

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.402/92

Bhimrao Lahanoo Shinde,
C/o. K.R.Jadhav,
Advocate, 4-Mayur,
Opp: UCO Bank, Tilak Nagar,
Dombivili(E)
Thane Dist.

.. Applicant

-versus-

1. The Divisional Rly. Manager
(P)(Engg)
Central Railway, Bombay V.T.
2. The General Manager,
Central Railway,
Bombay V.T.
3. The Secretary,
Union of India,
Ministry of Transport,
Department of Railways,
New Delhi.

.. Respondents

Coram: Hon'ble Smt. Lakshmi Swaminathan
Member(J)


Appearances:

1. Mr. G.S. Walia
Advocate for the
Applicant.
2. Mr. S.C. Dhavan
for
Mr. P.R. Pai for
the respondents.

JUDGMENT:

Date: 26th Nov. 1993.

(Per Lakshmi Swaminathan, Member(J))

This application has been filed u/s. 19
of the Administrative Tribunals Act, 1985, ^{in which} the
applicant has prayed for the change of date of
birth as recorded in the service records of the
Central Railway to be altered from 14-5-34 to
22-02-1937. 

2. The applicant was recruited as monthly
rated Khalasi on 23-06-1954 in the Engineering
Department of Respondent No.1. He was regularised
as Khalasi from 20-03-1956. The applicant has
stated that at the time of his appointment he

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 402/92

Transfer Application No: ---

DATE OF DECISION

26/11/93

Bhimrao Lahanoo Shinde

Petitioner

Mr.G.S.Walia

Advocate for the Petitioners

Versus

DRM, Central Railway, Bombay & anr.

Respondent

Mr.B.E.Dhavan for Mr.P.R.Pai

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Smt.~~ Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble Shri

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *yes*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

Lakshmi Swaminathan
(Lakshmi Swaminathan)
M(J)

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did not know his age/date of birth recorded by the respondents in his service sheet. He states that when he came to know in the year 1977 that his date of birth in the service register is wrongly recorded as 14-5-34 instead of 22-2-37, then he obtained the school leaving certificate and applied to the respondents for necessary rectification of the date of birth. However, the respondent has denied that any such representation was made ~~in fact~~ ^{is} in 1977 and neither ^{is} the applicant ~~is~~ able to produce any evidence to this effect. He admits that at that time he only produced the zerox copy of the original school leaving certificate. He also states that no seniority list was issued by respondent No.1 so as to ascertain whether his correct date of birth has been recorded in the service register. According to him the respondents have not carried out the Railway Board's instructions issued in September, 1972 and 1973 regarding his request for change of date of birth. According to him the Personnel Inspector of Respondent No.1 visited the applicant's school at Ghoti in Nashik District in March, 1992 and has ascertained the applicant's correct date of birth as 22-02-1937 as recorded in the school leaving certificate. By the letter dt. 26-3-92 respondent No.1 has refused to consider the applicant's request for change of date of birth on the ground that the last date for making such ~~representation~~ in the case of literate staff was 31-7-73. Being aggrieved by this rejection, the applicant has filed this application praying that on the basis of the original school leaving certificate

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from the school in which he had studied upto 7th standard which is a weighty and material evidence, his date of birth should be corrected in the service records to read as 22-2-1937 instead of 14-5-1934, and for all consequential reliefs viz. restraining the respondents from retiring him on 1-6-92 and for a declaration that he is entitled to continue in railway service upto 28-2-1995

3. The learned counsel for the applicant has submitted that the applicant who was recruited as a monthly rated Khalasi on 23-6-54 belongs to the class of "illiterate staff". Relying on the Central Railway letter dt. 22-3-72 the counsel has stressed upon the fact that in the case of illiterate staff, there are no restrictions whatsoever on the time limit for them to make a request for alteration in the recorded date of birth and they could in fact submit their representations at any time, provided a clerical error had occurred in the date of birth. Reference was also made to Rule 225(4) of the Indian Railway Establishment Code Vol. I. In para 3 of the rejoinder filed by the applicant ~~he has~~ also refuted the allegation made by the respondents that the applicant could not have been recruited since he would have been underage on the date of appointment i.e. 17 years and 4 months, in case the date of birth is accepted as 22-2-37, as ~~as~~ certain other persons had been recruited who were below the age of 18 years. The seniority list of March, 1987 has been referred to by the applicant.

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4. The respondents relying on the same rule, namely, Railway Pension Rules of 1950 which has been extracted in para 3 of the rejoinder *have* stated that prior to the coming into force of this rule in April, 1950 the persons mentioned in Sr. Nos. 1, 3 and 10 in the category of Carpenters Gr. I and Sr. Nos. 1, 5 and 8 in the category of Masons Gr. I could be less than 18 years, as the prescribed age limit was 16 years. The respondents have also stated that the applicant was in fact literate and conversant in English. They have produced two leave applications dt. 21-9-57 and 19-11-81 from the records which have been signed in English by the applicant. The applicant has himself produced school leaving certificate which shows that he had studied upto 7th standard. Apart from the seniority list published in 1987 which is annexed to the applicant's rejoinder in which the applicant's date of birth is shown as 14-5-34, the respondents also referred to and produced another seniority list published in 1982 giving the same date of birth.

5. While the applicant states that he came to know in the year 1977 that his date of birth in the service register is wrongly recorded, no explanation has been given as to how he became aware of this fact. The school leaving certificate on which he is relying upon now shows that the certificate was given by the school on 16-6-54 i.e. he was in possession of the certificate when he joined the railway service on 23-6-54. The respondents have also produced the service record of the applicant.

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In this service register also it appears that the applicant has signed his name in the same style as the leave application letters referred to above, in English. Admittedly at the time when the applicant joined the railway service he was in the illiterate staff category and, therefore, as per provisions of Rule 225(4) of Railway Establishment Code the date of birth had been recorded by a railway servant and duly witnessed by another railway servant.

6. The main issue in this case is whether relying upon the instructions of the Railway Board of 1971 and 1972 the representation made by the applicant in 1989 was within time or not. The learned counsel for the applicant also relied on the R.B.E. No.182/86 dealing with alteration in the recorded date of birth No.E(NG)I-86-BR-7 dt.19-10-1986 in which copy of Railway Board's letter dt. 25-10-78 addressed to the GMs, All Indian Railways, has been given as follows :

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"Complaints are frequently received that when Class IV staff represent that their dates of birth have been wrongly entered in the service records by clerical staff, the representations are not entertained by the Railway Administrations on the plea that in terms of Board's letter No.E(NG)II-70/BR/1 dated 4-8-1972 the last date for making such representations was 31-7-1973. This matter was discussed in the Board's PNM Meeting with the AIRF on 16/17-8-1978 when the following minutes were recorded:

"11. Alter~~ation~~ation of date of birth. It was explained that the decision taken in 1972 affected only requests for alteration of date of birth from

literate staff. As for illiterate staff, the rule had always been that where their date of birth had been incorrectly entered they could represent and such representations could be conceded. It was agreed that a clarification would be issued that representations for alteration of date of birth from illiterate Class IV staff could be entertained without any time limit being stipulated for submitting such claims."

From the above it will be clear that the last date of 31-7-73 does not apply to representations from illiterate staff since the rule had always provided for corrections being made in their case. The Board accordingly desire that all representations from illiterate staff should be dealt with on the above basis."

In view of these instructions the applicant's counsel has vehemently opposed any restriction or time limit sought to be imposed by the respondents in this case.

JS Based on this rule he has also stated that the recent judgment of Supreme Court in Union of India vs. Harnam Singh (AIR 1993 SC 1367) should be distinguished, wherein the court was dealing with Note 5 below FR 56 which prescribed time limit for correction of date of birth in the service record of a government servant in other departments, and was not dealing with the rules ~~xx~~ governing failway servants.

6. Learned counsel for the respondents has, however, submitted that the Railway Board's letter is only an instruction regarding the unlimited time ^{*JS*} *available* to the illiterate staff and is not a rule. The relevant rule is Rule 225 which has been made under Article 309 of the Constitution which prescribes a time ~~xxx~~ limit.

JS 7. There is ^{no doubt} that a Govt. servant who has declared his age at the initial stage of employment can make a request later on for correcting his age if he has conclusive or irrefutable proof relating to his

date of birth as different from the one earlier recorded. Regarding the period of limitation, as observed by the Supreme Court in Union of India vs. Harnam Singh, it is competent for the government to fix a time limit in the service rules after which no application for correction of date of birth of the government servant can be entertained. Even assuming for the moment, as contended on behalf of the applicant, that the Railway Board's instructions of 1972 have the force of a rule wherein the "illiterate staff" belonging to the railways can make a request for alteration in the date of birth at any time, the question arises whether on the facts of this case the applicant has acted without any unreasonable delay. In this regard the Supreme Court has held in Union of India vs. Harnam Singh (AIR 1993 SC 1367) as follows:

"The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals.

" It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire." (emphasis added)

8. From the facts given above, it is clear that the applicant was very much in possession of the school leaving certificate on which he is relying upon, at the time when he was appointed in the Railway service in 1954. From the records it is also evident that the applicant was in fact literate and quite conversant in English, being able to also sign in that language even as early as 1954. When he was confirmed in the post of Khalasi in 1956 in the medical certificate dt. 22-3-56 he has also ~~declared~~ declared his age as 22 years which could only be correct if his date of birth was in 1934. Another medical certificate dt. 15-12-82 ~~was~~ showing his age as 48 years has also been produced on record which ~~was~~ was in the knowledge of the applicant. On both these medical certificates the applicant is totally silent. There is nothing on record ^{to show} that the applicant has made any such representation in 1977 for change of date of birth. Therefore, according to his own

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admission the representation made by him for change of date of birth has to be taken as 21-8-89 i.e. after 35 years of service and about three years prior to his date of superannuation. Since all along the applicant has been in possession of the school leaving certificate, this delay in making the request for change in the service record is inexcusable. Added to this is the fact that the applicant would be underaged at the time of joining the service if the date of birth is changed at this stage. Therefore, the applicant cannot be stated to have acted in a reasonable manner. ~~and~~ His claim suffers from inordinate laches and delay and is also devoid of merits. Following the decision of the Supreme Court in Harnam Singh's case, even if there is no period of limitation prescribed for seeking correction of date of birth, the applicant's claim has been correctly rejected by the respondents, being very belated. The decision in Harnam Singh's case has also been followed by this Tribunal in H.R. Gaikwad vs. U.O.I. 1993(2)ATJ 301. In view of these two judgments it is not necessary to deal in detail with the other earlier judgments relied upon by the applicant of Hiralal vs. U.O.I. ATR 1987(1)CAT 414 and S.K. Amarnath vs. U.O.I. judgment dt. 23-4-92 in O.A. 93/92 CAT Bombay Bench.

9. Accordingly the application is dismissed with no order as to costs.

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Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member(J)