

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/00181/2014

Order reserved on : 30.1.2015

Date of Order: 5.2.2015

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Jagdish Prasad 'G' S/o Late Shri Gopi Chand, aged about 50 years, resident of Railway Quarter No.481-J, Opp. Pani Ki Tanki, Near Ajmeri Gate, Railway Colony, Phulera and last employed on the post of Fuel Issuer under Senior Section Engineer(Loco), North Western Railway, Phulera, Jaipur Division, Phulera.

.....Applicant

(By Advocate Mr. C.B.Sharma)

VERSUS

1. Union of India, through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
3. Divisional Mechanical Engineer(Loco), North Western Railway, Jaipur Division, Jaipur.
4. Senior Section Engineer (Loco), North Western Railway, Phulera, Jaipur Division, Phulera.

.....Respondents

(By Advocate Mr. Anupam Agarwal)

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ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

The applicant has filed the present OA praying for the following reliefs:-

- 8.(i) That entire record relating to the case be called for and after perusing the same respondents may be directed to treat the date of birth of the applicant as 18.5.1963 instead of 18.5.1953 by quashing letter dated 9.1.2014 (Annexure A/1) with the letters dated 29.11.2012 and 29.5.2013 to the extent of retirement of applicant (Annexure A/9 and A/16) and applicant deemed in service beyond 31.5.2013 with all consequential benefits.
- ii) That the respondents be further directed to treat the applicant on duty beyond 31.5.2013 and be allowed to work till 31.5.2023 till the completion of age of 60 years taking into account the date of birth as 18.5.1963 instead of 18.5.1953 with all consequential benefits.
- (iii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just proper under the facts and circumstances of this case.
- (iv) That the cost of this application may be awarded.

2. The brief facts of the present OA are that the applicant was appointed as Gr.'D' on 28.11.1986 due to the sudden death of his father. That while preparing the service book of the applicant the respondents wrongly mentioned the date of birth as 18.5.1953 instead of 18.5.1963 and also manipulated the signature of the applicant. That the respondents issued a list of employees who were to retire, in which the name of the applicant also find place at Sl.No.10. That the applicant preferred an OA No.455/2013 which was disposed of vide order dated 19.11.2013(Ann.A/2) with the

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directions to respondents No.1 to re-examine the case of the applicant with regard to correct date of birth. The respondent No.1 vide letter dated 9.1.2014(Ann.A/1) rejected the claim of the applicant for recording the correct date of birth as 18.5.1963 instead of 18.5.1953. Being aggrieved by this order the applicant has filed the present OA.

3. The Ld. Counsel for the applicant submitted that the correct date of birth of the applicant is 18.5.1963 as per the Transfer Certificate and Secondary School Examination Mark sheet for the year 1984 and 1985 in which the applicant was declared failed. As per the PAN card as well as Ration Card and Adhar Card the date of birth of the applicant is 18.5.1963. (Ann.A/13 and A/14). He also referred to the office order dated 18.12.1986 in which also his date of birth has been mentioned as 18.5.1963 and it is signed by the same officer who has signed his Service Book at Annexure A/8. In the service book the date of birth of the applicant has been mentioned as 18.5.1953(Ann.A/8). The Ld. Counsel for the applicant submitted that the respondents managed to get the signature of the applicant below date of birth by some other person to justify their action. The applicant never put any signature on the first page of the service book. The Ld. Counsel further submitted that there

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is no record available on the basis of which the date of birth of the applicant has been recorded as 18.5.1953.

4. The learned counsel for the applicant submitted that the similar controversy has been decided by this Tribunal in OA No.94/2001 (J.P.Bairwa Vs. Union of India & others) vide order dated 19.10.2001 (Ann.A/19). He referred to another case of Hari Prasad Meena Vs. Union of India & Ors. in OA No.616/2013 vide order dated 18.2.2014(Ann.A/20). Therefore, he argued that the action of the respondents in not correcting the date of birth of the applicant is against the provisions of Article 14, 16 and 21 of the Constitution of India as in similar circumstances the respondents allowed such corrections. The applicant is not making request for a change of date of birth but only requesting for correction of clerical error thus the provisions of IREC Part I Para 225(4)(iii) are not applicable in the case of applicant and therefore, the order of the respondents No.1 dated 9.1.2014 is liable to be quashed and set aside. Therefore, the Ld. Counsel for the applicant submitted that the respondents be directed to correct the date of birth as 18.5.1963 instead of 18.5.1953 and provide him all consequential benefits.

5. On the other hand, the respondents have filed their reply. In their written reply the respondents stated that the applicant has no reason to be aggrieved of the order dated 9.1.2014 (Ann.A/1) because it nothing but reiteration of his

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date of birth as recorded in the service records. As per the law laid down by the apex court one cannot challenge the date of birth at the fag end of his service. Applicant has already been retired on 31.5.2013, therefore, at this stage any challenge to his date of birth is without any substance. The applicant has signed the service record just below of his date of birth. He never protested earlier about his date of birth. The seniority list was also published on 31.7.2007(Ann.R/1) in which also his date of birth has been shown as 18.5.1953 but even at that point of time the applicant did not protest about his date of birth. Thus in view of the principle of estoppels he has no right to allege anything contrary to what was recorded in his service record. Mere submission of educational certificates is of no relevance. The Hon'ble Supreme Court has deprecated such practice as it involves large repercussions. Therefore, any rejection on the basis of Para 225(4)(iii) of IREC Part I is just and legal.

6. With regard to the submissions of the Ld. Counsel for the applicant regarding PAN card, Ration Card, Adhar Card the respondents have stated that they are new documents and they were never produced before the authorities at the time of recording of date of birth, therefore, they have no relevance now for consideration of relief, therefore, same deserve to be ignored. That as per rules in case of an

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educated employee the date of birth is to be declared by the employee himself. Since the service book was prepared in 1986, therefore, at this late stage it cannot be admitted that the applicant never put any signature on the first page of service book. On the contrary applicant never protested in this regard till 2012. Therefore, in view of principle of estoppels he has no right to allege anything contrary to the same.

7. The respondents have submitted that as per rules an employee can ask for correction/change in the date of birth before completion of probation period or three years whichever is earlier. Admittedly, the applicant represented only on 28.3.2013 for the first time, therefore, his request for change in his date of birth is not within the ambit of the rules. He never protested during his entire service prior to the said date, therefore, there is no illegality in the action of the respondents in rejecting the representation of the applicant.

8. In response to the submissions of the applicant with regard to the order dated 18.12.1986(Ann.A/7) the respondents stated that the signature on this order by the same authority who signed the service book of the applicant (Ann.A/8) did not absolve the employee of his own responsibility. The applicant should have brought this fact to the knowledge of the competent authority within the

prescribed period as per rules. He failed to do so. Now he has no right to allege anything contrary to what had been recorded. Applicant has no right for correction in the date of birth. He has rightly been retired on 31.5.2013.

9. The respondents have submitted that the order of the Tribunal dated 18.2.2014 in OA No.616/2013 (Ann.A/20) has been passed after the order dated 9.1.2014 (Ann.A/1) passed by the respondent No.1, therefore, applicant cannot claim any parity on this basis.

10. Merely, because the applicant has a different date of birth in the certificate then that of service record does not entitle him for change of date of birth in service record.

11. With regard to the submission of the applicant about the case of J.P.Bairwa Vs. Union of India & Ors. in OA No.94/2001 decided on 19.10.2001, the Ld. Counsel for the applicant submitted that every matter has to be considered on its own facts and circumstances. The applicant has not been discriminated as per rules, therefore, OA has no merit and it should be dismissed.

12. Heard the learned counsel for parties, perused the documents on record and the case law as referred to by the learned counsel for parties.

13. The learned counsel for the applicant argued that the applicant is not seeking any change or correction in the date

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of birth. His prayer is that a clerical error has occurred in his service record regarding the correct date of birth which needs to be corrected and, therefore, Rule 225(4)(iii) of IREC Vol.I is not applicable. A clerical error can always be corrected. In support of his arguments he relied upon the order of this Tribunal in the case of J.P.Bairwa Vs. Union of India & Ors. in OA No.94/2001 decided on 29.10.2001, Hari Prasad Meena Vs. Union of India and Ors. in OA No.616/2013 decided on 18.2.2014 and Munshi Lal Meena Vs. Union of India and Ors. in OA No.808/2013 decided on 23.4.2014. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Police, Bombay and Another Vs. Bhagwan V. Lahane 1997(1) SCC (L&S) 719 decided on 26.11.1996 and Ashgar Khan Vs. Union of India & Ors. 1998(2) SCC (L & S)1428 decided on 2.3.1998.

14. On the other hand the learned counsel for the respondents argued that the representation of the applicant has rightly been rejected vide order dated 9.1.2014. It is settled law that no employee has a right to ask for a change in his date of birth at the fag end of his career. The case of the applicant is covered by the provisions of Para 225(4)(iii) of IREC Part I. He himself signed the service book in which his date of birth has been mentioned as 18.5.1953 (Ann.A/8). He argued that now after 27 years the averment

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of the applicant that he did not sign the service book cannot be accepted. No malafide has been alleged by the applicant as to why anybody else would put the signature of the applicant on his service book, therefore, now just before his retirement he could not have made the prayer for change in his date of birth and, therefore, he has rightly been retired on 31.5.2013. In support of his arguments the Ld. Counsel for the respondents relied upon the following judgments of the Hon'ble Supreme Court:-

1. State of MP and others Vs. Premlal Srivas 2011 Vol.2 SCC(L&S)574;
2. State of Haryana Vs. Satish Kumar Mittal and another 2010(2) SCC(L&S) 740;
3. State of Gujarat and others Vs. Vali Mohmed Dosabhai Sindhi AIR 2006 Supreme Court 2735 and
4. State of Uttranchal and others Vs. Pitamber Dutt Semwal 2006(1) Supreme Court Cases (L & S)106.

The Ld. Counsel for the respondents laid emphasis on the provisions of Para 225(4)(iii) of Indian Railway Establishment Code, Part-I, which is with regard to the change of date of birth. The relevant para of the same is quoted below:-

"(iii) where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended."

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The respondents have also relied on this Para 225(4)(iii) of Indian Railway Establishment Code, Part I in their letter dated 9.1.2014 (Ann.A/1) while rejecting the claim of the applicant for the change in the date of birth. However, just below the provisions of Para 225(4)(iii) of IREC, the Railway Ministry has given a decision, which is quoted below:-

“Railway Ministry’s decision- (a) When a candidate declares his date of birth he should produce documentary evidence such as Matriculation Certificate or a Municipal Birth Certificate, if he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be School Leaving Certificate, a Baptismal Certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age.”

As per this decision of the Railway Ministry, when a candidate declares his date of birth, he should provide documentary evidence such as Matriculation Certificate or a Municipal Birth Certificate. Therefore, the arguments of the learned counsel for the respondents that the date of birth of the applicant in his service book has been recorded on the basis of his oral submissions cannot be accepted. It was also the duty of the respondents to insist on a documentary proof of the date from the applicant. In the service book of the applicant (Ann.A/8) against the column of educational qualifications it has been shown that the applicant is 9th Pass, therefore, the respondents should have asked the applicant to produce a copy of the certificate which shows

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that the applicant is 9th Pass which would have given the correct date of birth of the applicant. The applicant has produced copy of his Mark Sheet of Board of Secondary Education, Rajasthan, Ajmer of Secondary School Examination 1984 in which the date of birth is recorded as 18.5.1963. He has also produced the Mark Sheet of Secondary School Examination 1985 of Board of Secondary Education, Rajasthan, Ajmer in which also his date of birth is 18.5.1963. These mark sheets show that the applicant appeared in the Secondary School Examination in 1984 and 1985 but he failed in both the years. However, it gives proof of the date of birth of the applicant as 18.5.1963.

15. Moreover, the applicant has produced an office order dated 18.12.1986(Ann.A/7) issued by the same officer who has signed his service book on the same date i.e. 18.12.1986. In the office order dated 18.12.1986(Ann.A/7) the date of birth of the applicant is recorded as 18.5.1963 and his educational qualifications has been shown as 9th Pass. Even on this office order there are signature of the applicant as a token of receipt of 2 copies of this order. The respondents neither in the written statement nor during the arguments have rebutted the office order dated 18.12.1986 (Ann.A/7). Obviously, there is a clerical error either in the office order dated 18.12.1986 or in the service book (Ann.A/8) of the applicant regarding the date of birth. In this

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office order (Ann.A/7) the date of birth of the applicant has been shown as 18.5.1963 and in the service book it has been shown as 18.5.1953. The respondents have not tried to reconcile between two date of birth as to which of them is the correct date of birth of the applicant. In the present OA the applicant is not asking for change of the date of birth but he is only requesting for a correction in the clerical error. The respondents should have verified the Secondary School Mark Sheet of the Board of Secondary Education produced by the applicant. Similarly, they could also verify the Transfer Certificate produced by the applicant issued from Rajkiya Madhyamik Vidyalaya, Fulera(Jaipur) Raj.(Ann.A/3) in which his date of birth has been recorded as 18.5.1963.

16. I have carefully perused the case law referred to by the learned counsel for respondents with regard to the correction of date of birth at the fag end of the service career. The Hon'ble Supreme Court has time and again held that an application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service career. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him in their respective promotions are affected in the process. This is an important aspect, which may not be lost sight of by the Court or the Tribunal while examining the grievance of a

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public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the concerned public servant, the Court or the Tribunal should not issue a direction, on the basis of the materials which makes such claim only plausible. The onus in such cases lies on the applicant to prove wrong recording of his date of birth in the service book. However, the Hon'ble Supreme Court in the case of State of Haryana Vs. Satish Kumar Mittal and Another 2010 (2) SCC (L&S)740 has held that a clerical error can always be corrected. In the present OA as stated earlier it is a case of correction of clerical error. Therefore, suitable directions can be given to the respondents in this regard.

17. The learned counsel for the respondents argued that the applicant has already been retired on 31.5.2013 treating his date of birth as 18.5.1953, therefore, at this stage he is not entitled any relief.

18. On the contrary, the Ld. Counsel for the applicant drew my attention to the judgment of the Hon'ble Supreme Court in the case of Ashgar Khan Vs. Union of India & others 1998 SCC(2) (L&S)1428 in which the Hon'ble Supreme Court has held that the High Court should have given a finding on the correct date of birth of the applicant and that the writ petition could not have been disposed of as having become

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infructuous because of the petitioner had retired during the pendency of the writ petition even on the basis of the revised date of birth. I have carefully perused the judgment of the Hon'ble Supreme Court in the case of Ashgar Khan(supra) and I am of the opinion that the ratio decided by the Hon'ble Supreme Court in the case of Ashgar Khan would squarely be applicable under the facts and circumstances of the present OA. In the present OA the date of superannuation of the applicant would be 31.5.2023 if the prayer of the applicant for correction of the clerical error in his date of birth is accepted. Therefore, in view of the law laid down by the Hon'ble Supreme Court this OA cannot be disposed of without deciding it on the merits of the case even if the applicant has been retired by the respondents on 31.5.2013. The respondents in the present OA have not produced even one document to show that on what basis the date of birth of the applicant was recorded as 18.5.1953 in his service book at the time of his initial appointment.

19. The Ld. Counsel for the respondents vehemently argued that the service book has been signed by the applicant as a proof that his date of birth as recorded in service book as 18.5.1953 is the correct date of birth. A similar controversy has already been decided by this Tribunal in OA No.94/2001 in the case of J.P.Bairwa Vs. Union of India & others vide order dated

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19.10.2001(Ann.A/19) and in OA No.808/2013 in Munshi Lal Meena Vs. Union of India & others decided on 23.4.2014. In these orders it has been held that even if the applicant has signed in the service book below the entry of date of birth but it cannot be taken away his right for correction in the clerical error. The applicant may have signed due to his negligence but it would not be made to suffer for his negligence. The applicant will face undue hardship if this clerical error is not corrected. Needless to say that the applicant is not responsible for this clerical error. Entries in the service book are recorded by the respondents. The ratio decided by this Tribunal in these two OAs (OA No.94/2001 and OA No.808/2013) is squarely applicable in the facts and circumstances of the present OA.

20. Therefore, the respondents are directed to correct the clerical error made in the service record of the applicant with regard to his date of birth as is evident from the copy of the Mark Sheet of Board of Secondary Education, 1984 and 1985 and the Transfer Certificate of the applicant(Ann.A/3). However, the respondents, before carrying out such correction, are also directed to verify genuineness of the Marks Sheet and Transfer Certificate and if the Marks Sheets of the Board of Secondary Education and the Transfer Certificate as produced by the applicant are genuine then the respondents shall correct the clerical error made in the

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date of birth of the applicant. The respondents are further directed to carry out this exercise within a period of three months from the date of receipt of a copy of this order.

21. With these observations and directions, the present OA is disposed of with no order as to costs.

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(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/