

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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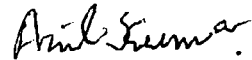
**Date of Order: 19.11.2013**

OA No. 455/2013 with MA No. 245/2013

Mr. C.B. Sharma, counsel for applicant.  
Mr. Anupam Agarwal, counsel for respondents.

Heard learned counsel for the parties.

O.A. and M.A. are disposed of by a separate order on  
the separate sheets for the reasons recorded therein.



(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 455/2013  
WITH  
MISC. APPLICATION NO. 245/2013

**DATE OF ORDER:** 19.11.2013

**CORAM**

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Jagdish Prasad 'G' S/o late Shri Gopi Chand, aged about 50 years, R/o Railway Quarter No. 481-J, Opposite Pani Ki Tanki Near Ajmeri Gate, Railway Colony, Phulera and last employed on the post of Fuel Issuer under Senior Section Engineer (Loco), North Western Railway, Phulera, Jaipur Division, Phulera.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

**VERSUS**

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
3. Divisional Mechanical Engineer (Loco), North Western Railway, Jaipur Division, Jaipur.
4. Senior Section Engineer (Loco), North Western Railway, Phulera, Jaipur Division, Phulera.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

**ORDER (ORAL)**

The applicant has filed this Original Application being aggrieved by the letter issued by the respondents dated 29.05.2013 (Annexure A/1) vide which the applicant has been informed that his request for change in the date of birth cannot be accepted and he would be retired on 31.05.2013 treating his date of birth as 18.05.1953 as per his service record.

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2. Learned counsel for the applicant submitted that the date of birth of the applicant is 18.05.1963. He submitted that as per the provisions of IREC Part-I Para 225 (4) (iii) change of date of birth cannot be allowed but the applicant's claim is to correct the clerical error and to record correct date of birth. Due to the clerical mistake, the respondents recorded the date of birth as 18.05.1953 instead of 18.05.1963.

3. Learned counsel for the applicant further submitted that the respondents also managed the sign of the applicant by some other person to justify their action. As per the knowledge of the applicant, he never put any signature on the first page of the service book.

4. Learned counsel for the applicant also submitted that at the time of appointment, the applicant submitted educational certificate in which correct date of birth is 18.05.1963 (Annexure A/2). He also drew my attention to an Office Order dated 18.12.1986 (Annexure A/6) regarding his appointment in which the date of birth of the applicant has been shown as 18.05.1963 and his educational qualification as 9<sup>th</sup> class passed. This letter has been signed by the same officer, who has verified the service record of the applicant on the same date (Annexure A/7). Therefore, he prayed that the respondents may be directed to treat the date of birth of the applicant as 18.05.1963 instead of 18.05.1953.

5. Learned counsel for the applicant, in support of his averments, referred to the following case law: -

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(1) **Ashgar Khan vs. Union of India & Ors.** – reported in 1998 SCC (L&S) 1428.

(2) **J.P. Bairwa vs. Union of India & Ors.** (OA No. 94/2001) order dated 19.10.2001 passed by Central Administrative Tribunal, Jaipur Bench, Jaipur.

6. On the other hand, learned counsel for the respondents submitted that the applicant has no reason to be aggrieved by the letter dated 29.05.2013 (Annexure A/1) because it is only a reiteration of his date of birth as recorded in the service records. He further submitted that a bare perusal of the service record at Annexure A/7 shows that the date of birth of the applicant is 18.05.1953 and the applicant has signed just below the date of birth and the verifying officer has also signed the same. Therefore, if the applicant was aggrieved with this entry in the service record then he should have protested much earlier rather than on the verge of retirement.

7. Learned counsel for the respondents submitted 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.”

Thus, he argued that the applicant was appointed in 1986 and now after 27 years of service, he cannot raise the issue of revising the date of birth.

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8. Learned counsel for the respondents argued that moreover as per the law laid down by the Hon'ble Apex Court, one cannot challenge the date of birth at fag end of service career, and to support his averments, he referred to the following judgments of the Hon'ble Supreme Court: -

- (1) **State of Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others** – reported in (2011) 2 SCC (L&S) 585.
- (2) **Chief Medical Officer vs. Khadeer Khadri** – reported in 1995 (1) SLR 547.
- (3) **Burn Standard Co. Ltd. and others. Vs. Dinabandhu Majumdar and another** – reported in 1995 (4) SLR 25.

9. Learned counsel for the respondents further submitted that in the absence of any mala fide, it cannot be admitted that applicant never put any signature on the first page of the service book. On the contrary, the applicant never protested in this regard till 2012.

10. Learned counsel for the respondents also submitted that seniority list was published on 31.07.2007 (Annexure R/1) in which the date of birth of the applicant has been shown as 18.05.1953. A copy of the seniority list was also given to the applicant but he did not protest about the date of birth even at that point of time. He further submitted that as per the 'Check Your Salary History' which is for the year 2013 (Annexure MA-1), his date of birth has been shown as 18.05.1953. Therefore, he submitted that the request of the applicant for the change of his date of birth at fag end of his service career cannot be accepted

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and, as such, the Original Application has no merit and it should be dismissed with costs.

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

12. Learned counsel for the applicant argued that according to the educational certificates, the date of birth of the applicant is 18.05.1963 and by a clerical mistake in the service book, it has been recorded as 18.05.1953. He submitted that in the case of **J.P. Bairwa vs. Union of India & Ors.** (supra), this Bench of the Tribunal has held that if there is a clerical error in recording the date of birth, in such case the clerical error can be corrected. In this case also, the date of birth, as recorded in the service book, was acknowledged by the applicant by putting his own signature. The Tribunal held that even if the applicant has put in his signature in that case it can only be observed that the applicant had been rather negligent but this being a substantive right cannot vanish because of such negligence. Therefore, the Tribunal in **J.P. Bairwa vs. Union of India & Ors.** (supra) directed the respondents to correct the date of birth of the applicant.

13. Learned counsel for the applicant further submitted that the case law referred to by the learned counsel for the respondents is not applicable in the present Original Application. In all the three judgments cited by the learned counsel for the respondents, the Hon'ble Apex Court has held that any change in the date of birth in service record at fag end of the service

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career is not permissible. However, in the present Original Application, 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 clerical error 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.

14. On the contrary, learned counsel for the respondents reiterated that the date of birth of the applicant cannot be changed due to the provisions of Para 225 (4) (iii) of IREC, Part-I. He further argued that he has already referred to the law settled by the Hon'ble Supreme Court that any change in the date of birth in the service record at fag end of the service career is not permissible. Moreover, the applicant has acknowledged his date of birth as 18.05.1953 by putting his signature just below the entry of the date of birth in the service record and it has been duly verified by the concerned officer.

15. I am not inclined to agree with the averments made by the learned counsel for the respondents. 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 provide 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 produced 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.

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16. In the present Original Application, the respondents have not been able to produce any documentary evidence on the basis of which the date of birth of the applicant was recorded as 18.05.1953 as required. It is not disputed that the applicant is 9<sup>th</sup> class passed. It has been so recorded in the service record of the applicant. Therefore, the respondents must have asked the applicant to produce some documentary evidence about the correct date of birth of the applicant at the time of appointment. Neither in the written reply nor during the course of the arguments, the respondents could clarify about the documents seen by them before recording the date of birth of the applicant in the service record. On the contrary, the learned counsel for the applicant has produced the Transfer Certificate (Annexure A/2) issued by the Government Secondary School, Phulera (Jaipur) and Statement of Marks of Secondary School Examination- 1984 issued by the Board of Secondary Education, Rajasthan. In both these documents, the date of birth of the applicant has been shown as 18.05.63. Moreover, the same authority, who has verified the service record of the applicant (Annexure A/7), has issued an Office Order of appointment of the applicant dated 18.12.1986 (Annexure A/6) in which the date of birth of the applicant has been shown as 18.05.1963 and the educational qualification has been shown as 9<sup>th</sup> class passed. The correctness of these documents has not been disputed by the respondents. Therefore, in my opinion, there appears to be a clerical error while recording the date of birth of the applicant in the service record.

17. I have carefully perused the case law, referred to by the learned counsel for the respondents viz. (1) **State of**

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**Maharashtra and Another vs. Gorakhnath Sitaram Kamble and Others** – reported in (2011) 2 SCC (L&S) 585, (2) **Chief Medical Officer vs. Khadeer Khadri** – reported in 1995 (1) SLR 547 and (3) **Burn Standard Co. Ltd. and others. Vs. Dinabandhu Majumdar and another** – reported in 1995 (4) SLR 25. The Hon'ble Supreme Court in all these three judgments have held that any change in the date of birth in service record at the fag end of the service career is not permissible. In my opinion, the ratio decided by the Hon'ble Supreme court in all these three judgments is not applicable under the facts & circumstances of the present OA. In the present OA, 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 by which the year of his birth has been wrongly stated in the service book. The respondents have not been able to produce any documents on the basis of which the date of birth of the applicant has been recorded as 18.05.1953. On the contrary, the documents which have been placed on record by the applicant with regard to the correct date of birth i.e. 18.05.1963 have not been controverted by the respondents.

18. The respondents have placed on record some pay slips of the applicant at Annexure MA/1. I have perused these pay slips which are of the year 2013. These pay slips cannot be relied upon as a proof of date of birth of the applicant as 18.05.1953 because these pay slips are subsequent to the notice for retirement dated 29.11.2012 (Annexure A/8).

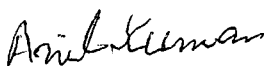
19. In view of the above facts and circumstances, the respondent no. 1 is directed to re-examine the case of the

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applicant about the correct date of birth of the applicant and shall decide the issue in question within a period of one month from the date of receipt of a copy of this order by passing a reasoned and speaking order according to the provisions of law. The interim relief granted by this Bench of the Tribunal vide order dated 12.06.2013 shall continue till the decision is taken by the respondent no. 1 in this case, as directed above.

20. With these observations and directions, the Original Application is disposed of with no order as to costs.

21. In view of the order passed in the Original Application, no further order is required to be passed in the Misc. Application No. 245/2013 filed on behalf of the respondents praying for vacation of interim order dated 12.06.2013, as such, the Misc. Application is disposed of.

  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

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