

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 31st day of May, 2011

ORIGINAL APPLICATION NO. 85/2010

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER

Bal Ram son of Rampal aged about 58 years, resident of Plot No. 38, Behind Jail, Bajeri, Sawai Madhopur, Rajasthan at present employed on the post of Driver in the Office of SCC (P.Way), Sawai Madhopur, Western Central Raiwlay, Kota Divison.

.....Applicant

(By Advocate: Mr. Shiv Kumar)

VERSUS

1. Union of India through General Manager, Western Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager (Estt.), Western Central Railway, Kota Division, Kota (Rajasthan).

.....Respondents

(By Advocate: Mr. R.G. Gupta)

ORDER (ORAL)

The present OA is directed against the order dated 28.11.2008 (Annexure A/1) showing the name of the applicant in the list of the retiring employees and vide impugned order dated 01.10.1993 (Annexure A/2), rejected the representation of the applicant.

2. The case of the applicant is that he was initially appointed on the post of Casual Truck Driver in the pay scale of Rs.950-1500 in Western Railway and was granted temporary status after completing requisite number of days. As per the applicant his date of birth is 04.07.1952 and the same was recorded in the Service Book by the respondents. The Indian Railway Establishment Code



Vol. I provides procedure regarding entering date of birth. Rule 225 of Indian Railway Establishment Code Vol. I and Railway Ministry Decision, which has been referred to by the applicant is reproduced hereinunder:-

"225. Date of Birth

(1) Every person, on entering Railway Service, shall declare his date of birth, which shall not differ any declaration expressed or implied for any public purpose before entering in Railway Service. In case of literate staff, the date of birth shall be entered in the record of service in the Railway Servant's own handwriting. In case of illiterate staff, the declared date of birth shall be recorded by 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, 1980.

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

(4) The date of birth as recorded in accordance with these rules shall held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the president in case of Group A & B servant, and a General manager in case of 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 Railway Servant being retain 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 probation period, or three years of service, whichever is earlier) of the circumstances in which the wrong date come to be entered is



furnished by the Railway Servant concerned, together with the statement of previous attempt made to have the record amended.

Railway Ministry's Decision -

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

3. The applicant submitted that he being an illiterate has given declaration of his date of birth in accordance with the above provisions. His date of birth in service recorded was recorded as 04.07.1952. It is also submitted that the aforesaid date of birth is also shown in the Railway Record, Physical Certificate dated 10.04.2008 and Pay slip for the month of July and August, 2008, in which date of retirement of the applicant has been shown as 31st July, 2012.

4. Per contra, learned counsel for the respondents submitted that at the time of entry of Railway Service, the applicant was medically examined for physical fitness and vide fitness certificate dated 06.12.1982, the age of the applicant is mentioned as 33 years as on 06.12.1982, which is exactly corresponding to date of birth on 10.06.1949. Learned counsel for the respondents also referred to Rule



225 (3) (a) of the Indian Railway Establishment Code Vol. I Fifth Edition -1985. Learned counsel submits that with regard to dispute in this OA regarding change of date of birth from 10.06.1949 declared at the time of entry into Western Railway Service on 06.12.1982 and recorded in the Service record also duly attested by P Way Inspector Sawaimadhopur, Western Railway.

4. Since the only dispute is with regard to the change of date of birth in service record, we direct the respondents to produce the service record of the applicant for perusal of this Tribunal. Today, the respondents have produced the original service record of the applicant.

It reveals that at the time of entry of service, the date of birth has been mentioned as 10.06.1949 and it appears that entry of date of birth as 04.07.1952 (mentioned in Court Affidavit) is entered afterwards. We have examined the affidavit by which date of birth in the service record was shown as 04.07.1952 was not attested by the Court but was attested by the Notary Public.

5. Admittedly, this is the second round of litigation. Earlier also, the applicant preferred an OA No. 60/2009, which was disposed of vide order dated 29.05.2009. By way of this OA, the applicant challenged the order dated 28.11.2008. It is also challenged in the present OA. Having considered the documents filed by the applicant like Physical Fitness Certificate, Pan Card and Driving Licence which shows the date of birth of the applicant as 04.07.1952 and considering this aspect that the applicant being an illiterate person and declaration given by the Notary Public that his date of birth is 04.07.1952, according to which date of retirement would be 31.07.2012 and after considering Rule



225(4) (i) of Indian Railway Establishment Code Vol. I Fifth Edition 1985, the Tribunal deemed it proper to direct the applicant to file a self contained representation within fortnight from the date of the order and the General Manager was further directed to decide the representation of the applicant within a period of one month from the date of receipt of representation by passing a reasoned and speaking order. Liberty was also given to the applicant to file fresh OA, if he is aggrieved by the order to be passed by the General Manager.

6. Pursuant to the direction given by this Tribunal, representation of the applicant dated 10.06.2009 was decided by the respondents vide order dated 07.10.2009 (Annexure A/11) by passing a reasoned and speaking order. The reasons for rejecting the representation of the applicant is mentioned in Para No. 8, which reads as under:-

"Para- 8

Regarding his request for deleting his name from the list of retiring employees it is regretted that the same cannot be accepted on following grounds:-

1. At the time of initial appointment in December, 1982, his age was assessed by doctor as 33 years and is so mentioned in the medical certificate no. 149777 dtd. 06.12.1982 issued by DMO/Gangapur City, which is exactly corresponding to his date of birth.
2. He had provided an affidavit of Notary Public for altering the date of birth after 11 years of joining service. This is not acceptable because this is not an order of competent court.
3. He has failed to represent for the correction of date of birth within a stipulated time of three years. Also he has failed to follow the proper procedure. Therefore, his request for change of date of birth at this belated stage cannot be acceded to and cannot be entertained at the last leg of his service.
4. As requested, personal hearing was granted to him on 12.8.2009. But he failed to produce any document other than the Driving licence in proof his date of birth as 04.07.1952. The driving licence was got checked from the authorities of Sawai Madhopur, who had renewed the same on 20.3.1984. Although his



driving licence mentions his date of birth as 04.07.1952, the same cannot be accepted as the licence was issued much after his joining the railway service and there is nothing to substantiate that the date of birth given in this is correct. Subsequently the details of the original licence issued to him on 09.03.1982 (i.e. before his joining the railway service) at RTO, Mumbai Central were also cross-checked (driving licence No. 81/C/8894). But there is no mention of birth on this.

5. The Supreme Court in *Executive Engineer, Bhadrak & Others v. Rangodhar Malik* [1993 SCC (L&S) 276] has held that a representation made one year before superannuation for correction of date of birth was rightly rejected by the department. Similarly the case of *Union of India v. Ram Suia Sharma* [1996 SCC (L&S) 605], the Apex Court rejected the claim of the applicant for correction of date of birth on the ground that the same was claimed by the applicant 25 years after joining service.

In view of above, he has been retired correctly on 30.6.2009 and no injustice has been done to him."

7. Thus upon perusal of Para No. 8 of order dated 07.10.2009 (Annexure A/11), we are fully satisfied with the reasons mentioned for rejecting the representation of the applicant in order. Upon perusal of original service record, the date of birth as 04.07.1952 appears to be interpolated later on. The Hon'ble Supreme Court in the case of **Punjab & Haryana High court at Chandigarh vs. Megh Raj Garg & Another**, 2010(2) Apex Court Judgments 411 (SC) in Para No. 12

has held as under:-

"12. This Court has time and again cautioned civil courts and the High Courts against entertaining and accepting the claim made by the employees long after entering into service for correction of the recorded date of birth. In **Union of India v. Harnam Singh**, 1993(2) SCC 162, this Court considered the question whether the employer was justified in declining the respondent's request for correction of date of birth made after thirty five years of his induction into service and whether the Central Administrative Tribunal was justified in allowing the original application filed by him. While reversing the order of the Tribunal, this Court observed:



"A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its power regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stable claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in **State of Assam v. Daksha Prasad Deka** a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. This Court said (SCC pp. 625-26 Para 4)

".....The date of compulsory retirement under FR 56(a) must in our judgment, be determined on the basis of service record, and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been



deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record." (emphasis supplied).

8. As per the rule, application for correction in the date of birth should be made within two years from the date of entry in service. The date mentioned in the Driving Licence, Pan Card and Physical Fitness Certificate cannot be made basis for change of date of birth. As per Medical report, the approximate age of the applicant assessed by the Medical Board was 33 years at the time of entry into service. Thus the date of birth of the applicant has been rightly been entered as 10.06.1949 in Service Book at the time of entry in service and the applicant has rightly been retired after considering his date of birth as 10.06.1949. Thus no interference is called for by this Tribunal in view of the ratio decided by the Hon'ble Supreme Court and after perusal of the original service record of the applicant. Accordingly, the present OA deserves to be dismissed being bereft of merit and is accordingly dismissed with no order as to costs.

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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