

148

Date: 4/11 October, 1996.

G.V.Ratnam. Applicant

1. Union of India represented by
Secretary, Railway Board,
Rail Bhavan, New Delhi.
2. The Chairman, Railway Board,
Rail Bhavan, New Delhi. .. Respondents.

Counsel for the Respondents: N.R.Devraj, Senior Standing counsel
for Respondents.

HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (A).

(PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN)

Applicant G.V.Ratnam has retired on superannuation on 31-5-1996 as Chief Engineer from the South Central Railway. His grievance in this application is that he has been prematurely retired by refusing to alter his date of birth. He impugnes the order of the Railway Board dated 26-8-1994 rejecting his representation against refusal to concede his request for correction of the date by initial order dated 25-6-1991. His date of birth recorded in the service

: 2 :

record is 27-5-1938 which he wants to be altered as 20-5-1939. The O.A., has been filed on 1-5-1996. Interim relief was refused on 30-5-1996 but hearing was expedited and arguments have now been heard. The relief prayed is to quash the impugned order and to issue consequential directions to the respondents to alter his date of birth in the service record as 20-5-1939 and extend him consequential benefits till he would be due to be superannuated on the basis of that date of birth.

2. The application is opposed by the respondents on the ground of delay and laches as well as on merits and they seek its dismissal.

3. The applicant joined service in the Railways as Assistant Engineer on 30-7-1962. He was promoted as Divisional Engineer on 12-2-1968, then as Deputy Chief Engineer Administrative Grade on 9-12-1975 thereafter as Additional Divisional Manager on 25-6-1982, as Additional Chief Engineer on 20-2-1984 and as Chief Engineer on 1-1-1986. He was placed as Chief Engineer in Additional General Manager's Grade on 11.11.1993

4. His date of birth entered in the School Leaving Certificate was 27-5-1938. On the basis of that Certificate that date was entered in the Service Register when he had joined the service. On that basis he was superannuated on 31-5-1996 as per the Rules.

well

: 3 :

5. It is the case of the applicant that during a discussion at a family function in the year 1988 he learnt that his actual date of birth is 20-5-1939 and the date had been wrongly entered in the School Leaving Certificate and consequently in the Service Register. He found that the date was recorded as 20-5-1939 in the Village Register of Births for the year 1939 maintained by the Village Panchayat, Bommaluru Village in Gudivada Taluk of Krishna District. He therefore approached the Mandal Revenue Officer and obtained a copy of the relevant extract of the Register of Births on 5-4-1988 and also applied to the District Educational Officer on 23-5-1988 for necessary correction of the date of birth appearing in the Secondary School Leaving Certificate. A report on the request of the applicant was submitted by the Mandal Revenue Officer to the District Collector and finally the District Educational Officer did not grant the correction in the School Leaving Certificate. The applicant filed a representation to the Respondents on 10-1-1991 for rectification of the date of birth entered in the Service Register. That was rejected by the respondents by Order dated 25-6-1991. That Order was challenged in earlier O.A., filed in this Tribunal being O.A.No.961 of 1991.

hall

6. The reasons given by the respondents for rejecting the request of the applicant in their reply dated 25.6.1991 were that he had neither represented for the change within the prescribed time limit under Rule 225 of the Indian Railway Establishment Code nor he had furnished a satisfactory explanation for the wrong date of birth having been recorded in the service records. The applicant had moved for the correction nearly 29 years after entering into service and about 3 years ^{from the} after so called knowledge about the mistake. Both these grounds were pleaded by the respondents in opposing the earlier O.A. (961/91). These however were negatived by the then learned single Member who disposed of that O.A., by Order dated 21-8-1992. He took the view that the contention of the Department that there was no positive material evidence available nor that there was delay in approaching for the change and that it should first be altered in the S.S.L.C., Book could not be accepted and held "the record of Births and Deaths as shown by Mandal Revenue Officer can be accepted as a positive evidence and the explanation offered by the applicant is also satisfactory. Therefore, I hold that the applicant has made out a case for change of his date of birth" However in spite of recording such a finding the learned Member instead of granting relief to the applicant consistently with that finding or directing the respondents to carry out the change passed

hsc


: 5 :

the following Order:

"The respondents are directed to consider the case on merits for change of the date of birth of the applicant, within a period of three months from the date of this Order."

We find with respect that the direction given to 'consider the case on merits' was in conflict with the positive finding recorded and had left room for further litigation. The peculiar situation in which the respondents were placed that arose by reason of this conflicting nature of the order was that if the respondents acted on the basis of the finding by merely carrying out the ministerial act of correction of the date that would be contrary to the operative direction which required them to consider the case on merits and if they considered the merits but were not satisfied about the selfsame material on the basis of which the finding was recorded they would be overruling the finding and thereby acting in breach of the order. This aspect has considerable relevance to understand further orders passed by the respondents with which the applicant feels aggrieved. The learned Senior Standing Counsel Mr. Devraj laid great stress on this circumstance.

7. In pursuance of the above direction the competent authority of the respondents reconsidered the case on merits and by proceedings dated 20-11-1992 advised the applicant that his request could not be agreed to on merits. The



reasons given for taking that decision were as follows:

- i) The onus of recording date of birth correctly in the official records is on the employee. He had recorded his date of birth as 27-5-1938 in service records at the time of entering service and that was supported by the Certificate from the Municipal High School, Gudivada.
- ii) The explanation given by the applicant as to why he could not approach for the change earlier namely that he came to know about the actual date of birth in one of the family functions in April 1988 was not convincing and hence not acceptable.
- iii) The School Leaving Certificate is the basic document for recording the date of birth as per the Railway Rules by which he was governed, in which he has not obtained an alteration from the Education Authorities. This alteration has to be obtained by him.

8. The applicant filed a representation against the above decision on 6-1-1993. That was rejected by the Railway Board vide letter dated 3-6-1993 (conveyed by letter dated 17/21-6-1993) stating that the representation was again examined by the Board but it did not find any justification to change their earlier decision dated 20-11-1992. The matter thus virtually stood closed.

hell

: 7 :

9. The applicant however appears to have moved the State Government by a representation dated 16-9-1993 for alteration of the date of birth in his S.S.L.C., Register to read as 20-5-1939 instead of 27-5-1938. The Government of Andhra Pradesh issued G.O.No.489 dated 21-3-1994 granting the correction. On that basis the applicant again filed a representation to the respondents on 28-4-1994 requesting for the change of date of birth in his service record. That has been rejected by the impugned Order dated 26-8.1994. It is stated therein that the Board has considered the representation but it cannot be accepted at this late stage, after so many years of his joining service and that this principle has also been upheld by the Hon'ble Supreme Court in UNION OF INDIA Vs. HARNAM SINGH (Civil Appeal 502/93 decided on 9-2-1993).

10. The aforesaid decision of the respondents is sought to be assailed in this O.A., on following grounds:

1. The respondents ought to have implemented the decision in the earlier O.A., and made necessary correction.
2. The evidence produced by the applicant by way of Government Order and corrected School Leaving Certificate ought to have been accepted.
3. It was not open to take recourse to Rule 225 IR in view of the decision on that point in earlier O.A.

hall

4. The grounds given to reject his request are untenable in view of order in previous O.A., which is final and binding.

5. The respondents were estopped from refusing to act upon the corrected School Leaving Certificate after 1st Respondent had by letter dated 20-11-1992 directed to get the entry in the certificate altered.

11. Mr. G. Ramachandra Rao, the learned counsel for the applicant reiterated the above grounds and submitted that the applicant is entitled to be granted the relief as prayed.

12. The respondents contend inter alia as follows:

The O.A., suffers from laches and is liable to be dismissed on that ground. It is also barred by limitation. It is also hit by res judicata in view of the order in the earlier O.A., and is not maintainable. The impugned decision of the respondents is valid in terms of Rule 225 of Railway Code. The case was considered on merits as directed by the Tribunal. It is wrong to say that the respondents had made any commitment in their letter dated 20-11-1992 that the date will be changed in the service record if the applicant got the School Leaving Certificate is corrected. They deny that the previous order has not been fully implemented. They maintain that it has been fully complied with. They place reliance on the decision of the Hon'ble Supreme Court in HARMAN SINGH's Case (supra) to

hale

: 9 :

which we shall advert later.

13. Mr. Devraj, the learned Senior Standing Counsel for the Respondents reiterated the above contentions and has relied upon the following rulings.

1. A.I.R. 1993 S.C. 1367 (UNION OF INDIA Vs. HARNAM SINGH)
2. (1994) 4 SCC.439 (NATIONAL AIRPORTS AUTHORITY vs. ABDUL WAHABE)
3. A.I R. 1993 S.C. 2647 (SECRETARY & COMMISSIONER, HOME DEPARTMENT vs. R.KARUNAKARAN)
4. A.I.R. 1995 SC 1349 (UNION OF INDIA vs. KANTILAL H. PANDYA)
5. (1996) 32 ATC 658 SC (UNION OF INDIA & OTHERS Vs. SAROJ BALA)
6. 1996 SCC(L&S)605SC (UNION OF INDIA Vs. RAM SHIA SHARMA)

14. The learned Standing counsel vehemently argued that the O.A., is liable to be dismissed on all counts. He also urged that the allegation of the applicant that the previous order has not been fully implemented cannot be a valid ground to render the second O.A., maintainable and the only remedy was to move by way of contempt and that is further ground to dismiss the O.A.

15. The applicant has tried to counter these contentions in his rejoinder filed in answer to the reply of the respondents who on their part have disputed the correctness of the same in their reply to the rejoinder. In the context of the rejoinder Mr. G.Ramachandra Rao, the learned counsel

for the applicant argued that the decisions of the Supreme Court relied upon by the respondents were rendered after 1991 and the case of the applicant ought to be decided with reference to his request made in 1991 and in the light of earlier O.A., and the order passed therein.

16. In the background of the factual events and submissions of the learned counsel for the parties the following points arise for determination, viz.,

POINTS

1. Whether the instant O.A., is barred by Res judicata/Estoppel?
2. Whether the O.A., is barred by delay and laches?
3. Whether the prospective correction of the Date of Birth in the School Leaving Certificate by the Government of Andhra Pradesh is of any material consequence and whether that correction is binding upon the respondents?
4. Whether the applicant has produced unimpeachable and convincing evidence to prove that there was a mistake in entering the date of birth in his service record?
5. Whether the respondents have acted inconsistently with the Rules governing the Railway~~s~~ Servants on the point of entry of date of birth in the service record of the applicant and refusing its alteration?
6. Whether the applicant is entitled to the relief prayed?
7. What Order?

hcl

: 11 :

Our findings on these points follow for the reasons given below.

REASONS.

17. POINTS 1 and 2: As stated earlier the applicant had entered the service way back in 1962. At that time his date of birth was entered in the service record as disclosed by him and was shown in the School Leaving Certificate as 27-5-1938. He moved for the first time for alteration of that dated on 10-1-1991. That request was rejected by the respondents on 25-6-1991. That was challenged in the previous O.A. Pursuant to the order in the O.A., the question was reexamined by the Railway Board and the request was again refused vide letter dated 20-11-1992. That afforded a cause of action to the applicant and he could have approached the Tribunal at that stage. He did not do so. Instead he complained to the respondents by his representation dated 6-1-1992 that the refusal of his request was contrary to the order of this Tribunal. That however cannot be regarded as a legal remedy availed by him and the only remedy was to seek the correct implementation of the Order by filing a contempt petition. That representation was also rejected by the respondents vide Railway Board's letter dated 3-6-1993 communicated on 21-6-1993. That afforded second opportunity to approach the Tribunal but that was also not availed. From both the above points of time i.e., 20-11-1992 and 21-6-1993 the O.A., had to be filed

had

within one year i.e., by 21-6-1994. It is however filed on 1-5-1996. The O.A., is therefore barred by limitation under Sec.21 of the Administrative Tribunals' Act.

18. What the applicant did after the decision of the Railway Board dated 3-6-1993 which was communicated by letter dated 21-6-1993 was to obtain a correction in the School Leaving Certificate from the State Government vide G.O. issued on 21-3-1994. Such action was not at all contemplated by the Order in the earlier O.A. Indeed in para 4.2.1 of his representation dated 6-1-1993 the applicant himself has stated that the Tribunal had held:

"the date of birth should first be altered in the S.S.L.C. Book is not a prerequisite"

In para 4.2.2 he stated that --

"In view of the above direction of the Hon'ble Tribunal I submit that it is not open from (for) the Administration now to demand that I should obtain alteration in my S.S.L.C. Register. Any such direction from Administration will be in contravention of the Order of the C.A.T., in O.A.961/91 to which the Railway was a party"

Despite the above stand taken the applicant now wants to suggest that the last sentence in the respondents' letter

hekt

: 13 :

dated 20-11-1992 reading "This alteration has to be necessarily obtained by Shri Ratnam" was believed by him to contain that direction. In that case also it was necessary for him to complain to the Tribunal about the alleged non-compliance of the Order in earlier O.A., by issuing that direction. Instead by taking the step to move the ^{Govt.} ~~Tribunal~~ for correction of the Secondary School Leaving Certificate he had given up the benefit of that judgment and his further action related to that fresh step taken. Hence that cannot help the applicant in getting the limitation extended which commenced from 21-6-1993 if not from 20-11-1992.

19. It was also not open to the applicant to re-iterate his request for correction of the date of birth by bringing into existence fresh material or ground after the previous O.A., had been decided. No such liberty was obtained. He could get the correction made only in accordance with the terms of the order in the earlier O.A. and he was estopped from basing his claim on a fresh ground. The circumstance of obtaining the correction from the Govt., therefore does not wipe out the bar of limitation. Similarly adopting some steps outside the scope of the earlier order and belatedly approaching the Tribunal by the present O.A., demonstrates lack of diligence and that amounts to laches. We therefore hold that the present action suffers from delay as well as laches. There also arises the bar of estoppel. Both the points 1 and 2 are therefore answered in the affirmative.

WKC

20. POINT NO.3: As mentioned earlier the applicant wants to suggest that because of the direction contained in the last sentence of respondents' letter dated 20.11.1992 he had moved the Government for obtaining correction of the date of birth in the School Leaving Certificate. In our opinion the said sentence cannot be torn out of its context and read as containing a direction to obtain correction in the School Leaving Certificate and committing to grant corresponding correction in the service record on such correction being obtained. The sentence although used the word 'has' it really means in the context 'had'. The difference will be clear on comparison of the two constructions which would read thus:

"This alteration has to be necessarily obtained by Shri Ratnam"

and

This alteration had to be necessarily obtained by Shri Ratnam"

When the paragraph at the end of which the sentence occurs is read as a whole there remains no doubt that the word occurring as "has" must be read as "had". The para reads as follows:

"The explanation given by Shri Ratnam as to why he could not approach earlier for the change of his date of birth is that he came to know about the wrong date of birth in one of the family functions in April, 1988. This is //

Handwritten signature

not convincing and hence not acceptable. Further the School Leaving Certificate is the basic document for recording the date of birth, as per the railway rules by which Shri Ratnam is governed, and in which he has not obtained any alteration from the Educational Authorities. This alteration has to be necessarily obtained by Shri Ratnam. "

The preceeding sentence shows that the last sentence was written in that context. That therefore did not contain any direction to obtain the correction thereafter or any commitment on the part of the respondents to abide by such subsequent event. This inference is fortified by the observation in the order on the previous O.A., wherein it has been stated as follows:

"In view of the decisions cited above, the contention of the Department that there is no positive material evidence available nor there was a delay and the applicant approached for change of his date of birth at a belated stage and that it should be first altered in the S.S.L.C. Book, cannot be accepted." (Emphasis supplied).

In the face of clear view expressed by the Court which was also emphasised by the applicant himself in his representation dated 6-1-1993 (as already noted) it is inconceivable that the respondents would give a go-bye to their stand and

hall

while rejecting the request for correction would still direct the applicant to obtain the correction thereafter and commit themselves to accept the same. The word 'has' apparently had been used inadvertently instead of 'had' to emphasise that the applicant not having obtained such correction his request could not be granted. The applicant ingeniously tried to take advantage of the looseness in the expression to give the meaning to the sentence as reading in present/future tense when it was intended to imply past tense. The step taken by the applicant to obtain the correction of the date from the State Government therefore does not entitle him to seek the relief of correction as prayed in this O.A.

21. The G.O. (Annexure A-11) bears the date of issue as 21-3-1994. From reference at serial No.4 it appears that the applicant had applied on 16-9-1993. The G.O. contains the Order as follows:

"Government hereby order that the date of birth of Sri G.V.Ratnam as entered in his S.S.L.C., Register i.e., 27-5-1938 be altered as 20-5-1939".

This Order is prospective in nature. It does not state that the date shall be deemed to have been altered from the date of initial issuance of the certificate. The Railways was not a party to this alteration. Even otherwise proceeding on the footing that the alteration granted may by necessary implication be deemed to relate back to the date of initial issuance of the certificate the respondents could not be

hall

concerned with it until on the basis of the alteration a fresh request was made to alter his date of birth in the service record on that basis. As adumbrated above, the same was open to the applicant. He, however moved by representation dated 28-4-1994. That was refused by the impugned order dated 26-8-1994. The applicant persisted by further representations filed on 15-9-1994 and 2-1-1995. He has impugned the order dated 26-8-1994. Neither it can be held that the Order is illegal for not acting on the basis of the alteration obtained in the SSLC Bookwork on the grounds pleaded in the earlier O.A., and reiterated. We hold that in the circumstances the respondents were not bound to grant correction of the date of birth in the service record on the basis of the G.O., and in that sense the G.O., is not of any material consequence to the issue involved. Point No.3 is answered accordingly.

22. POINT No. 4: Apart from our conclusions on points 1 to 3 we will also examine the merits of the claim of the applicant in its totality to complete the record. The substratum of applicant's case is that he learnt about the mistake of the date in the year 1988. That story has not been found convincing by the respondents as stated in the letter dated 20-11-1992. We cannot interfere with that assessment in the absence of any particulars as to the manner in which he came to know about ~~xx~~ his actual date of birth, when precisely in the year 1988, at what function, from whom and under what circumstances, having been shown by the applicant

nor can hold it unreasonable.

23. The only material on which reliance has been placed by the applicant (apart from the Government Order) is the record of Births and Deaths with the Mandal Revenue Officer. That was the only record on consideration of which the respondents had to take a decision on merits as directed by the Order in the previous O.A.

24. It appears that the applicant had moved the Revenue Authorities and an enquiry was made by the Mandal Revenue Officer who made a report to the District Collector, Krishna District on 6-12-1988. The dates of birth of three sons of Venkatacharyulu the applicant's father have been noted at the outset of the report. Those are as follows:

Gutta Gopal Krishna Rao.	24-3-1933
Gutta Aravinda Ghosh	18-5-1935.
Gutta Venkat Ratnam(Applicant)	20-5-1939

The date of Gopal Krishna Rao is shown as based on School Leaving Certificate and of Aravinda Ghosh and applicant Ratnam on the basis of copy of Birth Register. However there is also a remark made against the entry of date relating to the applicant which reads:

"His date of birth is written in Secondary
School Certificate as 17-5-1938"

What is pertinent to note is that the School Leaving Certificate produced before the Railways at the time of entering service

luc

: 19 :

in 1962 admittedly showed the date as 27-5-1938 and not 17-5-1938. That gives rise to a doubt that the copy of same certificate was not produced before the Mandal Revenue Officer. This discrepancy has not been explained by the applicant. He has relied on the report which is annexed as Annexure A-2 to the O.A. Hence it has to be taken as it reads and that gives rise to above mentioned discrepancy.

25. The Mandal Revenue Officer gave his report as follows:

"In the two sworn affidavits given by Sri Gutta Venkatacharyulu, he has stated that except the persons mentioned above, none else was borne to him and that the copy of Birth Register of Gudivada M.R.O., containing the date of birth as 20-5-1939 pertains to his son Sri Gutta Venkata Ratnam. These two sworn affidavits are given before Gazetted Officer of Central Government.

The above written evidences are truly strong and unimpeachable. The applicant's father Sri Gutta Venkatacharyulu is at present residing in Hyderabad. Therefore he could not be examined. I made enquiries in Bommaluru village about this matter. There is no one to give exact information regarding the correct date of birth of the applicant. Sri Moturu Prasad Rao, who is brother-in-law of Sri Gutta Venkatacharyulu and residing in Gudivada was enquired and he has given statement that the above facts are true and that Sri Gutta Venkatacharyulu has the above mentioned three children only, but their correct dates of birth are not known to him. In view of the above

hell

: 20 :

facts, it is recommended that there is no objection to change the date of birth of Sri Gutta Venkata Ratnam to 20-5-1939."

The ^{recommendation} Memorandum of the Officer is not of any importance. What is important is the nature of the material on which it is based. We find the material wholly insufficient to establish the date of birth of the applicant to be 20-5-1939. First feature of the report is that the father of the applicant has not been examined who alone could authoritatively speak about the day on which his son - applicant was born. The report shows that there was no person available in the village who could afford that information. Even the brother-in-law of applicant's father did not know the dates of birth of the applicant or his brothers. The Mandal Revenue Officer has based his report solely on two affidavits purportedly declared by applicant's father. Those affidavits however are not produced before us. However as can be seen from the report that even in those affidavits the father had not positively asserted that the actual date of birth of the applicant was 20-5-1939. All that he seems to have stated was that the copy of Birth Register of Gudivada Mandal Revenue Office containing the date of birth as 20-5-1939 pertains to his son, the applicant. In the absence of an assertion on his part that the applicant was born on that day no weight can be attached to his claiming the date appearing in the Birth Register as

hell

: 21 :

as pertaining to the applicant. Thus we have no hesitation to hold that the material relied upon by the Mandal Revenue Officer is worthless and has no evidenciary value. The applicant cannot hope to establish the fact that his date of birth is 20-5-1939 on the basis of this report. Then this report was not conclusive in itself. The decision on its basis could be taken only by the Competent Authority to whom it was submitted. The Collector to whom the report was submitted however did not accept the report vide Proceedings dated 7-4-1990 and consequently the District Educational Officer informed the applicant on 8-7-1990 that the proposal sent to the Director of School Education for alteration of the date of birth had been negatived. A representation to the 2nd respondent against that decision was also rejected on 25-6-1991. The decision taken by the Competent Authorities on merits cannot be reopened by reappreciating the evidence that was made available to them and arrive at a different conclusion apart from the fact that even on merits of that material the decision of the Competent Authorities cannot be faulted.

26. The report of the Mandal Officer refers to the entry in the Birth Register. An extract of that entry is produced at Annexure A.3. It pertains to the year 1939. It merely shows that a son was born on 20-5-1939 to G.Venkatacharyulu and his wife Smt. Saraswati. It

ball

: 22 :

does not contain the name of the child. Unless therefore there was convincing evidence available through persons knowledgeable about the fact of birth of the applicant on that day, particularly the parents, the extract cannot be correlated to the applicant and is of no avail to him to prove conclusively his claim that his date of birth is 20-5-1939. The gap of time in the dates of birth of the three children also does not make it inherently improbable that the applicant could be born in 1938 after the birth of his elder brother in 1935.

on

27. This is the only material/which reliance could be placed by the applicant.

28. We have already stated that the Government Order for alteration of the date obtained by the applicant being subsequent event cannot be relied upon. Even otherwise we do not find the order to be based upon any convincing material. Although the G.O., recites that --

"Based on the evidence produced by the applicant and the enquiry conducted by the Revenue Authorities, it is found that the claim of the individual for alteration of his date of birth is genuine" --

neither the Order refers to nor the applicant has shown as to what other evidence was produced before the Government

hall

: 23 :

and the reference in the Order to the enquiry conducted by the Revenue Authorities can lead to no other inference but that the Order was based on the recommendation of the Mandal Revenue Officer ignoring the opinion of the Collector and the Director of Education who did not accept that report. Since we have already found that no value can be attached to the recommendation of the Mandal Officer the Government Order cannot be construed as an independent piece of evidence to support the case of the applicant.

29. Thus the applicant has failed to establish by any evidence worthy of credence, much less unimpeachable or conclusive that the date of birth entered in his service record is wrong.

30. In R.KIRUBAKARAN's case (A.I.R.1993SC. 2647) the Supreme Court held that unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out the Court or Tribunal should not issue a direction on the basis of materials which make such claim only plausible. The instant case does not satisfy these parameters.

31. We therefore hold that the applicant has failed on merits to prove his claim for alteration of the date of birth in his service record and the refusal on the part of respondents to grant that request is neither erroneous nor illegal and is sustainable in law.

hcl

Point No.4 is answered accordingly.

32. POINT NO.5: The respondents have all along since the beginning been acting in accordance with Rule 225 of IRE Code. That Rule lays down the basic norms in Clause (1) which may be summarised as below.

- (1) Every person, on entering Railway service, shall declare his date of birth. 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 (clause 1)
- (2) 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 (Clause 4)
- (3) The date of birth may be altered by the competent authority --
"Where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years of service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned" (clause 4(iii))

Since we have found that the applicant has failed to adduce satisfactory and sufficient evidence to prove that the date entered was due to mistake the respondents must be held to have acted consistently with this rule and they have thus acted legally. We answer point No.5 accordingly.

hall

32. POINT Nos., 6 and 7:

33. As mentioned earlier the applicant moved for alteration nearly after 29 years. He also moved belatedly after the so called knowledge had dawned on him. His claim was outside the limitation prescribed in Rule 225 IR Code. The Hon'ble Supreme Court has laid down in a series of decisions that in such circumstances the alteration should not be granted.

34. It was held in ~~HARNAM~~ SINGH's case (1993 AIR SCW 1241) as follows:

"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 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 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

hell

: 26. :

tribunals cannot come to the aid of those who sleep over their rights and allow the limitation to expire. Unless, altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age".

These observations squarely apply to the instant case. Here Rule 225 IR has fixed the time limit to seek alteration. Applicant had slept over the matter for unreasonable lengths of time and must suffer the bar of limitation arising under the said rule. He is also not entitled to the benefit of the observations of Their Lordships preceeding above observations in which it has been said thus:

"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 irreputable 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 by the Courts and Tribunals"

Since this is not a case of no rules and even if the date of knowledge is taken into account still as the claim suffered from laches and was a stale claim it has been rightly refused by the respondents. Mr. G. Ramachandra Rao's submission that the decision of the Supreme Court enunciating the above rules being subsequent to the application made for alteration in 1991 and may not govern the case needs to be stated only to be rejected. Thus since the impugned order is based on application of the principles laid down by the Hon'ble Supreme Court it deserves to be upheld.

35. In UNION OF INDIA vs. KANTILAL PANDYA

(A.I.R. 1995 S.C. 1349) the decision in HARMAM SINGH's Case has been followed. In SAROJ BALA's case (1996) 32, ATC SC 658) the claim for alteration of the date of birth was denied and the observations in that connection would be fully attracted in this case also. Their Lordships observed:

"It is unthinkable that having been born in an educated family and having remained in service for 18 years she discovered that her date of birth is wrong"

In that case the Government servant had annexed her school record in which the date of birth was recorded as 4.4.1949 at the time of appearing at All India Civil Services Examination in 1971. On the basis of selection she was appointed in 1972. She applied to the University for correction of

hull

the date as 5.4.1950 but that was rejected by the University as well as the Government. The Chandigarh Bench of the Central Administrative Tribunal however had granted that alteration. The material relied upon by the Government servant consisted of a birth certificate given by the Registrar and an affidavit made by the mother. Birth certificate of elder sister and an horoscope were also relied. The Supreme Court was pleased to set aside the order of the Tribunal with the above quoted observations. The facts in the instant case bear close proximity to those facts. Here also reliance is being placed on extract from Birth Register and two affidavits made by father. The original S.S.L.C., record was produced at the time of entering in service. The applicant is an educated and literate person. He had put in about 25 years service before realising the mistake. The claim of the applicant therefore cannot be accepted. To do so would be wholly unjustified and illegal.

36. IN RAM SHIA SHARMA (196 SCC (L&S) 605) the Supreme Court has been pleased to hold that the controversy is no longer res integra and that in a series of judgments of the Court it has been held that a Court or Tribunal at ^athe belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service records. The claim of the applicant could have been rejected in the earlier O.A., itself on

✓

Sub

this principle but the applicant was afforded one more opportunity of consideration of the matter by the respondents on merits. Even thereafter there is no change in the situation and in view of the principles enunciated by the Supreme Court the O.A., is liable to be rejected. We draw further support from the decisions of the Supreme Court in *BURN STANDARD CO., LTD., Vs. DEENABANDHU MUJUMDAR & ANOTHER* (IT 1995(4)SC 23) and *SENIOR HORTICULTURIST & ANOTHER Vs. MALLAIAH* (SLP.No.18332 of 1995 decided on 21-11-1995). Thus whether the case is considered with reference to initial decision of the respondents dated 25-6-1991 or the impugned order dated 26-8-1994 the conclusion is inevitable that the claim made by the applicant deserves to be rejected and the O.A., dismissed. We answer points 6 and 7 accordingly and pass the following order.

O R D E R.

O.A., is dismissed. There was no interim relief granted. No order as to costs.

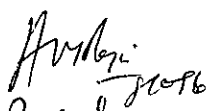

H. RAJENDRA PRASAD,
MEMBER (A)

04 OCT 96.


M.G. CHAUDHARI, J
VICE-CHAIRMAN.

Date: 4th October, 1996.

Pronounced in open Court.


Deputy Registrar (S)

GA.590/96.

To

1. The Secretary, Railway Board,
Union of India, Railbhavan, New Delhi.
2. The Chairman, Railway Board,
Railbhavan, New Delhi.
3. One copy to Mr. G. Ramachandra Rao, Advocate, CAT.Hyd.
4. One copy to Mr. N.R. Devra, Sr. CGSC. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. Copy to All Reporters as per standard list of CAT.Hyd.
7. One spare copy.

pvm.

Stewart 9/11/96
(178)

I COURT

TYPED BY

CHECKED BY

COMPALED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 4-10-1996

ORDER / JUDGMENT

M.A/R.A./C.A. No.

in

O.A.No. 590/96

T.A.No. (w.p.)

Admitted and Interim Directions

Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm

Six Spale Copies

केन्द्रीय प्रशासनिक अधिकरण. Central Administrative Tribunal दस्तावेज/DESPATCH - 8 NOV 1996 हैदराबाद बेंच HYDERABAD BENCH
