that this amendment would cause hardship to the Railway servants who were already in employment on 3.12.1971 and who did not take advantage of the provision of the rule regarding alteration of date of birth as it stood before the above amendment.

Thereafter, the Railway Board issued instructions on 4.8.1972 that such employees may be given an opportunity to represent against their recorded date of birth upto 31.7.1973. The last date of 19.11.1973 quoted at para 5 above would, therefore, appear to be incorrect, the correct last date being 31.7.1973. In fact, it is this date, viz. 31.7.1973, which has been quoted in the final reply that was sent to the applicant by the Chief Personnel Officer on 2.12.1988.

11. Mr.Gangal countered this by citing A.T.R. 1988(1) CAT I, B.Kumar v. Union of India & Ors. In this it has been held:

"...While it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. This is what exactly has happened in the present case.."

12. Mr.Gangal also cited A.T.R. 1987(1) CAT 414, Hira Lal v. Union of India and A.T.R. 1987(2) CAT 506, R.R.Yaday v. Union of India & Ors. In these two cases,

it has been held:

"...the five year period of limitation prescribed for the first time under the said S.O. 3997 dated 15.12.1979 cannot apply to those Government servants who were in service by that day for more than 5 years... that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

These citations do not, however, help him in this case.

An identical situation had arisen on the Railways earlier (viz. 3.12.1971) and had been corrected soon thereafter (viz. 4.8.1972) as already brought out at para 10 above.

By this correction, the disadvantage at which the applicant might have found himself was removed. Hence, these two citations are not material to this case.

13. On going through the record it is evident that the applicant's request for changing of date of birth was originally rejected on ground of limitation. It was only on 2.12.1988 that a comprehensive order rejecting his request was given to him. Based on this, in my opinion, the case is not debarred by limitation and it does warrant examination by this Tribunal.

14. Mr. Gangal's next submission was based on Rule 225 of the Indian Railway Establishment Code Vol. I. The Preface to the 1985 edition of this Code states that "The 1971 edition has now been revised to incorporate all amendments issued up to 31.12.1983 in respect of relevant provisions and is issued by the President in exercise of powers conferred on him by the proviso to Article 309 of the Constitution". Rule 225

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is 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.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3)(a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(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 should 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 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 be accepted as an evidence in support of the declaration of age.

(b) If he could not produce any authority in accordance with (a) above he should be asked to produce an affidavit in support of the declaration of age.

(c) In the case of Group D employees care should be taken to see that the date of birth as declared on entering regular Group D service is not different from any declaration expressed or implied, given earlier at the time of employment as a casual labourer or as a substitute.."

15. Mr. Gangal's submission was that the applicant was a Group 'C' Railway servant and hence this rule empowered the General Manager to cause the date of birth to be altered. The rule did not provide for the delegation of this power to any lower authority. It was his submission that had such delegation been envisaged it would have been specifically mentioned as has been done in Rule 215. It was his further submission that Rule 2003(5) of the Indian Railway

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Establishment Code, Vol.II defines competent authority as under:

"... (5) Competent Authority, in relation to the exercise of any power under these rules, means the President or any authority to which such power is delegated in Appendix XXXII. (See also Rules 2282 and 2283)"

He added that no further delegation in respect of change of date of birth had been made under Rules 2282 and 2283 and hence no one other than the General Manager, was competent to cause the date of birth to be altered.

I am of the view that this submission is mis-placed.

Volume II of the Indian Railway Establishment Code, in which all these Rules are contained, contains Rules which correspond to the Fundamental and Supplementary Rules and Civil Service Regulations applicable to all civil servants (other than railway servants) under the Indian Union, who are subject to the rule-making powers of the President. Rules 2001 to 2283 contained therein pertain to rules corresponding to the Fundamental and Supplementary Rules and deal with the delegations in respect of these Fundamental/Rules. The relevant rule as far as Vol.I of the Establishment Code is concerned is Rule 124 of the Establishment Code Vol.I which reads as under:-

"The General Managers of Indian Railways have full powers to make rules with regard to Railway servants in Group C & D under their control provided they are not inconsistent with any rule made by the President or the Ministry of Railways."

There is, therefore, nothing wrong in the General Manager delegating powers under Rule 225 to the Chief Personnel Officer. The fact that there is no specific mention

regarding delegation in Rule 225 does not detract from the rule making powers given to General Managers in terms of Rule 124. An authority who can frame Rules can also delegate powers in so far as these Rules are concerned unless there is a specific provision to the contrary. There is no such contrary provision in Rule 225.

16. Mr. Sawant submitted that while Rule 225(4) precluded any authority other than the General Manager, or some lower authority to whom the power is delegated by the General Manager, from changing the date of birth of a Railway Servant, the converse was not true. It was his submission that the normal situation was that the recorded date of birth could not be altered but three, and only three, situations had been specifically spelt out in Rule 225(4) under which the General Manager, or some lower authority to whom he had delegated this power, could cause the recorded date of birth to be altered. It was his submission that, therefore, lower authorities could reject the request of a Railway servant for changing his date of birth. In this case, the request was first rejected by the Divisional Railway Manager, but was subsequently examined in detail by the Chief Personnel Officer and rejected by the latter. I see nothing wrong in this.

17. Mr. Sawant's final submission was that the applicant's date of birth had been recorded by him in his own hand both in the application form to the Railway Service Commission and the Service Record. It was also available in his High School Leaving

Certificate. Mr. Sawant contended that the High School Certificate should be taken as authentic because it was quite unlikely that the applicant's father who had served in the Army for so many years would make such a grievous error in recording his son's date of birth. All these three dates were the same, viz. 3.1.1931. Mr. Sawant fairly indicated that he would not like to express a view on whether the applicant's declaration of date of birth in the Railway Service Commission Form could be regarded as "any declaration expressed or implied for any public purpose before entering railway service" as mentioned in Rule 225(1). He added that, nonetheless, the School Leaving Certificate did indicate a date of birth and it is this date of birth which is now being held to be binding. It was his submission that the explanation now being pur forward by the applicant had not been put forward within the stipulated time limit. In conclusion, Mr. Sawant submitted that, in any case, the explanation now being forward was not satisfactory and it was on these grounds that the request had been rejected.

18. Based on this discussion, I am of the view that the application deserves to be rejected.

19. The application is accordingly rejected. In the circumstances of the case there will be no order as to costs.



(P.S. Chaudhuri)
Member (A)