

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of May, 2009.

ORIGINAL APPLICATION No.60/2009

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Bal Ram,
Driver,
O/o SCC (P.Way),
Sawai Madhopur,
West Central Railway,
Kota Division.

... Applicant

(By Advocate : Shri Shiv Kumar)

Versus

1. Union of India through
General Manager,
West Central Railway,
Jabalpur (MP).
2. Divisional Railway Manager (Estt),
West Central Railway,
Kota Division,
Kota.

... Respondents

(By Advocate : Shri R.G.Gupta)

ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA thereby challenging the order dated 28.11.2008 (Ann.A/1) showing his name in the list of employees retiring in the year 2009. Through this OA, the applicant has prayed for the following relief :

"That the impugned order dated 28.11.2008 (Ann.A/1) showing the name of applicant in the list of retiring employees in the year 2009 and showing the date of birth of applicant as 10.6.1949 instead of 4.7.1952 and further changing the date of retirement from 31st July, 2012 to 30th June, 2009 may please be declared illegal, arbitrary and the name of applicant may please be deleted from impugned order dated 28.11.2008 (Ann.A/1) and further the impugned order dated 28.11.2008 (Ann.A/1) showing the name of applicant in the list of retiring employees in the year 2009 may please be quashed so far it relates to applicant in the interest of justice."

2. Briefly stated, facts of the case are that the applicant was initially appointed on the post of casual Truck Driver in the pay scale of Rs.950-1500 in the Western Railway on 6.12.82 and was granted temporary status after completion of the requisite service. At the time of appointment, he gave declaration of his date of birth as per rules and had also filed an affidavit in support thereof, according to which his date of birth was recorded as 4.7.1952. The applicant has filed several documents like physical fitness certificate, pay slip, PAN Card and the driving license (Ann.A/2 to A/7), which show his date of birth as 4.7.1952. However, vide impugned order dated 28.11.2008 (Ann.A/1), his name has been shown in the list of employees retiring in the year 2009 showing his date of birth as 10.6.1949. Being aggrieved by this action of the respondents, the applicant has filed this OA before this Tribunal praying for the aforementioned relief.

3. Learned counsel for the applicant in this OA, inter-alia, made the following submissions :

- i) That the applicant being an illiterate person had given declaration of his date of birth and in accordance with the relevant provisions, his date of birth in service record was recorded as 4.7.1952, according to which his date of retirement is 31.7.2012.
- ii) That in pursuance of the relevant provisions, the applicant was asked by the respondents to produce an affidavit in support of his date of birth, which the applicant did as per Ann.A/2.

- iii) That the applicant has filed physical fitness certificate dated 10.4.2008 and pay slips for the month of July and August, 2008 (Ann.A/3 to A/5 respectively), in which date of birth of the applicant is shown as 4.7.1952 and his date of retirement is shown as 31st July, 2012.
- iv) That the applicant was appointed as a Driver in the Railway and in his driving license (Ann.A/6) his date of birth has been shown as 4.7.1952. The driving license was first prepared in the year 1972 and renewed thereafter from time to time.
- v) That in his PAN Card also (Ann.A/7), issued by the Income Tax Department, his date of birth has been shown as 4.7.1952. The applicant has never given any different declaration regarding his date of birth at any time.
- vi) That suddenly in the pay slip for the month of December, 2008, applicant's date of retirement has been shown as 30th June, 2009, instead of 31st July, 2012. After receiving the said pay slip, the applicant being shocked met the departmental authorities to resolve his grievance but to no avail.
- vii) That the applicant has not completed 60 years of age as per his date of birth recorded in the railway service. His date of retirement has wrongly been shown in the impugned order dated 28.11.2008 (Ann.A/1). The date of birth of the applicant is 4.7.1952, which was recorded in the service record of the applicant by the respondents themselves as per rules. According to his aforesaid date of birth, his date of retirement is 31.7.2012.
- viii) Learned counsel for the applicant had referred to Ann.R/2 i.e. copy of the service book of the applicant, wherein two dates of birth had been recorded i.e. 10.6.1949 and 4.7.1952, and submitted that the correct date of birth of



the applicant is 4.7.1952 and an affidavit has also been filed by the applicant in order to prove this point.

- ix) Learned counsel for the applicant had also relied upon the provisions contained in Rule-225 of the Railway Establishment Code, Vol.I, and vehemently contended that date of birth of the applicant should be taken as 4.7.1952 and not as 10.6.1949, as shown by the respondents in the impugned order dated 28.11.2008 (Ann.A/1).

4. Learned counsel for the respondents relied upon by the reply filed and, inter-alia, made the following submissions :

- i) That it is wrong to say that the applicant is illiterate. He had duplicate service book which means that he is able to read and understand the contents of the service book. It is also wrong to state that applicant's date of birth in the service record is 4.7.1952, which is mentioned in figures only as managed by the applicant at clerical level by some unauthorized person. As per Ann.R/1 and R/2, the natural declaration of date of birth is 10.6.1949, which is written both in figures and in words, whereas by underlining the said date of birth subsequent entry has been made by some unauthorized person as 4.7.1952.
- ii) That the affidavit sworn by the applicant is attested by Notary Public and the subsequent date of birth i.e. 4.7.1952 is not endorsed by any competent authority for approval and admission on record.
- iii) That the physical fitness certificate dated 6.12.1982, issued at the time of entry into service, revealed 33 years of age as on 6.12.82, according to which the date of birth at the initial declaration is 10.6.1949 which is exactly corresponding.
- iv) That the date of birth in the driving license is recorded as stated by the applicant and the same has no bearing on

the service record of the applicant after a lapse of more than 11 years of entry in Railway service.

- v) That the date of birth in the PAN Card is recorded as stated by the applicant and the same has no bearing on the service record of the applicant after a lapse of more than 11 years of entry in Railway service.
- vi) That the date of retirement of the applicant as on 30.6.2009 is corresponding to 10.6.1949 as declared initially by the applicant at the time of entry into Railway service and is correctly shown in the pay slip.
- vii) That as per initially declaration of date of birth, the date of retirement as 30.6.2009 is correctly shown in the impugned order dated 28.11.2008 (Ann.A/1).
- viii) That the correct date of birth declared by the applicant at the time of his entry into railway service is 10.6.1949, according to which the retirement of the applicant is due on 30.6.2009 as per the impugned order dated 28.11.2008 (Ann.A/1). The applicant has no case to press before this Tribunal and the same is liable to be dismissed.
- ix) That a careful perusal of Rule 225(4)(i) would reveal that change of date of birth sought by the applicant is only to obtain an advantage otherwise inadmissible since as per initial declaration the date of birth is 10.6.1949 and accordingly the applicant is retiring on 30.6.2009 and by change in the date of birth, as sought to 4.7.1952, the applicant would retired on 31.7.2012, by continuing in service for three more years. Such change which is ex-facie an ulterior motive is not allowed as per Rule-225 (4)(i) of the Indian Railway Establishment Code, Vol.I.

5. I have heard the rival submissions and perused the record and relevant rules. It is necessary to reproduce the provisions contained in Rule-225 of the Indian Railway



Establishment Code, Vol.I, regarding date of birth, which 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 handwriting. In the case of the illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3) (a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(4) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall however, be open to the President in the case of a Group A&B railway servant; and a General Manager in the case of a Group C&D railway servant to cause the date of birth to be altered.

(i) Where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or

(ii) where in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(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.

Railway Ministry's decision – (a) When a candidate declares his date of birth he should produce documentary evidence such as a 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 the 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.

(b) If he could not produce any authority in accordance with (a) above he should be asked to produce an affidavit in support of the declaration of age.

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(c) In the case of Group D employees care should be taken to see that the date of birth as declared on entering regular Group D service is not different from any declaration expressed or implied, given earlier at the time of employment as casual labourer or as a substitute."

The applicant has produced certain evidence in support of his claim that his date of birth is 4.7.1952. He has also filed an affidavit in order to prove this point. This involves a question of evaluation/appraisal of evidence. This Bench of the Tribunal is not competent to evaluate/appraise the evidence. I also find that the applicant has approached this Tribunal without approaching the competent authority for correction/change in the date of birth. From perusal of Rule-225 of the Indian Railway Establishment Code, Vol.I, it is evident that the General Manager is competent authority for such purpose.

6. Keeping in view the observations made above, the applicant is directed to file a self-contained representation to the General Manager within a fortnight from the date of this order and the General Manager is directed to decide such representation within one month from the date of receipt thereof by passing a reasoned and speaking order. In case the applicant feels aggrieved by the order to be passed by the General Manager, he will be at liberty to approach this Tribunal again.

7. With these observations, the OA stands disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)

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