

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 13.02.2014

OA No. 616/2013

Mr. S.S. Ola, counsel for applicant.

Mr. Anupam Agarwal, counsel for respondents.

Arguments heard.

Order reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

*Recd original
copy of
18/2/14
CANUPAM
AGARWAL
adv*

Kumawat

Date 18-02-2014

Order pronounced today in the
open court, by the aforesaid
Bench.

MD
18/2/14

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 616/2013

Order reserved on: 13.02.2014

Order pronounced on: 18.02.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Hari Prasad Meena S/o Shri Badri Lal Meena, aged about 58 years, at present working on the post of Chief Courier Supervisor at Railway Station Jaipur R/o B-42, Bal Nagar, Kartarpura, Near 80 feet Road, Mahesh Nagar, Jaipur.

...Applicant

Mr. S.S. Ola, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, NWR, HQ Office, Jawahar Circle, Jaipur.
2. The Divisional Railway Manager, NWR, Jaipur Division, Jaipur.
3. The Senior DPO, NWR, Jaipur Division, Jaipur.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

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

"(i) The impugned order (Annexure A/1) dated 9.7.2013 may kindly be quashed and set aside and further the respondents be directed to alter date of birth 7-5-1955 instead of 7-5-1954 in figure as well as in words in the record of service.

(ii) Any other relief which is found just and fit and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

Anil Kumar

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was appointed as Commercial Clerk with the respondent-department. The applicant had produced necessary documents before the appointing authority. He also produced matriculation certificate for the verification of date of birth, which was duly issued on 05th July, 1972 by the Secretary of Secondary Examination of Rajasthan Board, Ajmer and the date of birth of the applicant is mentioned as 07th May, 1955 in the matriculation certificate. But the respondents have recorded the date of birth of the applicant as 7-5-1954 and in words Fifth May Nineteen Fifty Four in his service record. It appears to be an error made by the respondents at the time of making entries in his service record.

3. Learned counsel for the applicant further submitted that the applicant neither filled up particulars in the record of service nor entered the date of birth in the record of service in his own hand writing. The applicant, however, made his signature in the record of service. Therefore, the applicant requested the respondents to correct his date of birth according to his secondary school certificate.

4. Learned counsel for the applicant also submitted that even in the service record at Annexure A/3, it has been stated that the date of birth has been recorded on the basis of secondary school certificate of the applicant. Therefore, the clerical error may be corrected. The applicant has produced a photocopy of his secondary school certificate (Annexure A/2). He submitted that

Arul Kumar

he represented the case before the respondents, who have rejected it vide letter dated 09.07.2013 (Annexure A/1) on the ground that as per the provisions of para 225(4), Chapter-2, of IREM, his date of birth cannot be changed.

5. Learned counsel for the applicant argued that it is a clerical error, therefore, it should be corrected and, hence, the Original Application be allowed.

6. On the contrary, learned counsel for the respondents submitted that as per the law laid down by the Hon'ble Apex Court, one cannot challenge his date of birth at the fag end of his service career. The applicant is to retire in the month of May 2014 taking his date of birth 07th May, 1954, therefore, any change to his date of birth at the fag end of his service career is without any substance.

7. Learned counsel for the respondents further submitted that the applicant has admitted that he appended his signature in the service record. However, he failed to protest in this regard during his entire service career.

8. Learned counsel for the respondents also submitted that the seniority lists were published from time to time in which the date of birth of the applicant was disclosed but the applicant never represented against his date of birth. Even he failed to protest in this regard despite the fact that it is disclosed in the salary slips as well.

Anil Kumar

9. Learned counsel for the respondents submitted that mere submission of educational certificate is of no relevance. Recording correct date of birth needs change of date of birth if the same is recorded other than what is being asked. Therefore, the rejection on the basis of Para 225 (4) (iii) of IREM Part-I is just and legal.

10. Learned counsel for the respondents further submitted that the secondary school certificate may not be a relevant factor to exercise discretion at this fag end when rules did not permit so and since he has appended his signature to his service record, therefore, he cannot say that he was not aware of his date of birth as recorded in his service record.

11. In support of his arguments, learned counsel for the respondents also referred to the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others**, reported in (2010) 14 Supreme Court Cases 423, wherein the Hon'ble Supreme Court has held that the correction in the date of birth at the fag end of career is not permissible. Therefore, he prayed that this Original Application has no merit and it should be dismissed.

12. Heard learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the respondents.

Anil Kumar

13. This Bench of the Tribunal vide order dated 04.02.2014 directed the respondents to produce before the Court the service record of the applicant in original along with the Secondary School Certificate of the applicant on the basis of which the entry of date of birth of the applicant has been made in the service book of the applicant. In compliance of the order dated 04.02.2014, the respondents have produced the original service record of the applicant.

14. Learned counsel for the applicant argued that in the present O.A., the applicant is not requesting for the change in the date of birth in the service record but he is praying for the correction of the clerical error made by the respondents by which the year of his birth has been wrongly stated in the service book. Therefore, he prayed that the respondents be directed to record the correct date of birth in his service record on the basis of his Secondary School Certificate.

15. Learned counsel for the applicant also submitted that the case law referred to by the learned counsel for the respondents is not applicable in the facts and circumstances of the present case. The Hon'ble Supreme Court in the case of **State of Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others** (supra) has held that correction in the date of birth at the fag end of the career is not permissible. In that case, respondent no. 1 had filed a school leaving certificate indicating his date of birth as 02.06.1949 as proof of his date of birth in the service record and consequently the same date of birth was

Amil Kumar

recorded. However, subsequently, the respondent no. 1 filed an application stating that though in the school leaving certificate his date of birth is 02.06.1949 whereas, in fact, the date of birth in the record of the Tehsildar is 03.05.1951, so the date of birth be corrected in the service record of the respondent according to the record of the Tehsildar. In the present O.A., the applicant is not requesting for change of his date of birth other than what has been recorded in the secondary school certificate. He is only requesting that his date of birth be recorded / corrected as per the secondary school certificate, which is also the source of his date of birth being entered in his service record.

16. I have carefully perused the entry made in the original service record as produced by the respondents. In this service record, it has been mentioned that the date of birth of the applicant is 7-5-1954, which is based on his secondary school certificate of 1972. The certified copy of this secondary school certificate of the applicant is also in the original service record of the applicant, which is dated 05th July, 1972, which has been attested by the 'Pradhyapak, Rajkiya Mahavidhyalaya, Kota'. In this certificate, the date of birth of the applicant has been recorded as 07th May, 1955. Learned counsel for the respondents was not able to explain that when the certified copy of the secondary school certificate is available in the service record of the applicant then how the date of birth of the applicant has been recorded as 07th May, 1954. Apparently, it appears to be a clerical error. An error can always be corrected. At best it can be said that the applicant had been rather

Anil Kumar

negligent in putting his signatures but this being a substantive right cannot vanish because of such negligence.

17. I am fully in agreement with the learned counsel for the applicant that the ratio decided by the Hon'ble Supreme Court in the case of **State of Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others** (supra) is not applicable in the facts and circumstances of the present case.

18. In the case of **State of Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others** (supra), the respondent no. 1 had based his claim of the change of date of birth on the basis of date of birth in the record of the Tehsildar rather than school leaving certificate. In that case, there were two different sources of the date of birth of respondent No. 1. But in the present case, there is only one source of the date of birth i.e. secondary school certificate. In the present case, the applicant is praying that his date of birth be treated as it has been stated in his secondary school certificate, which is also on record of the respondents. The original service record of the applicant, as produced by the respondents, also shows that the date of birth of the applicant has been recorded on the basis of his secondary school certificate of 1972. This fact has not been disputed even by the learned counsel for the respondents. Therefore, I am of the opinion that the ratio decided by the Hon'ble Supreme Court in the case of **State of Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others**

Anil Kumar

(supra) is not applicable in the facts and circumstances of the present case.

19. Learned counsel for the respondents also led emphasis that as per the provisions of IREC Part-I, Para 225 (4) (iii), change of date of birth at this belated stage cannot be allowed.

The relevant part of the same is quoted below: -

"(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."

20. Just below the provisions of Para 225 (4) (iii) of IREC, the

Railway Ministry has given a decision, which is quoted below: -

"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.

As per this decision of the Railway Ministry, when a candidate declares his date of birth, he should provide documentary evidence such as a Matriculation certificate or a Municipal birth certificate. In the present case, the applicant at the time of appointment has provided an attested copy of secondary school certificate and the same is on record of the respondents, therefore, it cannot be said that the applicant did

Anil Kumar

not provide the required proof of his date of birth as required by the decision of the Ministry of Railways.

21. Therefore, I am of the opinion that if there is a clerical error in recording the date of birth, in such case, the clerical error can be corrected. The applicant will face undue hardship if this clerical error is not corrected. Needless to say that the applicant is not responsible for this clerical error. The entries in the service record are made by the respondents. Therefore, the respondents are directed to correct the clerical error made in the service record of the applicant with regard to his date of birth as is evident from the certified copy of secondary school certificate of the applicant, which is available in the original service record of the applicant. The respondents are further directed to correct such mistake and the date of birth of the applicant be read as 07.05.1955 as mentioned in the secondary school certificate of the applicant. The respondents are also directed to carry out this correction within a period of one month from the date of receipt of a copy of this order.

22. With these observations and directions, the Original Application is allowed with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

kumawat