

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR**  
**BENCH, JABALPUR**

**CIRCUIT COURT SITTING HELD AT INDORE**

**O.A. NO. 867/1997**

Ramchandra, S/o. Mangilal,-  
Mason, under -  
Chief Inspector of Works (Survey  
& Construction), Makshi, W. Rly. .... **Applicant**

**V e r s u s**

Union of India & others,  
Western Railway, Represented thro'-

1. General Manager, Western Railway, Churchgate, Mumbai - 20.
2. The Divisional Rail Manager, Western Railway, Ratlam - 457 001
3. Dy Chief Engineer ( S & C), Western Railway, Ratlam. .... **Respondents**

**Counsel :**

Shri A.N. Bhatt for the applicant.  
Shri Y.I. Mehta, Sr. Adv. assisted with Shri H.Y. Mehta for the respondents.

**Coram :**

Hon'ble Shri Justice N.N. Singh – Vice Chairman.  
Hon'ble Shri Govindan S. Tampi – Member (Admnv.).

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**ORDER**  
(Passed on this the <sup>21<sup>st</sup></sup> of February 2003)

**By Hon'ble Shri Justice N.N. Singh – Vice Chairman :-**

The applicant has filed this original application against the incorrect entry of date of birth in the panel made by the Divisional Railway Manager, Ratlam under letter dated 31/03/1997 (Annexure A/1). It was also prayed that incorrect date of birth of 21/10/1939 was entered in column 6 serial No. 403. It should be clarified as 21/10/1956 which was the actual date of birth of the applicant. The case of the applicant is that he was engaged in Railway service as Casual Labour on 21/05/1974 under Inspector of Works, Ujjain where he worked till 01/04/1976 and thereafter he was again engaged from 08/09/1986 as Mason where he is presently working and that he was sent for medical examination and as per medical certificate the applicant was aged about 30 years at that time. It was further claimed that his date of birth was accordingly entered in column No. 4 containing service particulars as 21/10/1956 (Annexure A/3) and that he is working continuously since then, but by letter dated 31/03/1997 respondent No. 2 entered his incorrect date of birth as 21/10/1939 by changing his date of birth from 21/10/1956. It was also claimed that this change in the date of birth forced respondent No. 3 to retire the applicant from service with effect from 30/11/1997 though as per his records he was not due for retirement.

2. The respondents filed reply denying that the applicant is illegally made to retire from his service on the basis of correction made in the

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date of birth. It is also asserted that the respondents had issued orders of retirement from 30/11/1997. It was also claimed that his representation has been considered. According to the respondents the applicant was initially engaged as Casual Labour on 21/05/1974 and at that time he declared his age as 35 years which was recorded in the LTI register (Annexure R/1). It was also claimed that he was given temporary status by Annexure A/3. However his date of birth was wrongly shown as 21/10/1939 in place of 21/10/1956 which was in terms of Railway Boards Circular dated 19/11/1990. The case of the respondents is that the date of birth given in the affidavit Annexure A/7 is against his initial engagement as Casual Labour on 21/05/1974 as on that day on the basis of revised date of birth he would have been aged less than 18 years. It was further claimed that having obtained benefit of a casual labour the applicant is stopped from asserting that his age given at the time of initial entry was wrong. It was further claimed that even on 06/12/1996 he has given his correct age to be 57 years (Annexure R/3), for getting that 11 years back, he filed an affidavit giving the different date of birth. On these grounds it was prayed to dismiss the Original Application filed by the applicant.

3. We have heard learned counsels of both the sides and have gone through the record. Shri A.N. Bhatt learned counsel for the applicant contended that date of birth in the service record could not have been changed unilaterally. He placed reliance on decision of Hon'ble Madhya Pradesh High Court (Gwalior Bench) in the case of Bhan Singh Bhadoria Verus State of Madhya Pradesh and Others reported at 2002(3) M.P.H.T. Page 428 where it was held that the respondents had no authority to change the date of birth unless it amounts to merely clerical error. He also relied on the decision of the Apex Court reported at

1980(41) FLR (SC) 275 where the fixation of pay by Board was accepted. He also relied on the decision of S.C. Verma Versus Union of India reported at 2001(2)MPLJ Page 155 where their your lordships of Madhya Pradesh High Court held that the best evidence of the age is matriculation certificate and the correction in age made subsequently was not correct.

3.1. This is not the case of the respondents that the applicant was engaged on 21/05/1974 as casual labour under IOW, Ujjain rather it is the case of the applicant himself <sup>who claimed</sup> ~~assailed~~ in para 4.1 of his application. Admittedly the applicant was re-engaged in 1987 and he got his date of birth recorded as 21/10/1956. It was claimed that it was based on medical certificate and the affidavit filed by the applicant. There is no dispute that the best evidence regarding date of birth is matriculation certificate, but in this case the applicant have not appeared in matriculation, <sup>exam</sup> so his date of birth as recorded in his initial service records and the medical examination report at that time, would govern the issue. The respondents have filed Annexure R/1 an extract of LTI Register in which the entry was made regarding this applicant to have been appointed on 21/05/1974 where he declared his age as 35 years. There are other entries regarding other casual laborers also. In Annexure R/3 also on 06/12/1996 the applicant admitted that his age was 57 years which supported the entry in Annexure R/1. The affidavit making change in his date of birth by the applicant is not based on any certificate or horoscope. If the date of birth of the applicant is recorded subsequently as 21/10/1956, then the applicant could not have been employed as casual labour on 21/05/1974 because he would have been only 17 years and 7 months of age. Nobody could be employed in Government service, <sup>or</sup> public undertaking unless he is aged 18 years.

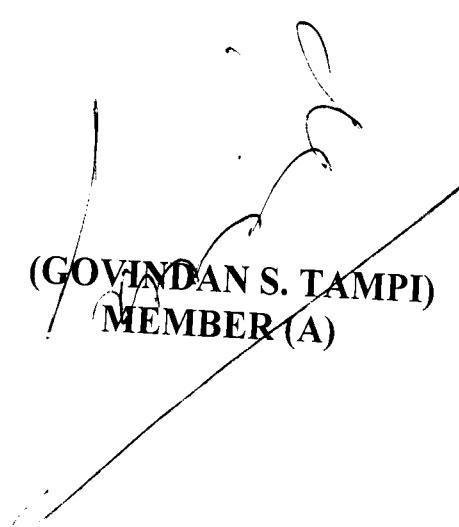
*M. M. S.*

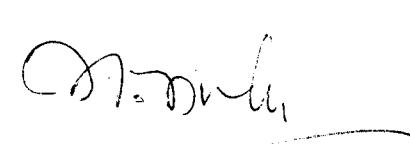
Having taken advantage of the date of birth recorded in Annexure R/1, the applicant could not have challenged it to his advantage, to extend the service period subsequently. While disposing of a similar matter regarding date of birth the Hon'ble Supreme Court in the case of GM. Bharat Cooking Coal Limited, West Bengal Versus Shib Kumar Dushad reported at 2001 Lab Lr 25, and others held that the employee who was neither having Matriculation Certificate/Secondary School Certificate nor a statutory certificate, mentioning the date of birth to be authentic the employer is to refer the matter to the Medical Board. The date of birth as determined by the Medical Board and accepted by the employer was final. It was claimed that in Annexure R/1 the entry regarding age was recorded on the basis of medical officers assessment. It was also pointed out therein that in such cases the burden is heavy on the employee who comes to the court with the case that the date of birth recorded by the employer is untrue and incorrect and that burden could be discharged only by producing acceptable evidence of a clinching nature. Here simply an affidavit of the applicant cannot be treated as evidence of clinching nature to make changes in the entries made in 1974. Towards end of the judgment their lordships held that "consideration for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of their being a genuine mistake but also from the point of its impact on the service of the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth." Relying on the aforesaid guidelines and

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admitted case of the applicant that he was employed in 1974 as a Casual Labour under IOW, Ujjain, change in the date of birth subsequently by the applicant was not permissible when he had taken advantage of his date of birth recorded at the time of initial appointment.

4. In the result we find no merit in this OA and it is accordingly dismissed. There will be no order as to cost.

  
(GOVINDAN S. TAMPI)  
MEMBER (A)

  
(N.N. SINGH)  
VICE CHAIRMAN

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प्राप्तिक्रम सं ओ/न्या..... जवलपुर, दि.....  
प्रतिक्रिया नामे दिल्ली.....  
(1) राजीव गोविंदन तम्पी/दि..... जवलपुर  
(2) राजीव गोविंदन तम्पी/दि..... जवलपुर  
(3) राजीव गोविंदन तम्पी/दि..... जवलपुर  
(4) राजीव गोविंदन तम्पी/दि..... जवलपुर  
सुनिन एवं आवश्यक कार्यालयी के  
An - object of OA is to decide  
y J. mech - 14. All orders  
Issued 28/2/03  
28/2/03