

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 245/93

Transfer Application No:

DATE OF DECISION: 31.5.1994

Baboo Natha

Petitioner

S.Pillai

Advocate for the Petitioners

Versus

Union of India & Anr. Respondent

S.C.Dhawan.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No. 245/93.

Baboo Natha.

... Applicant.

V/s.

Union of India & Anr.

... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri S.Pillai.

Respondents by Shri S.C.Dhawan.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dated: 3/5.1994.

This is an application for change of date of birth. The applicant was initially appointed as a Casual Labour Safaiwala in Central Railway Hospital, Byculla in 1953 and regularised in service on or about 1.5.1957. The date of birth as recorded in his service book is 24.4.1935. The applicant was retired w.e.f. 30th April, 1993 vide Ex.A-2. According to the applicant, his correct date of birth as per the School Leaving Certificate obtained by him subsequently to the date of regularisation in Railway Service is 14.3.1939. He first represented for change of date of birth on 16.1.1987 vide his application at Ex.A-3 to which, however, there was no reply. However, he also represented through the General Secretary, Northern Railway Mazdoor Union, Central Railway and was informed by the Railways by their letter dt. 17.8.1992 vide Ex.A-1 that his service record reveals that he did not produce any educational certificates at the time of his appointment i.e. 15.5.1957 and the Divisional Medical Officer, Bombay according to practice in vogue at that time certified his

age as 22 years as on 24.4.1957 and accordingly the date of birth was entered in service record as 24.4.1935.

It is also stated that his earlier representation was turned down by the Chief Personnel Officer by his letter dt. 4.12.1990. It is this letter dt. 17.8.1992 which is impugned by the applicant on the grounds that the applicant was not directed to produce the School Leaving Certificate at the time he was appointed, that he had submitted the original of his School Leaving Certificate in connection with an application for a post within the Railways in 1970 which certificate was in possession of the Respondents till 1992, that the date of birth as recorded in the service record should be taken as authentic and this is also the basis for the record maintained by the Union in connection with his membership of the Credit Society, that the applicant is an uneducated SC employee and therefore, his case needs to be considered with latitude and therefore the date of birth should be changed and he should be given the benefit of the changed date of birth including reinstatement in service and other consequential benefits.

2. The Respondents have resisted the application firstly on the ground of limitation which according to them runs from 4.12.1990 when he was first informed regarding the rejection of his request for change of date of birth. According to them, requests for change of date of birth are required to be dealt with in accordance with Rule 225(4) of the Indian Railway Establishment Manual, Vol.I according to which the application for change of date of birth ought to have been made within 3 years of the entry in service. The Respondents denied

that applicant had produced any School Leaving Certificate on 24.3.1970 as alleged. The Respondents also pointed out that if the change in the date of birth is accepted, the applicant could not have been eligible for recruitment in service even as casual labour in 1953 when he would have been less than 18 years of age and having taken the benefit of employment on the basis of recorded date of birth viz. 24.4.1935, he is now stopped from claiming that his date of birth is wrongly recorded or that he is entitled to any change in the recorded date of birth. . .

3. The applicant in his rejoinder states that there is no rule prohibiting engagement of a person at the age of 18 years as a casual labour and reiterates that he was not aware that his date of birth has been recorded as 24.4.1935 till he first came to know about it in 1987.

4. At the argument stage, the applicant has taken us through two certificates issued by the school in which he was studying. The first certificate at Ex.A-4 issued on 22.2.1960 is from the Municipal Buleswar W.A.P.G. School. Another certificate at Ex.A-9 is from the Muni. Sheth Chhotalal Dalsukhram Gujarati School. The date of birth recorded in these two certificates is the same. The applicant takes objection to the reference in the impugned letter dt. 17.8.1992 that production of a copy of certificate at the fag end of the retirement and that too from an abandoned school is not acceptable. According to him the school in question is not an abandoned school, but merely shifted from old premises and has therefore undergone a change of name, but is in possession of all connected records. According to him the order of the Railway Administration is also vitiated as it is not a speaking order.

5. In our view, the law in regard to change of date of birth had been laid down by the Supreme Court in the case of Harnam Singh (Civil Appeal No.502/93). In view thereof we are required to see whether the rejection of the request of the applicant for the change of date of birth violates any statutory rules and whether the applicant has shown requisite vigilance in moving the Railway Administration for change of date of birth. We are satisfied that Rule 225(4) of the Indian Railway Establishment Code which is a statutory rule applicable in this case has not been violated. It is well known that the time limit was introduced in the Indian Railway Establishment Code corresponding to the time limit in the F.R. for the other Civil Servants and it has not been shown to us that the applicant had approached the authorities within time. The fact that he might have applied for a post in 1970 and the certificate might have been on the records of the Railway Administration in connection therewith does not help the applicant because that authority was not the authority which maintained the service record of the applicant and dealt with the matters relating to change of date of birth. Since the first certificate was issued by the school in 1960 it can be surmised that the applicant was aware of the date of birth since the time but had perhaps deliberately not approached the Railway Administration for change of date of birth because as pointed by the Railway Administration, he would have been ineligible for recruitment in Railways in 1953 on the basis of that date of birth. We are therefore, inclined to agree that the applicant is now estopped from questioning the recorded date of birth.

6. So far as the question of age limit at the

stage of entry is concerned the Respondents have invited our attention to the Railway Board's Circular No.EMG 64 CL 25 dt. 29.6.1966 and EMG 2-79/CL/5/16579 according to which the age limit for the casual labour is 18 to 28 years. The Respondents have also invited our attention to the Judgment of this Tribunal in OA 546/93 decided on 30.6.1993 in which the Tribunal dismissed the application for change of date of birth as barred by limitation.

7. We consider that the present application is hit by bar of limitation as well as fails on merit. We therefore, dispose of the application by passing the following order.

O R D E R

The application is dismissed. No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

B.