

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **564/97**

3-9-98

Date of Decision:

P.D.Sonawane

.. Applicant

Shri Uday Warunjikar

.. Advocate for
Applicant

versus

Union of India & Ors.

.. Respondent(s)

Shri A.I.Bhatkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble **Shri D.S.Bawej, Member (A)**

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

D.S.Bawej
(D.S.BAWEJ)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 564/97

this the 3rd day of September 1998

CORAM: Hon'ble Shri D.S.Bawaja, Member (A)

Prabhakar Digambar Sonawane,
R/at Aptewadi, Shrikrishna Nagar,
Shirgaon, Badlapur, Post-Kulgaon.

By Advocate Shri Uday Warunjikar

... Applicant

V/S.

1. The Divisional Personal Manager,
Central Railway, C.S.T., Mumbai.
2. The Senior Divisional Electrical
Engineer (TRS) Central Railway,
Kalyan Loco Shed, Kalyan.
3. The Union of India
through the General Manager,
Central Railway, C.S.T., Mumbai.

By Advocate Shri A.I.Bhatkar

... Respondents

ORDER

(Per : Shri D.S.Bawaja, Member (A))

This application has been filed seeking
relief of directing respondents to correct the date
of birth of the applicant as 24.9.1948 instead of
24.8.1941.

2. The applicant was engaged as a Casual
Khalasi in Kalyan Locoshed, Central Railway in
the year 1965. The services of the applicant were
regularised in August, 1966. Thereafter, the applicant
was promoted in Group 'C' in April, 1978, and at present
he is working as Electric Fitter Grade-I. The case of
of the applicant is that his actual date of birth is
24.9.1948 but the same has been recorded as 24.8.1941.

He submits that at the time of recruitment, he had submitted all the relevant documents with regard to his date of birth and he was under the honest belief that his date of birth is recorded as 24.9.1948. However, for the first time in 1991 he came to know ~~from~~ seniority list that his date of birth is recorded as 1941. He immediately made a representation requesting for correction of his date of birth as 24.9.1948. This request was rejected as per order dated 20.3.1992. Thereafter, he made several representations to the higher authorities ~~but~~ did not get any response. He has agitated the matter through this OA. filed on 16.6.1997 seeking change in date of birth as 24.9.1948 instead of 24.8.1941.

3. The applicant has produced several documents in support of his claim for date of birth as 24.9.1948. These documents include the certificate issued by the Chief Officer, Shahada Municipality, School Leaving Certificate, Ration Card, Election Identity Card and LIC Policy. The applicant has also contended that his father was also in Railway service and he got married only in 1945 and therefore his date of birth cannot be in the year 1941. He has also contended that in case he had not availed the opportunity for seeking change in date of birth as made available in 1971, that does not take away his right to claim correction in the date of birth.

4. The respondents have filed a written reply. The respondents at the outset ^{have} ~~had~~ opposed the application on the plea that it is barred by limitation, as the claim of the applicant for correction of date of birth had been ~~re~~jected in 1992 and the present OA. has been filed only on 16.6.1997. On merits, the respondents

have submitted that date of birth as 28.4.1941 had been recorded in the service record at the time of recruitment and the same had been duly signed by the applicant. The applicant is literate and he was aware of the consequences of his declaration of the date of birth. The date of birth recorded at the time of entry ^{becomes final} and the applicant cannot now seek a change after several years. It is further contended that if the date of birth as claimed by the applicant is allowed, then the applicant was under age at the time of recruitment. The applicant could not have secured the appointment with the date of birth as 24.9.1948. Therefore, the applicant after having taken advantage of his date of birth of 24.4.1941 for appointment in Railway service cannot turn around and seek change in the date of birth which would otherwise ^{from} ~~would have~~ debarred him ~~from~~ seeking employment in the year 1965-66.

5. The applicant has not filed any rejoinder reply.

6. I have heard Shri Uday Warunjiker, learned counsel for the applicant and Shri A.I.Bhatkar, learned counsel for the respondents.

7. Before going to merits of the relief claimed for, the question of limitation raised by the respondents shall be considered. It is noted that the request made by the applicant in 1992 for change in date of birth was rejected by the respondents as per order dated 20.3.1992 (Annexure-'A-1') and the present application has been filed on 16.6.1997. The applicant in Para 3 of the OA, has indicated that the application is filed within the limitation period as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The applicant

has not filed any rejoinder reply to the written reply of the respondents and therefore has not contested the plea of limitation raised by the respondents. In the OA, also there is no averments to explain the delay in filing the present OA. after his claim for correction of date of birth had been rejected. The only averment made is that he has been representing at various level from 1992 till 1996 and after not getting any response, he has filed the present OA. After the claim had been rejected, ~~any~~ ~~representations~~ made thereafter, will not extend the limitation. The matter has to be agitated at appropriate time as provided for under Section 21 of the A.T.Act. Keeping these facts view, I ~~subscribe~~ ^{to} the view of the respondents that the application is barred by limitation.

8. Apart from the application being barred by limitation and not maintainable on this ground alone, on facts and circumstances of the case also I find no merit in the claim of the applicant. The applicant was initially engaged as a casual khalasi in 1965 and was regularised in 1966. The request for change of date of birth had been made for the first time in 1992 only, i.e. after a period of almost 26 years. The applicant has pleaded that he had produced all the relevant record at the time of recruitment for preparation of the service record and therefore he was under the honest belief that his date of birth has been correctly recorded as 24.9.1948. The applicant has brought a number of documents on record in support of his claim with regard to date of birth. On going through these documents, it is noted that the certificate ~~of~~ ^{of} the Municipality had been issued only in 1993 which

clearly indicates that this certificate was not available with the applicant at the time of recruitment. The second document is the School Leaving Certificate. The copy brought out at Annexure-'A-3' does not indicate as to when this certificate had been issued. However, during arguments, the learned counsel for the applicant ~~on query with~~ ^{regard to} the date of issue of the certificate mentioned that the same was obtained in 1971. However, The applicant ~~has~~ not indicated whether the School Leaving Certificate was obtained in 1965-66 when he was engaged on the Railway and whether the same certificate was submitted in support of his date of birth. Since the applicant has not made any categorical statement ~~on~~ this aspect, it is difficult to accept that the applicant had his School Leaving Certificate available with him at the time of recruitment. The other three documents, i.e. Ration Card, Election Card and the LIC Policy have no relevance as documentary evidence as date of birth or ~~age~~ indicated ~~is~~ on declaration of the applicant and cannot be taken as proof of age or date of birth of the applicant. In ~~any~~ documentary evidence the applicant ~~having~~ in possession is of no avail as the date of birth as recorded as accepted by the applicant at the time of recruitment ~~is~~ is relevant. The respondents have produced the first page of the service book where the details with regard to the date of birth and educational qualification and other particulars have been recorded. It is noted that the date of birth had been recorded as 24.8.1941. The applicant has signed in English on the service-sheet and his educational qualification has been shown as VIIth Std. Since the applicant is

literate and he had signed in English, it is clear that the applicant had accepted the date of birth as 24.8.1941. The applicant's contention that he was in honest belief that his date of birth is recorded as 24.8.1948 is therefore not borne by the service record. He was fully aware that his date of birth is recorded as 24.8.1941 and he has raised the issue only in 1992 when he was close to his retirement.

9. The respondents have also brought out that in case the date of birth as claimed by the applicant is accepted, then he would have been less than 18 years of age which is ^{the} minimum requirement of age for recruitment. The applicant by ~~the~~ date of birth as 24.8.1941 has secured the advantage of getting the employment and cannot turn around now to seek correction in the date of birth to get further advantage of several years. On the facts as brought out, I endorse the submission of the respondents that applicant having taken the advantage of wrongly recorded date of birth of service cannot now take advantage of several years ^{till} after keeping quiet ~~the~~ till the ^{end} of his service.

10. The Hon'ble Supreme Court in several recent judgements has held that any change ~~in~~ date of birth than what is recorded at the time of recruitment at the ^{end} of service or after retirement cannot be entertained. In this connection, some of the judgements which may be referred to are (a) Union of India vs. Harnam Singh, 1993 SCC (L&S) 375, (b) Burn Standard Co.Ltd. & Ors. vs. Dinabandhu Majumdar & Anr., AIR 1995 SC 1499.

It will be relevant here to reproduce an extract from the judgement in the case of Burn Standard Co.,Ltd. from Para 10.

"10. . . . The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employers as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches,....."

11. In view of the above deliberation, the claim made by the applicant for change of date of birth is not sustainable and therefore the OA. stands dismissed. No orders as to costs.

D.S. BAWEDA
(D.S. BAWEDA)
MEMBER (A)

mrj.