

35

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.460/99.

DATE OF ORDER :- 26-7-1999

BETWEEN :

Govindu, S/o Dargaiyah,
aged about 51 years,
Mason Gr.I,
Senior Section Engineer/W,
South Lalaguda,
SC Railway, Secunderabad.

.. APPLICANT

A N D

1. Divisional Railway Manager,
Hyderabad Division,
South Central Railway,
Rail Nilayam, Secunderabad.
2. Sr.Divisional Personnel Officer,
Broad Guage, South Central Railway,
Rail Nilayam, Secunderabad.
3. Senior Section Engineer/W,
South Central Railway,
South Lalaguda, Secunderabad.
4. Assistant Engineer/Buildings,
Hyderabad Division, SC Railway,
Secunderabad.

.. RESPONDENTS

Counsel for Applicant : Mr. S. Lakshma Reddy

Counsel for Respondents : Mr. D.F.Paul, SC for
Railways.

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN.

O R D E R.

1. The question of change of birth date from 1.8.1943 to 1.8.1948 ~~fails~~ for consideration in this O.A. Permission was refused to allow such change to be made in the service record of the applicant. Hence this O.A.
2. The emphasis was mainly on the proposition that the change contemplated by the applicant was hit by the principles of laches and delay. The applicant was engaged

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as a casual labour on 19.3.1968 and subsequently he was promoted as Khalasi Helper on 1.8.1978. According to the applicant, the seniority list of Khalasi Helper was published in 1981 and displayed on the Notice Board when it came to the notice of the applicant that there was an error in recording his date of birth as "1.8.1943" instead of "1948" and therefore, he made a representation for correcting the said error. The representation was forwarded to the 4th respondent by letter dated 24.12.1989. Since no action was taken, the applicant made a representation to the Divisional Secretary, South Central Railway Mazdoor Union addressed to the 3rd respondent on 9.12.1994. Even then since no action was taken and the applicant found that they again mentioned 1.8.1943 in the provisional seniority list of Skilled Artisan staff, he made a representation on 3.7.1996 to the 2nd respondent for correcting his date of birth which was forwarded by the 4th respondent to the 2nd respondent but the same was rejected. It is against the said rejection that the applicant has approached this Tribunal for getting his grievance redressed.

3. By no stretch of imagination I can retrieve the applicant from the disabilities and incapacities flowing from the principles of laches and delay. Even if I agree with the submission made by the learned counsel for the applicant that after being engaged on 19.3.1968 as a casual labourer with the 4th respondent, it was only in 1981 that the applicant came to know about the alleged error in his date of birth, I fail to appreciate why he did not make any representation within six months from the date of publication of the seniority list of Khalasi Helpers in 1981.

4. In fact on the basis of the above ground itself, the original application deserves to be rejected in view of the fact that the alleged cause of action had arisen before 3 years from the date of the Administrative Tribunals Act, 1985 coming into force. This ground alone is sufficient not to entertain any claim in respect of the applicant's birth date. However, instead of summarily rejecting the O.A. on this ground, I will still look into the legitimacy of the claim advanced by the applicant.

5. The learned Standing Counsel Mr. Paul for the respondents drew my attention to the declaration made by the applicant expressing his willingness to go to Irac on deputation, the xerox copy of which is filed as Annexure-4 to the reply statement by the respondents. In this declaration which was certified on 15.9.1981 by the Central Wing Officer to be correct, the applicant himself had mentioned his date of birth as 1.8.1943. The learned Standing Counsel also drew my attention to Annexure-5 to the reply statement which also reveals that his birth date was stated as 1.8.1943. The applicant unfortunately has not filed any rejoinder or explanation to the satisfaction of the Tribunal as to how his birth date came to be recorded as 1.8.1943 in the aforesaid two annexures by the applicant himself, if it was his contention that his birth date was 1.8.1948 and not 1.8.1943. In that view of the matter, even if delay and laches are not taken into account at all, the applicant's case fails on the substantive aspect of the matter that his correct date of birth was 1.8.1948 and not 1.8.1943 as recorded in the service book of the applicant.

6. The learned Standing Counsel for the respondents also drew my attention to the decision of this Tribunal in OA No.1252/97 dated 18.2.1998 in which after taking into consideration that the applicant had not produced any document or School Leaving Certificate to state that his date of birth was 10.3.1950 at the time of his actual appointment and even after the medical test his age was decided as 29 years by the medical authorities when the documentary evidence was available on record to show that his date of birth was 1940, the applicant could not object to the entry of his date of birth as 1940 by filing an application in 1996. It is further observed in the said order that the Apex Court merely directed that the change of date of birth at the fag end of service should not be accepted unless there was extraordinary evidence available for correction of the date of birth. The Tribunal further observed that in the case before it there was no proof for accepting the request of the applicant except his initial application wherein his date of birth was recorded as 10.3.1950. But his application at the time of joining service was not a real proof to come to the conclusion that the applicant had a case for correction of his date of birth. The official documents right from the date of his joining the service showed his date of birth as 1940 and that had been accepted by him number of times and therefore, the Tribunal found no reason to allow the application for correction of the date of birth.

7. On a judicial review made by the High Court of Andhra Pradesh of the CAT order in WP No.10438/98 decided on 20th April,1998 it was held that since no acceptable

material had been placed either before the Tribunal or before the High Court, the High Court did not find any error in the impugned order and dismissed the writ petition.

8. In the case before us ~~not only~~ the applicant has not rendered satisfaction to the Tribunal nor any positive evidence ~~is~~ produced to show that he was born in 1948. But no satisfaction whatsoever has been rendered by the applicant as to how the applicant himself mentioned his date of birth as 1.8.1943 in Annexures-4 & 5 of the reply affidavit. In such cases, where a discrepancy with regard to the date of birth is raised by a Government servant, the evidence which could most reliably be taken into consideration is the School Leaving Certificate or the Municipal certificate or the date recorded in the Birth and Death Register maintained by the local authority of the place where the Government. ^{although} employee was born. During the course of arguments/ it was contended by the learned counsel for the applicant that the applicant was an illiterate person and that there was no question of producing the School Leaving Certificate, it came to light that he had studied upto III standard and therefore, it would appear that the applicant was trying to suppress the material evidence which could legitimately be taken into consideration by the Tribunal in arriving at a proper conclusion. The applicant has not produced any third party affidavit so as to corroborate his claim that he was born in 1948 and not in 1943.

9. The main plank of the applicant's case is that in the Service Card for Casual labourers, the xerox copy of which is produced by the applicant as Annexure-1 to the

10

OA his date of birth was recorded as 1948 as also in Annexure-2. However, in both these annexures mere "1948" has been mentioned in item No.3—"Date of birth" and not the exact date of birth. However, in the subsequent annexure at page 16 of the OA produced by the applicant giving particulars of service, the date of birth is mentioned as 1.8.1943. An affidavit was made to impress upon me that the year of birth as mentioned on page 16 of the OA was in fact 1948 but the same was tampered with so as to make ^{it} read as 1943. However, ~~on~~ a close look at the birth date mentioned in the Annexure at page 16, no tampering seems to have been resorted to and therefore, the submission made in that regard by the learned counsel for the applicant cannot be accepted. All said and done it cannot be denied that there was a serious doubt regarding the applicant's date of birth and it was for the applicant firstly to make an application for rectification within the time prescribed by law and secondly to produce a substantive evidence to satisfy the Tribunal that the correct ~~year~~ of birth is 1948 and not 1943. I am therefore not convinced regarding the case sought to be made out by the applicant that his correct date of birth was 1.8.1948 and not 1.8.1943 and both on account of lack of substantive evidence as also the delay and laches committed by the applicant, this O.A. fails.

10. In the resut, the O.A. ~~fails~~ and is dismissed; however with no order as to costs.

D.H. Nasir
(D.H. NASIR)
VICE-CHAIRMAN.

Dated the 26th day of July, 1999.

D.H.N.
16/7/99

1st AND 2nd COURT

COPY TO:-

1. HDHNS
2. HHRP M(A)
3. HOSDP M(J)
4. D.R. (A)
5. SPARE

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD;

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD.
MEMBER (ADMIN)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMIN)

THE HON'BLE MR. D.S. JAI PARAMESHWAR:
MEMBER (JUDL)

ORDER: Date. 26.7.99

ORDER / JUDGMENT

MA./RA./CP.NO
IN
DA.NO. 460/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

(16 copies)

