

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**OA No. 291/00522/2014
with MA No/291/00036/2016**

Order Reserved on : 08.03.2016

Date of Order: 29/03/2016

Coram

Hon'ble Ms. Meenakshi Hooja, Member (A)

Panchu Singh Son of Shri Chittar Singh, aged about 49 years, resident of Buda Pushkar, Kans, District Ajmer and presently working as Pipe Fitter Grade- II, Under Senior Section Engineer (Water Supply), Near Divisional Railway Manager Office, North Western Railway, Ajmer Division, Ajmer.

.....Applicant

(By Advocate Mr. C.B. Sharma)

VERSUS

1. Union of India through its General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur 302017.
2. Railway Board, through its Chairman, Rail Bhawan, New Delhi.
3. Divisional Railway Manager (Estt), North Western Railway, Ajmer Division, Ajmer.
4. Senior Divisional Personnel Officer, North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate Mr. M.L. Goyal)

ORDER

This OA has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 regarding correction in his date of birth, seeking the following reliefs:

- (i) That entire record relating to the case be called for and after perusing the same respondents maybe directed to treat the date of birth of the applicant as 01/01/1965 instead of 01/02/1959 by quashing letters dated 09/09/2014 &

10/02/2012 (Annexure - A/1 & A/2) with all consequential benefits.

- (ii) Any other order/directions of relief maybe granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iii) That the costs of this application may be awarded.

2. When the case came up for hearing on 08.03.2016, Ld. counsel for the applicant, submitted that vide Annexure A/1 dated 09.09.2014, it has been informed that change of date of birth of the applicant is not warranted and that vide letter dated 10.02.2012 (Annexure A/2) he was already informed earlier of the decision of the Railway Board, which considered the matter and decided that change in the date of birth of the applicant entered in his service record cannot be made as per rules. In this connection, counsel for applicant submitted that as per Annexure A/3 which is the Transfer Certificate (T.C.) issued by the Education Department, the date of birth of the applicant is mentioned as 01.02.1965, and also in many official documents including Annexure A/5 which is the seniority list of Pipe Fitter Khallashi for 1995. However, in the seniority list dated 24.05.2001 (Annexure A/6) the date of birth of applicant has been shown as 01.02.1959, but in a subsequent official document dated 02.07.2005 (Annexure A/7) his date of birth was again shown as 01.02.1965. The applicant, by this entry of his date of birth as 01.02.1965 felt assured that his date of birth stands corrected but later came to know that in his Service Book, the date of birth is 01.02.1959 and he filed a representation dated 04.04.2006 (Annexure A/8) to correct the entry in his Service Book as in the TC of the Education Department his date of birth is clearly mentioned as 01.02.1965. Later vide Annexure A/9 dated

31.03.2008 it was informed (under RTI Act provisions) that the basis of recording date of birth is the 8th Pass Duplicate School Certificate and the certificate is being verified. However, after that, vide Annexure - A/2 dated 10.02.2012, the applicants' case for change of date of birth was rejected and the same position has been reiterated in Annexure A/1 dated 09.09.2014. Counsel for applicant further submitted that again in the seniority list of 2013 (Annexure A/10) his date of birth has been shown as 01.02.1959. During the course of arguments, counsel for applicant also submitted RTI information obtained on 18.11.2014 regarding the Service Book of the applicant wherein on the first page his date of birth has been shown as 01.02.1959 in numbers and 01.02.65 in words (in Hindi) initially, with cutting on the word 65 to read as 59 and that in the leave account also his date of birth has been shown as 01.02.65 in many places (The documents submitted were kept on record, being relevant to the case).

3. In the above context, counsel for applicant contended that the case of the applicant is one of correction in date of birth and not for change in date of birth. He submitted that in similar matter in which OA No.808/2013 (Munshi Lal Meena Vs Union of India & Others) was filed before this Bench of the Tribunal, the matter was decided vide order dated 23.04.2014 (Annexure A/11) whereby the respondents were directed to correct the clerical error made in the service record of the applicant with regard to his date of birth as was evident from the certified copy of the certificate of Secondary School Examination of the applicant. The order has also been

implemented by the Respondents vide their order dated 22.08.2014 (Annexure A/13). Counsel for applicant also contended that Annexure A/12 order of the Tribunal dated 18.02.2014 passed in OA No. 616/2013 (Hari Prasad Meena Vs Union of India & Others) also relates to a similar controversy in which also the respondents were directed to correct the clerical error made in the service record of the applicant. Thus the applicant's case is fully covered by both the orders of the Tribunal and, therefore, counsel for applicant prayed for allowing the instant OA.

4. Per contra, counsel for respondents submitted that the applicant was appointed on 11.12.1989 and in his Service Book itself (on the first page, which also was submitted by the counsel for respondents during the hearing) on the basis of voluntary declaration, his date of birth has been entered as 01.02.1959 and the applicant has also signed on the same page. He further submitted that as per Rule 225(4)(iii) of the Indian Railway Establishment Code, correction in date of birth can be made only within three years after joining of service but in the present case, the applicant has raised objection after so many years and correction of date of birth at the far end of the career is not permissible. Moreover in Para 4(ii) of the Original Application, it has been mentioned that the applicant came to know about entering of his date of birth as 01.02.1959 in the year 2001 and even thereafter he did not represent the matter and only made a representation after five years on 04.04.2006 (Annexure A/8) which is highly delayed. On this ground, counsel for respondent

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contended that the Original Application is hopelessly time barred and relied upon the judgment of the Hon'ble Apex Court in State of Orissa vs. Chandra Sekhar Mishra (2002) 10 Supreme Court Cases 583 on the point of limitation. With regard to correction in date of birth not being permissible at the fag end of the career, counsel for respondent referred to the judgments of the Hon'ble Supreme Court in Union of India vs. Harnam Singh AIR 1993 SC 1367 as well as in State of Maharashtra and Others Vs Gorakhnath Sitaram Kamble & Others (2010) 14 Supreme Court Case 423 in support of his contention. Counsel for respondent also submitted that the case of the applicant is different from the cases of Munshi Lal Meena (OA No. 808/2013) and Hari Prasad Meena (OA No. 616/2013) and orders of this Tribunal in those cases as at Ann.A/11 and Ann.A/12 are not applicable in the case of the present applicant. Counsel for the respondents thus prayed for the dismissal of the OA.

5. Considered the aforesaid contentions and perused the records. From a perusal of first page of Service Book of the applicant (submitted by counsels for both the parties) it is seen that in column 12 pertaining to date of birth, the date of birth of the applicant has been entered as 1.2.1959 in numbers while in words (in Hindi) it has been written as 1.2.65 but the word 65 has been cut and 59 written in its place. In Column 13 which pertains to Educational qualifications, the applicant has been shown 8th Pass. It is further noted that the first page of Service Book has been signed by the applicant himself. Thus it appears that at the time of

signing on first page of Service Book, the applicant made no objection to the date of birth being clearly written as 01.02.1959 in numbers and also written in words in Hindi as 01.02.1959 (after making a cutting on the word 65) It is further noted that however, in the copy of Transfer Certificate filed by the applicant as Ann.A/3 the date of birth of the applicant is shown as 01.02.1965 and the applicant is said to have left school on 16.05.1981 after passing class 8th. It is also noted that the medical certificate (Annexure A/4) issued at the time of his appointment by Medical Department, Western Railway in November, 1989, the age of the applicant has been mentioned as 24 years. It has been averred in the OA that the applicant was appointed on 11.12.1989 and the age being given in the medical certificate as 24 years, also indicates that the date of birth of the applicant is of the year 1965. It is further seen that in the seniority list of Pipe Fitters issued in the year of 1995 (Annexure A/5), the date of birth of the applicant has been shown as 01.02.1965, but later in the seniority list of 2001 (Ann.A/6) it has been shown as 01.02.1959. Again in the year 2005 in an official document dated 02.07.2005 (Annexure A/7) the date of birth of the applicant is shown as 01.02.1965. It is also noted from the certified copy of leave account obtained by the applicant under RTI (and submitted during the course of hearing) in certain pages pertaining to years e.g. 1989-92, 1993-94, 1995-96 and 97, the date of birth of the applicant is shown as 01.02.1965. In the seniority of 2013 (Annexure A/10) again the date of birth has been shown as 01.02.1959. There is also a communication made on behalf of the Sr. Division Personnel Officer, Ajmer vide letter dated

31.03.2008 (Annexure A/9) in which it has been stated that the date of birth of the applicant has been entered as 01.02.1959 in his service book on the basis of the Duplicate school certificate and further that this certificate is being inquired into.

7. From the above, it is seen that the official documents themselves show that two dates of birth i.e. 01.02.1959 and 01.02.1965 have been recorded in different official documents. There is even variation in the date of birth as mentioned as 01.02.1965 in the School Transfer Certificate (filed as Annexure A/3) and the first page of Service Book (submitted during the course of hearing) which shows it as 01.02.1959.

8. However, the representation of the applicant for correction in his date of birth was rejected by the Railway Board and the applicant was informed vide letter dated 10.02.2012 (Annexure A/2) that no change in date of birth can be made as per rules and letter dated 09.09.2014 (Annexure A/1) reiterated the aforesaid decision.

9. Though it has been argued by the counsel for respondents that the applicant filed belated representation in the year 2006 i.e. almost 25 years after initial appointment, and his request has justly been rejected being not in accordance with the rules especially Para 225(4)(iii) of the Indian Railway Establishment Code and that as per ruling of the Hon'ble Apex Court in a catena of judgements, that change of date of birth is not permissible at the far end of the career, but in this case it is noted that as brought out above, the Respondents themselves have shown two

dates of births in their own official documents - in some it is 01.02.1959 and in others it is 01.02.1965. Thus, the case of the applicant appears to be not just one regarding change of date of birth but also for correction and consistency of the applicant's date of birth in all the official records. For this a proper examination and verification of documents (including the Duplicate Transfer Certificate filed as Annexure A/3 on the basis of which the applicant has claimed his date of birth to be as 01.02.1965) is required to be made by the respondents.

10. Thus taking into account the above analysis and also keeping in view the orders of this Tribunal passed in OA No. OA No.808/2013 (Annexure A/11) and OA No. 616/2013 (Annexure A/12), it is deemed appropriate to dispose of this Original Application with certain directions.

11. Accordingly, it is directed that the respondents may verify and reexamine the records as to how the different dates of births are being shown in the various official documents and also verify the genuineness of 8th pass Transfer Certificate (TC) filed as Annexure A/3 and thereafter decide upon the correct date of birth of the applicant, who may also be provided with an opportunity of hearing during this process. The respondents are further directed to complete the exercise at the earliest, and preferably within four months from the date of the receipt of a copy of this order.

The O.A. is thus disposed of as above with no order as to costs.

In view of the above, MA No/291/00036/2016 also stands disposed of.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER