

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of May, 2011

Original Application No.86/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

Praful Kumar Chhotarai
s/o Shri Kuber Charan,
r/o Q.No.968 A,
World Railway Colony, Kota.

.. Applicant

(By Advocate,: Shri Manoj Pareek)

Versus

1. Union of India
through the General Manager,
West Central Railway,
Jabalpur.
2. The Divisional Railway Manager,
West Central Railway,
Kota.

.. Respondents

(By Advocate: Ms. Sonal Singh, proxy counsel for Shri Alok Garg)

ORDER (ORAL)

The short controversy in this OA is with regard to date of birth.
The applicant was initially appointed as casual labour Gangman on
30.3.197. He became permanent in the year 1979 and posted as



Trolleyman in the year 1985. As per the applicant, his date of birth is 26.2.1955 which has been mentioned at the time of initial entry in service on the basis of school leaving certificate and same date of birth has been entered in the identity card and medical card.

2. The controversy arose when Divisional Railway Manager issued a letter dated 10.8.2009 to Assistant Divisional Engineer along with list of employees likely to be retired. In this list against name of the applicant the date of birth indicated is 26.2.1950 and was to be retired in the month of February, 2010. The applicant thereafter submitted representation dated 12.9.2009 giving out that his date of birth is 26.2.1955 instead of 26.2.1950 and also submitted photo stat copies of school leaving certificate, medical certificate and casual labour service card. After representation, the A.En. wrote a letter dated 14.10.2009 to the applicant demanding original certificates which was replied by the applicant on 15.10.2009.

3. On the contrary, the learned counsel appearing for the respondents submitted that as per the record available with the respondents, the date of birth of the applicant is 26.2.1950 and there is no error in the same. Further, the applicant failed to bring on record any document in original whereby his claim of his date of birth being 26.2.1955 can be proved. The learned counsel appearing for the respondents drawn our attention towards Ann.R/1, the school leaving certificate dated 12.8.1968 in which the date of birth has been reflected as 26.2.1950 in figures and words. The learned counsel also placed reliance on first page of the service book Ann.R/2. In the service book the date of birth of the

applicant as 26.2.1950 has been mentioned at the time of entry in service.

4. With regard to the date of birth entered in the casual labour card, medical card and identity card, the Assistant Divisional Engineer (Works), Kota has clarified vide his letter dated 5.2.2010 that identity card has not been issued by his office to the applicant. It is further submitted that the medical card which is issued under Form No.G-346F has no column with regard to date of birth.

5. Assuming for the sake of arguments, though not admitted, the date of birth is rightly entered in the identity card as well as in the medical card, it will not serve any purpose with regard to change of date of birth as held by the Apex Court in the case of Union of India and Ors. vs. Kantilal Hematram Pandya reported in (1995) 3 SCC 17 whereby the Hon'ble Apex Court observed that in the matters of unexplained and inordinate delay in seeking alteration in date of birth, judicial interference should be made sparingly and with circumspection. It is further observed that where a railway servant entering in service in 1955 mentioned in various documents in 1960 and 1980 the same date of birth as recorded in his service book, did not avail of the opportunity given in 1972 by the Railway Board for seeking correction of date of birth by 31.7.1973 and made representation for alteration of recorded date of birth only in 1985 and 1987 without adducing any reliable evidence and without explaining the inordinate delay on his part, held, relief should have been refused.

6. Similar view has been taken by the Hon'ble Supreme Court in the case of State of U.P. and Another vs. Shiv Narain Upadhyaya reported in (2005) 6 SCC 49 observing that date of birth as recorded in the service book should be decisive and correction thereof can be sought only in accordance with procedure prescribed and within the time fixed under the rules or order or within reasonable time in absence of any rules or order. Challenge to the date of birth as recorded in the service book, made on the eve of retirement should not normally be entertained. Onus lies on the employee concerned to prove by irrefutable evidence his plea of error in service book. Court of Tribunal should be slow in issuing directions for correction of date of birth or in granting interim relief or continuation in service, unless there is clear, clinching and unimpeachable evidence in that regard because any such direction may entail chain reaction hampering promotional prospects of juniors and thus causing irreparable injury to them. In that case respondent employee challenged order of his superannuation on ground that his date of birth as recorded in his service book on the basis of which his age was calculated, was wrong in view of a different date of birth mentioned in school record. The appellant State producing service book as also other supporting documents relating to date of birth. In the circumstances, it was held that High Court erred concluding that date of birth of respondent as recorded in service book was not correct.

7. It is also stated on behalf of the respondents that if the employee wanted correction in date of birth, he should apply



within two years from the date of entry in service whereas the applicant has represented before the respondents when he was to retire on attaining the age of superannuation. The Apex Court in the case of Punjab and Haryana High Court at Chandigarh vs. Megh Raj Garg and Anr., reported in 2010 (2) Apex Court Judgments 411 (SC) held that an employee can seek correction in date of birth within two years from the date of entry into service. However, the competent authority can make correction at any time if it is found that the age recorded in the service book is incorrect and has been so recorded with view to enable the concerned employee to continue in service beyond the age of superannuation or gain any other advantage.

8. Having heard the rival submissions and upon careful perusal of the material available on record as well as the judgment referred. It is admitted fact that at the time of entry in service the date of birth as 26.2.1950 was recorded on the basis of school leaving certificate (Ann.R/1) and the same has been entered in the service book of the applicant. The date of birth as 26.2.1955 as claimed by the applicant is only entered either by mistake or by willful misleading while issuing the identity card and the medical card. As per the settled preposition of law as held by the Hon'ble Supreme Court in the case of Shiv Narain Upadhyaya (supra) and Kantilal Hematram Pandya (supra), normally in public service with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book,



relating to the individual concerned. This is the practice prevalent in all service, because every service has fixed the age of retirement and it is necessary to maintain the date of birth in the service records. Here, so far as the applicant in the present case is concerned, in the service record the date of birth entered is 26.2.1950 on the basis of school leaving certificate and it is not disputed that the applicant retired on attaining the age of superannuation on the basis of the date of birth recorded in the service record, as such, I find no merit in this OA as the applicant utterly failed to establish his case so as to require any interference. I am not impressed with the submission of the applicant that in his horoscope the date of birth is 26.2.1950 which is corroborated by identity card and medical card, which has been denied by the respondents stating that no identity card has been issued by the concerned authority and medical card contain no column for date of birth.

9. Be that as it may, as per the law laid down by the Hon'ble Supreme Court, as noticed above, the date of birth entered on the basis of the schooling leaving certificate is admissible and the applicant has been rightly retired considering his date of birth as 26.2.1950.

10. Consequently, I find no merit in this OA, which is accordingly dismissed with no order as to costs.



(JUSTICE K.S.RATHORE)
Judl. Member

R/