

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./X.X. No. . 212 of 1998.

DATE OF DECISION 24.5.2001...

Dr. (Smt.) Anjali Chakraborty

APPLICANT(S)

S/Sri A.Roy, M.Chanda

ADVOCATE FOR THE APPLICANT(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Sri B.K.Sharma, Rly.standing counsel

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
- 5.

Judgment delivered by Hon'ble Admn.Member.

IC Ushah

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 212 of 1998.

Date of Order : This the 24th Day of May, 2001.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.K.Sharma, Administrative Member.

Dr.(Smt.) Anjali Chakraborty,
Wife of Sri P.K.Chakraborty,
Teacher Grade-I, Netaji Vidyapith
Railway Higher Secondary School,
N.F.Railway, Maligaon,
Guwahati-11. . . . Applicant.

By Advocate S/Sri A.Roy, M.Chanda.

- Versus -

1. Union of India,
through the General Manager,
N.F.Railway,
Maligaon, Guwahati-11.
2. General Manager,
N.F.Railway,
Maligaon,
Guwahati.
3. Chief personnel Officer,
N.F.Railway, Maligaon,
Guwahati-11.
4. Principal,
Netaji Vidyapith Railway
Higher Secondary School,
N.F.Railway, Maligaon,
Guwahati-11. . . . Respondents.

By Sri B.K.Sharma, Railway standing counsel.

O R D E R

CHOWDHURY J.(V.C)

In this application under Section 19 of the Administrative Tribunals Act 1985 the applicant has challenged Annexures G and H being Memorandum No.E/252/71/1(W) dated 13.8.98. The applicant has challenged the action of the respondents in restoring the original

1 C U Sharma

contd..2

entry in the date of birth of the applicant in the service book as well as application for the post of Teacher dated 6.12.66. The action of the respondents has been challenged on the ground that it was violative of the principles of natural justice and was done unilaterally without giving opportunity to the applicant and it is claimed that the applicant's date of birth is 1.5.1942 and not 1.10.1938 as reported by the respondents.

2. The facts relevant to the case are that the applicant was appointed as Substitute Teacher in Netaji Vidyapith Railway High School in 1963 and was regularly appointed on 23.8.67. Prior to the joining as a Teacher the applicant had joined in the year 1958 as a Clerk in the Commercial Branch of N.F.Railway. She resigned from this post in June/July 1962. At the time of filing of the O.A the applicant was working as a Grade-I Teacher, a Group C post. After expiry of 32 years of service the applicant was issued a memo dated 23.1.95 and a regular enquiry was conducted and penalty of reduction to the immediate lower time scale of pay was imposed for a period of 18 months with cumulative effect. The applicant had filed an appeal against the penalty imposed. As no action was taken by the respondents the applicant moved an application before this Tribunal which was registered and numbered as O.A.280/97 in which a direction was given to the respondents to dispose of the applicant's representation dated 18.12.96 within a month. As the respondents failed to dispose of the representation dated 18.12.96 the applicant approached this Tribunal by filing O.A.65/98. In the meanwhile the respondents confirmed the penalty imposed on the applicant. The applicant received letter No.E/252/

10 (US) hary

contd...3

57/125(W)D&A/Con dated 21.7.98 informing the applicant as under :

- "(i) In the application Form No.81478 submitted by your applicant seeking employment, the entry against date of birth has been overwritten as 1st May 1942 and charged for tempering of the document;
- (ii) Relying on the medical fitness certificate No.326 dated 23.8.67 he has come to the conclusion that the date of birth should be 3.10.1938;
- (iii) Being appointed as Junior Clerk sometime on 29.7.58, it would have been impossible for such appointment being underaged;
- (iv) It is also mentioned that the documents were produced before the Director, Forensic Science Laboratory, Assam, Guwahati. On examination the said authority has confirmed that the existing writing as 1st May 1942 is a produce of Original writing 1st October 1938 by overwriting in the said application form bearing No.81478 dated 6.12.66."

The applicant was given 15 days time to give reply. The applicant's request for extension of time was rejected. The applicant replied by a letter dated 4.8.98 denying the allegations made against her in the letter 21.7.98. Thereafter as per Annexure-H the original date of birth was restored as 1.10.1938 against 1.5.1942. It is stated to that as a consequence of changing the date of birth/1.10.1938 the applicant stood retired with effect from 30.9.1998 whereas as per age certificate available with the applicant the date of retirement should be 1.5.2002. It may be mentioned that the applicant has referred to the O.A.65/98 whereby she has challenged the penalty imposed on her. It is stated that only difference with respect to the issues raised in the aforementioned O.A. are that the respondents ^{have} ~~is~~ relied on forensic expert report for changing the date of birth. It was pointed out that the

16/11/98

contd..4

applicant had succeeded in the application filed against the penalty imposed on her. It is claimed that the respondents have referred to the overwriting made in the first page of the service book. The applicant stated that no action prejudicial to the applicant can be taken behind her back without affording her reasonable opportunity. The applicant was denied the reasonable opportunity to present her case. The age certificate available with the applicant as well as the report submitted by the Enquiry Officer proved that the date of birth of the applicant was 1.5.1942 and not 1.10.1938 as determined by the Railway authorities. This action has been taken by the respondents to retire her and to accommodate a person of their choice.

3. The matter was heard at length. Mr A.Roy, learned senior counsel assisted by Mr M.Chanda, learned counsel argued on behalf of the applicant. It was submitted that the first page of the service book as on 10.2.66 showed the date of birth of the applicant as 1.10.1938. It was discovered in the late nineties that the date of birth has been changed to 1.5.1942. It was submitted that in December 1966 when the applicant filed application for regularisation it was found that the date of birth ^{was} recorded as 1.10.38 and ^{entries on} the same was changed to 1.5.1942. As required by rules the ^{first} page of the service book have to be made by the hand of the applicant and accordingly the applicant made the changes in the first page of the service book by correcting the same to 1.5.1942. This entry was made on 11.12.1975 and has been authenticated by Controlling Officer of Netaji Vidyapith. Similarly the ^{were} changes ^{also} made in the application for appointment as Teacher. It was submitted that two consequences flowed from this action of changing of date of birth. The first was the initiation of penalty

contd..5

16 (15) Sharma

proceeding which was held as bad as tampering of the service book was not proved and also on failure to observe procedures. The second consequence was the reference to the forensic expert. The forensic expert gave his opinion that the entry on first page of the service book as well as on the application form for appointment as Teacher have been made by same person. Mr A.Roy, learned senior counsel for the applicant admitted that the changes in the service book and the application form had been made in the presence of the Principal. He submitted that the correction have been made on the basis of the supporting materials which have been endorsed by the Controlling Officer, namely, the principal. Such corrections remained as such from the year 1975 to 1998. During this period the respondents never disputed the endorsement made in the service record and did not dispute that the date of birth of the applicant was 1.5.1942. The learned counsel submitted that the service record was in the custody of the respondents and not the applicant. The applicant could not have on her own made the changes in the service book. He challenged the action of the respondents in restoring the date of birth as 1.10.1938 on the ground that the same was illegal and violative of the principles of natural justice. The applicant has sought for justice on account of the change made by the respondents unilaterally. He prays for setting aside the memorandum dated 13.9.98. The learned counsel referred to the judgments in Union of India vs. Harnam Singh, reported in AIR 1993 S.C 1367 and in Secretary and Commissioner, Home Department and others vs. R.Kirubakaran, reported in AIR 1993 S.C 2647 for the submission that date of birth if wrongly recorded can be corrected.

contd..6

K L Ushar

4. The respondents have filed written statement. It is mentioned therein that after the applicant joined as Teacher her service record was opened in February 1966 wherein the applicant made entries and has signed as well as given her left hand impression on the first page of the service record. In the year 1966 she has also made an application for regularisation of her service in the grade of Assistant Teacher, wherein also the applicant quoted her date of birth apart from other particulars. A reference is also made to the disciplinary proceeding whereby a penalty of reduction of pay to the immediate lower time scale for a period of 18 months was made. Some time in the 1993 it came to light that the date of birth originally recorded by the applicant had been completely scored off and the fresh overwriting had been made so as to make the date of birth appear to be "First May Nineteen forty two". Similarly the original application form bearing No. 81478 was also corrected to show the date of birth as "1st May 1942." The respondents have made reference to para 145 of the Indian Railway Establishment Code Vol.I 1959, which is extracted as under :

"145. Date of birth - (1) Every person, on entering Railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering Railway service. 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. In the case of illiterate staff, the declared date of birth shall be recorded by a senior Class III Railway Servant and witnessed by another Railway servant..."

""

(3) The date of birth recorded in accordance with this rule shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently .. The said para also provided for causing the alteration of date of birth so recorded by the President in the case of Gazetted

16 U Sharma contd..7

servants and GM in the case of non-gazetted servants subject to 4 conditions stipulated therein.

In the revised edition of 1985 of the said code the para has been renumbered as 225 and reads as under :

225. Date of Birth - (1) Every person, on entering Railway service shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering Railway service. In the case of literate staff the date of birth shall be entered in the record of service in the Railway servant's own hand writing. In the case of illiterate staff, the declared date of birth shall be recorded by a senior Railway servant and witnessed by another Railway servant ..."
"....."

(4) The date of birth as recorded in accordance with the rule shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently.

However, the said rule also provided for causing the date of birth to be altered by the President in the case of Gazetted Railway servant and GM in the case of Group C and D Railway servants as stipulated in the three conditions therein."

The rules provided that the date of birth can be altered by the President in the case of Gazetted Railway servant and by GM in the case of Group C and D employees. The applicant being a Group C employee the competent authority to alter the date of birth was GM and not any other person. It is claimed that tampering in the original date of birth was done by the applicant in her own hand writing without any authority and has been made for her own benefit. The matter regarding tampering the date of birth was referred to the Director, Forensic Science Laboratory, Assam, Guwahati in respect of the first page of service book and application form bearing No. 81478 dated 6.12.66. The Senior Scientific Officer of the office of the Director, Forensic Science Laboratory gave an opinion on 18.6.98 that the writings "1st May 1942" was a product of alteration of original writing 1st October, 1938 by over writing. As per provisions of rule

225 of the Indian Railway Establishment Code Vol.I 1985 the original date of birth declared by the employee is binding. A show cause notice was issued to the applicant by letter dated 21.7.98 requiring her to show cause as to why original date of birth as 1.10.1938 should not be restored. She was asked to give her reply within 15 days. The applicant wanted more time which was refused. The report of the Forensic Laboratory confirmed that the date of birth had been altered in the first page of the service record as well as the application form No. 81478 dated 6.12.66. The applicant replied to the show cause notice on 4.6.98. The Chief Personnel Officer found no merit in the applicant's reply and by memo dated 13.8.98 he passed an order recording the date of birth as 1.10.1938. He has passed a reasoned order dealing with all the objections of the applicant. It is mentioned in the written statement that the respondents have not alleged that the applicant herself made the overwriting. The show cause notice regarding the date of birth of the applicant was a separate matter and had not connection with the departmental proceeding and the same was based on finding of an independent authority, namely, on the report of the Director, Forensic Science Laboratory, Guwahati. The report of the Forensic Laboratory has enabled the respondents to find that the original date of birth has been overwritten. The conclusion of the date of birth has not been based either on the seniority list of LDC's but on the findings of the Forensic expert report. As per the Chapter I of Section B of Indian Railway Establishment Code Vol.I Revised Edition 1989, the age prescribed for entry to the grade of Commercial Clerk is between 18 to 25 years in terms of para 127(ii). There is no scope for any one to enter service below the age of 18 years unless specific

relaxation has been granted. If any relaxation has been allowed by any Court in respect of age relaxation that was under the peculiar circumstances of those cases and not under any general rule or law.

5. The learned counsel for the respondents referring to Annexure-F (page 48 of the O.A.) pointed out that on the first page of the service book the endorsement of the Controlling Officer of Netaji Vidyapith was made below the entry at sl.No.8 . He explained that sl.No.8 of the service book referred to the educational qualification and the endorsement was for the applicant's additional qualification. However, when the date of birth which appears at sl.No.6 was changed and arrow was made pointing to the endorsement made in sl.No.8. He stated that there was enough space for the endorsement against sl.No.6. He further argued that as the respondents have given show cause notice to the applicant before restoring the original date of birth. The action of the respondents cannot be questioned. He also referred to the following cases :

1. (1996) 6 SCC 584 (Haryana Urban Development Authority and another vs. Roochira Ceramics and another).
2. A.I.R. 1997 SC 2055 (Union of India vs. C.Rama Swamy and others.
and Rule 174(b) of Indian Railway Establishment Manual Vol.I.,

for the submission that the date of birth can be corrected only for a bonafide clerical error and that there can be no judicial review for the change of date of birth. In judicial review only the procedure can be questioned.

6. We have heard the parties at length and have given our anxious consideration to the submissions. The learned counsel for the applicant has fairly accepted that the changes in the first page of the service book as well as in the application form were made by the applicant in her own hand. In her explanation dated 4.8.98 to the show cause .

10/11/98

contd..10

8

notice dated 31.7.98 the applicant has stated as under :

"It is an admitted position that due to some error in calculation it was rectified/corrected to give the date of birth in full in the application form before its submission."

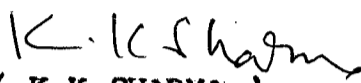
Normally the date of birth, unless otherwise required, is not given in words. One cannot make any mistake in the calculation of date of birth. The date of birth is fixed and is known to the person. The applicant has not mentioned as to what made her committed the mistake in recording her date of birth in the application form for the post of Teacher. It also offends ^{common} ~~in~~ sense to accept that a similar mistake would have been committed ^{while} ~~in~~ recording the date of birth in the service book also. In both the places the entries were made by the applicant. The Railway Rules have prescribed the procedure for the change of date of birth. Obviously, the procedure prescribed in Rule 145/225 has not been followed. The date of birth in the applicant's case was required to be changed under the authority of GM and could not have been changed by the Controlling Officer. We do not find any irregularity in the procedure adopted by the respondents in restoring the original date of birth. The applicant was given a show cause notice after the receipt of a report from the Forensic expert. The respondents have not arbitrarily come to a finding about the date of birth. On scientific scrutiny it has been established that the original entries of date of birth both in the application for appointment as well as in the first page of the service book were 1.10.1938 and that 1.5.1942 was overwritten. We are unable to accept the applicant's prayer for directing the respondents to change the date of birth to 1.5.1942. There is no illegality or arbitrariness in passing of the

contd.. 11

VC UShaw

impugned order dated 13.8.98. We find no reasons to interfere with the aforementioned order. The application filed by the applicant is accordingly dismissed.

There shall, however, be no order as to costs.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN