

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 732/97

23.2.98
Date of Decision:

Dr. S.A.H.A. Mannan

.. Applicant

Applicant in person

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri S.C. Dhawan

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S. Baweja, 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 ? f

D. S. Baweja
(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 732/97

In receipt this the 23rd day of July 1998

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

Dr. Shaikh Abdul Hasib Abdual Mannan
Railway Quarter No.E/60,
Railway Lines, Solapur-1.

Applicant in person

... Applicant

V/S.

Union of India & Ors.
through it's
General Manager,
Central Railway,
Mumbai CST. and ors.

By Advocate Shri S.C.Dhawan

... Respondents

O R D E R

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

The applicant has sought the following reliefs through this application : (a) to direct the respondents not to issue any order to retire the applicant pre-maturely in the month of September, 1997. (b) to direct the respondents not to alter the recorded date of birth in the service record in violation of Rule 225 RI of Indian Railway Establishment Code Vol.I. (c) to direct the respondents to accept the date of birth as recorded in the Service Register duly supported by the original date of birth certificate issued by Solapur Municipality. (d) direct the respondents to correct the date of birth as 6.5.1940 in all the records and (e) respondents be directed to retire the applicant on his attaining the age of 58 years based on his date of birth as 6.5.1940.

2. The applicant in support of his above reliefs has stated his case as follows :-

The applicant joined Railways as Assistant Surgeon Grade-I in Group 'C' service in 1965. In 1966 the post of Assistant Surgeon was upgraded to Gazetted cadre and designated as Assistant Medical Officer. The applicant submitted his application for appointment on 11.5.1965 in which he recorded his date of birth as 6.5.1940 which was based on the date of birth certificate issued by the Solapur Municipality on 11.5.1940. Subsequently, when the post was upgraded to the Gazetted Cadre, the applicant was asked to fill up certain forms. While filing the Railway Recruitment Form, the applicant indicated the date of birth as recorded in the Matriculation certificate as required as per the instructions for filling the Railway Recruitment Form. The applicant further submits that the date of birth in the Matriculation Certificate has been not correctly recorded based on the date of birth certificate issued by the Solapur Municipality. The applicant contends that he recorded the date of birth in his own handwriting in the Service Register as 6.5.1940 in the year 1965 and since then this date of birth continued to be shown in the Service Register. However, the respondents in violation of the provisions of Rule 225-RI of Indian Railway Establishment Code Vol.I have altered the date of birth of the applicant as 5.9.1939. As such the action of the respondents to retire the applicant pre-maturily in the month of September, 1997 is unjustified and illegal. The applicant has further stated that in 1985, he had submitted an application in the prescribed form to correctly indicate his date of birth as 6.5.1940 to avoid any apprehension with regard

to his date of birth which was not correctly reflected in the seniority list, being issued. However, the respondents did not take any action on this application. Feeling aggrieved by change in date of birth from 6.5.1940 to 5.9.1939, the present application has been filed on 11.8.1997.

3. The respondents have opposed the application through the written reply. The respondents have indicated that the applicant had already superannuated on 30.9.1997. Respondents have ^{outset} at the ~~the~~ opposed the application stating that the request for change in date of birth has been made at the fag end of his service and therefore the application is time barred and hit by limitation. The respondents have submitted that the date of birth was recorded in the Service Record based on the Matriculation certificate which was submitted by the applicant and no change in the date of birth has been thereafter carried out and therefore the ~~allegation~~ of the applicant is baseless. The respondents further submit that in the forms filled by the applicant, in his own handwriting at the time of recruitment, the date of birth has been indicated as 5.9.1939 based on the Matriculation Certificate. This date of birth has been indicated in the seniority ⁱⁿ list from time to time as well as ~~the~~ classified list of the Gazetted Officers. The applicant did not ~~raise~~ any objection at any time. Further, the applicant in his application filed in 1985 making a request for change in date of birth has clearly indicated that he had recorded his date of birth in the service record as 5.9.1939 based on the Matriculation Certificate.

In view of these facts, the applicant is not entitled to make any request for change of date of birth as the date of birth accepted at the time of entry into service based on the documentary evidence of the Matriculation certificate had become final and no change in date of birth can be claimed subsequently based on the date of birth certificate issued by the Municipality. The respondents have further stated that the representation made by the applicant was considered by the Railway Board and the same was rejected as per order dated 13.10.1997. The respondents have also brought out that the original service record of the applicant is not traceable. However, on the basis of available evidence as brought on record with the written statement, it is established that the admitted date of birth at the time of entry into service is 5.9.1939.

4. The applicant has not filed any rejoinder reply. However, through a Misc. Application the applicant has brought on record some additional documents in support of his claim that his date of birth recorded in the service record is 6.5.1940.

5. The applicant has appeared in person. I have heard the arguments of the applicant and Shri S.C.Dhawan, learned counsel for the respondents.



6. During the arguments, the learned counsel for the respondents relied upon the following judgements :-

(1) Government of Andhra Pradesh & Anr.
Vs.

M. Hayagreev Sarma

1990 S.C. SLJ 105

(2) Union of India vs. Harnam Singh
1993 SCC (L&S) 375

(3) Union of India vs. Ram Suta Sharma
1996(1) S.C. SLJ 552

(4) Bhikhalal Jethalal Rawadka vs. Union of India & Ors
OA.NO. 701/96 decided on 27.2.1997 by this Bench.

7. As stated earlier, the main case of the applicant is that he had recorded date of birth as 6.5.1940 in his own handwriting in the service record based on the date of birth certificate issued by Solapur Municipality and the same has been changed to 5.9.1939 by the respondents in violation of the provisions of Rule 225-RI of Indian Railway Establishment Code Vol. I. The respondents, on the other hand, have contested the claim of the applicant and have asserted that the date of birth was recorded as 5.9.1939 based on the Matriculation certificate produced at the time of entry into service. Keeping in view the rival contentions and the documentary evidence produced on record by the either party, I am of the considered view that there is no merit in the claim of the applicant on account of various reasons as discussed hereafter.

8. The respondents have contended that the original service record of the applicant is not traceable. The respondents during the arguments brought out that the service record of the applicant got misplaced on account of inter Railway transfers. The applicant, on the other side, emphatically rebutted this claim of the respondents stating that the original service record is available with the respondents and in support he has brought a copy of the letter dated 7.7.1997 written by Divisional Railway Manager in the Headquarters office at Annexure-'J' of the OA. The respondents [redacted] at this stage [redacted] have produced the file containing the service record of the applicant and it was notice [redacted] that a duplicate service record is available on the file. On perusal of this record, it is noted that there is no signature on the duplicate record of any officers for certification of the entries. It is also not indicated as to how this duplicate record has been prepared. It also does not carry the signatures of the applicant. It is perhaps the knowledge of this duplicate service record that the applicant is taking a stand that he had entered the date of birth as 6.5.1940 at the time of entry into service. Leaving aside the issue of missing of the original service record from the available material, it could be easily inferred that the stand taken by the applicant is not tenable as his own averments contradict his assertion. On going through the application made by the applicant making request for alteration in the date of birth in 1985 at Annexure-'G', in Col. 6, the applicant has clearly indicated that the date of birth initially recorded in the service record was on the authority of Matriculation Certificate. If the applicant had

recorded the date of birth in the service record based on the date of birth certificate issued by the Municipality, then the applicant ^{this fact} should have clearly brought out/against Col. 6 stating that the date of birth recorded in the Matriculation certificate is not correct. The very fact that the applicant applied for change in date of birth in 1985 leaves no doubt that the applicant was aware that his date of birth has been admitted as 5.9.1939 not 6.5.1940 as claimed by him subsequently at the time of retirement.

9. The respondents have brought on record the Railway Commission Form filled by the applicant at the time of recruitment in which the date of birth has been recorded as 5.9.1939 and the existence of this document has not been controverted by the applicant. The applicant has not made any averment that at any stage he had submitted the date of birth certificate issued by the Municipality even though the certificate was available with the applicant at the time of entry into service. From the facts brought on record, it is beyond doubt that the applicant was quite aware of the fact that the date of birth in the Matriculation Certificate was different from what is recorded as per the date of birth certificate issued by the Municipality. The applicant seems to not have made any efforts to get the Matriculation certificate corrected. He also did not make any representation to the respondents at the time of entry for admitting the date of birth based on the date of birth certificate. The applicant made an attempt to get

his date of birth changed to 6.5.1940 by making request in 1985 in response to the notification issued by the Railways giving opportunity to the employees to get their date of birth corrected. However, the applicant seems to have not followed in 1985. It appears that no action had been taken on this application by the respondents. However, the applicant did not pursue the matter further and just kept quiet and has agitated the matter only when he was being retired based on the date of birth as 5.9.1939. Keeping these observations in view, I find it hard to accept the plea of the applicant that respondents have acted arbitrarily to change his date of birth to 5.9.1939 in violation of extant rules. In fact this is a case of not change in date of birth by the respondents but the change in date of birth claimed by the applicant at the fag end of his service.

10. ^{earlier,} As indicated 4 the respondents have cited number of judgements to support their contentions. These judgements have been carefully gone through to identify the ratio of their application to the present case. In the judgement of Government of Andhra Pradesh & Anr., the Hon'ble Supreme Court has gone into applicability of Rule 5 of A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 and therefore the ratio of this judgement is not directly applicable to the present case. However, the Hon'ble Supreme Court in Para 8 of the judgement has 8 observed that once the date of birth has been accepted based on the Matriculation certificate at the time of entry into service, the

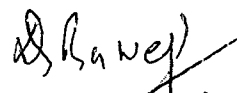
entry becomes final and the employee is not entitled to reopen the correctness of the entry made on the basis of the date of birth certificate issued by the Municipality based on the birth register. In the present case, as brought out earlier, the applicant had only submitted a Matriculation Certificate in support of his date of birth and at no stage he had submitted the birth certificate of the Municipality in support of his date of birth. The applicant has now only claimed the change in date of birth on the plea that date of birth has been wrongly recorded in the Matriculation Certificate. Keeping in view what is held by their Lordships in this judgement, the applicant is not entitled to claim change in date of birth admitted at the time of entry based on Matriculation Certificate subsequently on the basis of date of birth certificate.

11. In the case of Union of India vs. Harnam Singh, the Hon'ble Supreme Court while going to the issue regarding the rules for seeking^a/changing in date of birth, their Lordships while observing that date of birth is sought after 35 years of service after induction in service during which period the employee had several occasions to see his service book but raised no objection regarding the date of birth ^{has} that petitioner held cannot be allowed to seek change in date of birth in view of unexplained and inordinate delay. In the present case, as discussed earlier, the applicant was quite aware about the date of birth recorded in the Matriculation Certificate being different

than what is claimed to be the exact date of birth as per the Birth Register of the Municipality, did not agitate the issue at any time till 1985, i.e. after 20 years. Even then, he did not pursue the matter and kept quiet till the due date of retirement based on the date of birth recorded in the Matriculation Certificate approached. Keeping in view what is observed by the Hon'ble Supreme Court in this judgement, the applicant's case squarely does not deserve consideration. The same view has been reiterated by the Hon'ble Supreme Court in the case of Union of India vs. Ram Suta Sharma holding that Court or Tribunal cannot entertain a belated claim for correction of the date of birth and the order of the Tribunal which had directed the respondents to correct the date of birth was held as illegal. The order of this Tribunal in OA.NO. 701/96 as per the details given earlier has also examined the issue of belated application for change of date of birth. After dealing with the various judgements of the Hon'ble Supreme Court including the judgements as referred to above, the Bench came to the conclusion that belated application for change in date of birth is without merits. On the facts of the case, the ratio of decision in this OA. is squarely applicable to the present case.

12. Keeping in view the above deliberations, the OA. is devoid of merits and the same deserves to be dismissed. It is, accordingly, dismissed with no orders as to costs.

mrj.


(D.S. BAWEJA)
MEMBER (A)