

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 668/2012

Jaipur, the 10th day of September, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Munshi Lal Meena son of Shri Ram Sukha, aged about 52 years, resident of House No. 851, Kripal Nagar, Kalyanipura Road, Gulab Bari and presently working as Carpenter (MCR), North Western Railway, Ajmer Division, Ajmer.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through its General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Railway Board, through its Chairman, Rail Bhawan, New Delhi.
3. Divisional Railway Manager (Estt.), North Western Railway, Ajmer Division, Ajmer.
4. Senior Divisional Personnel Officer, North Western Railway, Ajmer Division, Ajmer.

... Respondents

(By Advocate: Mr. M.L. Goyal)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) That entire record relating to the case be called for and after perusing the same respondents may be directed to treat the date of birth of the applicant as 05.11.1959 instead of 05.11.1954 with all consequential benefits by quashing letter dated 10.02.2012 (Annexure A/1).
- (ii) That the respondents be further directed not to retire the applicant on 30.11.2014 and be allowed to work till 30.11.2019 till the completion of age of 60 years taking into account the date of birth as 05.11.1959 instead of 05.11.1954.
- (iii) Any other order/directions or relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iv) That the costs of this application may be awarded."

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2. The brief facts of the case are that the applicant is working as Carpenter (MCF), North Western Railway, Ajmer Division, Ajmer. According to the applicant, his date of birth is 05.11.1959. He passed Secondary Examination in the year 1980. The date of birth shown in the mark-sheet as well as in the certificate is 05.11.1959 (Annexure A/2).

3. The applicant was appointed as Group 'D' on 16.02.1984 after due process. The respondents prepared the Service Book of the applicant in which the date of birth has been entered as 05.11.1954 (Annexure A/3) which can also be read as 05.11.1959. In subsequent documents annexed with Service Book i.e. Leave Account etc., the date of birth of the applicant has been shown as 05.11.1959.

4. That the respondents in the Pay-Slips for the month of November 2005, December 2005, January 2006 and February 2006, the date of retirement of the applicant has been shown as 30.11.2019 as per date of birth as 05.11.1959. But suddenly in the Pay Slips for the month of March 2006, the date of retirement is shown as 30.11.2014. By this action of the respondents, the matter came to the knowledge of the applicant and the applicant immediately made a request before respondent no. 3 on 07.04.2006 for recording his correct date of birth i.e. 05.11.1959.

5. The respondents informed the applicant under the Right to Information Act, 2005 that as per provisions of Para 225 (iii)

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of the Railway Establishment Code Part I which provide that any request for change of date of birth can be made within three years from the date of appointment (Annexure A/6).

6. The learned counsel for the applicant submitted that the basis on which the date of birth has been recorded in the Service Book is as per School Certificate and in the School Certificate, the date of birth of the applicant is 05.11.1959. Therefore, the concerned employee, who filled up the service particulars of the applicant, by mistake recorded 05.11.1954 as the date of birth of the applicant. The applicant has not made any request for change of date of birth but only demanding for a correction of a mistake while recording his actual date of birth in the Service Book.

7. The learned counsel for the applicant further submitted that the applicant also approached the Civil Court at Ajmer in Case No. 20/2012 and Hon'ble Civil Court on the ground of jurisdiction dismissed the same vide order dated 13.08.2012 (Annexure A/10). Therefore, learned counsel for the applicant argued that the respondents be directed to correct the mistake and record the date of birth of the applicant as 05.11.1959 instead of 05.11.1954.

8. On the contrary, the learned counsel for the respondents submitted that the date of birth of the applicant as recorded in the Service Record of the applicant cannot be changed as not permitted under Rules. The date of birth of the applicant is based on the medical certificate issued by the Railway Medical

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Department and on the basis of his declaration, voluntarily made at the time of his appointment. The applicant himself has signed below the date of birth to authenticate that it was the correct date of birth (Annexure R/1).

9. The learned counsel for the respondents further submitted that the applicant never raised any objection to his date of birth having been recorded as 05.11.1954. The respondent department issued seniority list from time to time and informed to the applicant but he never objected to his date of birth at that point of time (Annexures R/2 & R/3).

10. He further submitted that any representation to correct the date of birth should have been given within three years from the date of his appointment as per Rule 225(4)(iii) of Indian Railway Establishment Code. In this case, the applicant has submitted his first representation on 16.06.2009 for change in his date of birth i.e. after 25 years of his appointment. He filed the petition at the fag end of his service, therefore, in view of the facts & circumstances and keeping in view the material available on record, it is evident that the claim of the applicant is not sustainable in the eyes of law.

11. He further submitted that the averment made by the applicant to the effect that he made a request to respondent no. 3 on 07.04.2006 for change in his date of birth is absolutely false, baseless and contrary to the material available on record. He further argued that the correcting the

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date of birth in the record is a civil matter and, therefore, the jurisdiction lies with the Civil Court.

12. The learned counsel for the respondents further referred to the following judgments of the Hon'ble Supreme Court with regard to the fact that Courts/Tribunal at a belated stage cannot entertain the claim for correction of date of birth duly entered in the Service Record.

- (1) Chief Medical Officer vs. Khadeer Khadri
1995 (1) SLR 547
- (2) Burn Standard Co. Ltd. & Others vs. Dinabandhu Majumdar & Another, 1995 (4) SLR 25
- (3) Union of India vs. Ram Sula Sharma
1996 (2) SLR 16
- (4) State of Maharashtra & Another vs. Gorakhnath Sitaram Kamble & Others, 2010 (14) SCC 423

13. Heard the learned counsel for the parties, perused the documents on record and the case laws referred to by the learned counsel for the respondents.

14. With regard to the averment of the learned counsel for the respondents that this is a civil matter and, therefore, this Tribunal has no jurisdiction, it is observed that the applicant approached the Civil Court at Ajmer in Case No. 20/2012. The Hon'ble Civil Court on the ground of jurisdiction dismissed the same vide order dated 13.08.2012 (Annexure A/10). Therefore, the applicant filed the present OA before the Tribunal. I have perused the order passed by the Civil Court. Hon'ble Civil Court vide order dated 13.08.2012 (Annexure A/10) has categorically stated that Civil Courts has no

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jurisdiction in such matters. Hon'ble Civil Court has further stated that service connected matter lies under the jurisdiction of the Central Administrative Tribunal. Therefore, the applicant had no option but to file the present OA before the Tribunal.

15. I have carefully perused the Page No. 1 of particulars of service of the applicant at Annexure R/1. In this document, the date of birth of the applicant is clearly shown as 05.11.1954 and the applicant has signed just below this entry. The averment of the learned counsel for the applicant that this entry can also be read as 1959 is not acceptable because I have seen the original particular of service produced by the respondents. In the original documents also, the date of birth is shown as 05.11.1954. However, in the same document against column of authority, it has been stated that this date of birth has been recorded as per school certificate whereas the learned counsel for the respondents submitted that this date of birth has been recorded as per the medical certificate but there is no such mention in the Service Book (Annexure R/1). Under the Education column, the qualification of the applicant has been shown as X Pass. The respondents were asked to produce the original personal file as well as leave account of the applicant vide order dated 02.09.2013. However, the respondents vide order dated 05.09.2013 have informed that no personal file has been opened of the applicant.

16. From perusal of seniority list dated 23.05.1994 (Annexure R/2), it appears that the date of birth of the

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applicant has been shown as 05.11.1954. Similarly in the seniority list, which is available at Annexure R/3, the date of birth of the applicant is recorded as 05.11.1954. However, the learned counsel for the applicant stated that these seniority lists were not in the knowledge of the applicant as they were never circulated to him. This averment of the learned counsel for the applicant is not acceptable because both these documents at Annexures R/2 & R/3 are public documents. These are widely circulated so that if any employee has any objection about his/her seniority, he/she can represent against his/her seniority list. Even in the letter dated 23.05.1994 (Annexure R/2), it has been directed to concerned Unit Incharge to widely circulate this seniority list and it should be got noted by the concerned employees and one copy of this seniority list be pasted on the Notice Board.

17. However, on the other hand, it is also correct that the pay slips issued to applicant for the months of October 2005-November 2005, December 2005-January 2006 and January 2006-February 2006, the date of retirement of the applicant has been shown as 30.11.2019 (Annexure A/4) and these are documents which are prepared by the respondents and not by the applicant. The correctness of these documents have not been rebutted by the respondents. However, in the pay slip for February 2006-March 2006, the date of retirement of the applicant has been shown as 30.11.2004 but how this change has been made has not been clarified by the respondents in their reply.

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18. Similarly while perusing the photo copy of Leave record of the applicant, submitted by the applicant alongwith his OA, the date of birth is shown as 05.11.1959. This is also the record of the respondents, which has not been rebutted by the respondents either in their reply or during the course of arguments.

19. I have carefully perused the case law~~s~~, referred to by the learned counsel for the respondents with regard to correction in the date of birth at the fag end of the carrier. The Hon'ble Supreme Court has held that an application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, in as much as other waiting for years, below him for their respective promotions are affected in this process. This is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of material which can be held to be conclusive in nature is made out by the concerned public servant, the Court or the Tribunal should not issue a direction on the basis of materials which make such claim only plausible. The onus is on the applicant to prove wrong recording of his date of birth in his Service Book.

20. In this case, as stated above, there are certain facts regarding the date of birth which have not been rebutted by the respondents like the date of retirement in the pay slips of

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certain months and also the date of birth in the leave account of the applicant. These documents are prepared by the respondents. Similarly even in the Page No. 1 of the particulars of service (Annexure R/1), the authority on which the date of birth has been recorded is stated as per school certificate and the applicant has been shown as Class X Pass. The respondents have no-where stated that the Secondary School Certificate produced by the applicant at Annexure A/2 is not correct or fake. Therefore, without expressing any opinion on the merit of the case, I direct the respondents to re-examine the issue of correcting the date of birth of the applicant. The respondents would also examine whether it is a case of rectification of mistake apparent from the record. While deciding the issue afresh, the applicant will be given an opportunity of being heard. The respondents are directed to pass a reasoned & speaking order according to the provisions of law expeditiously but not later than a period of three months from the date of receipt of a copy of this order.

21. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ