

(Reserved on 30.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/01237/2017

This the *01st* day of *June, 2018*

HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

Nisar Ahmad, S/o Late Makbool Ahmad, Presently posted as Senior Technical, North Central Railway, Allahabad Division, Allahabad. Residence House No. 88/73, Pura Manohar Das (Akaberpur), District - Allahabad.

.....Applicant

By Advocate: Shri A.K. Singh

Versus

1. Union of India through General Manager (Railway), North Central Railway, Allahabad Zone, Allahabad.
2. Divisional Rail Manager, North Central Railway, Allahabad Division, Allahabad.
3. Divisional Rail Manager (Personal), Northan Railway, Allahabad Zone, Allahabad.

.....Respondents

By Advocate : Sri A.K. Rai

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

The facts of the case, in brief, are that the applicant was appointed on the post of Fitter by the respondents on 07.08.1982 as a regular employee. The applicant, after receipt

of his high school certificate in 1983, he submitted the certificated to the respondent No. 3 on 20.09.1983 (Annexure A-1 to the O.A) with a request to correct the date of birth as per the high school certificate. It is stated by the applicant the he filed two reminders to the respondent No. 3 on 19.01.1984 and 15.05.1984, but no action on his request was taken by the respondents. It is further stated in the O.A that the applicant submitted another application in the month of June 2004 and then on 20.07.2009 alongwith copy of earlier letters for correction of his service record and date of birth according to the high school certificate, in which his date of birth was recorded as 10.07.1960 whereas, as per the service records, his date of birth was recorded as 01.07.1958. He submitted detailed representations again on 15.04.2016 and 27.01.2017 (Annexure A-5 to the OA). Inspite of repeated requests for change of date of birth in the service record, no action was taken and, therefore, this OA has been filed by the applicant with the prayer for following reliefs: -

- “1. To pass the order or direction to quash the fake entry with regard to the date of birth recorded in the service record of the applicant.
2. To pass the order or direction directing the respondent no. 3 to take necessary action on

the representation dated 15.04.2016 and 27.01.2017 and modify / correct the date of birth mention in the service record on the basis of High School certificate.

3.”

2. The respondents have filed Counter Reply. It is stated by the respondents that at the time of appointment, the applicant submitted the transfer certificate dated 24.01.1980 issued by Yadgare Hussaini Uchchttar Madhyamik Vidyalaya, Allahabad and as per the said transfer certificate, the date of birth of the applicant is 01.07.1958. Similarly, the applicant submitted I.T.I pass certificate in which his date of birth was mentioned as 01.07.1958. It is further stated that at the time of appointment, the applicant filled up the form for the post of Fitter mentioning his date of birth as 01.07.1958. Accordingly, the date of birth has been recorded in his service record as per the documents furnished by the applicant.

3. The applicant has also filed Rejoinder broadly reiterating the stand taken in the OA. He stated in the Rejoinder that he received his high school certificate on 15.09.1983 and accordingly he submitted application within a month to the Principal, Industrial Training Institute, Banda as well as

respondent No. 3 for correction of his date of birth as per the high school certificate.

4. Heard learned counsel for the applicant. It is stated by him that the series of representations starting from 1983 i.e. within year of his joining service, have been filed by the applicant for correction of the date of birth but no action has been taken by the respondents. As per the Railway Board instructions, any request for correction of date of birth has to be submitted within three years after joining the service, which has been done by the applicant. He further submitted that unless the decision is taken in this matter, the respondents will retire the applicant in July, 2018 as per his date of birth in his service records.

5. Learned counsel for the respondents submitted that as stated in the counter reply, the date of birth of the applicant has been correctly recorded based on the documents submitted by the applicant at the time of his appointment. He submitted a copy of Master Circular No. 12 of the Railway Board, which prescribed procedure for recording the date of birth of the railway servants or its alteration. In this case, the applicant has not taken any action in the matter till the year 2017 i.e. just before he is going to retire. Therefore, he argued that in the

light of the following decisions of Hon'ble Supreme Court and Hon'ble Allahabad High Court, the OA does not have any merits

- i. Burn Standard Company Limited Vs. Dinabandhu Mazoomdar – 1995 (4) SCC 172.
- ii. Union of India Vs. Harnam Singh – 1993 (2) SCC 162
- iii. State of U.P and others Vs. Tej Ram Kashyap – 2016 Law Suit (All) 685

6. We have considered the submissions as well as the pleadings of both the parties. We have also gone through the provisions of Master Circular No. 12 issued by the Railway Board regarding procedure of recording the date of birth and its alteration.

7. In case of the literate staff, following procedure have been laid down in the Master Circular No. 12 for recording the date of birth :-

“I. Declaration of date of birth at the time of appointment: -

1.....

2.....

3. In the case of literate staff, the date of birth shall be entered in the record of service in their own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

II. Procedure in regard to alteration of date of birth: -

1. The date of birth as recorded in accordance with the rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of Group 'A' & 'B' railway servants and a General Manager in the case of Group 'C' & 'D' railway servants 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 the railway servant being retained 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 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. (Rule 255-RI).

2. As a one time exception to the time limits laid down in para **II.1** above, the Railway employees in service on 03.12.1971 were allowed to represent their cases for alteration in the recorded date of birth latest by 31.07.1973. After 31.07.1973, no request for alteration in the recorded date of birth can be entertained if it has not been submitted before completion of the probation period or three years service whichever is earlier.

(E (NG) II/70/BR/1 dated 04.08.1972)

3. It is clarified that the above time limits will not apply in the case of illiterate Group 'D' staff.

(E (NG) II/78/BR/12 dated 25.10.1978) & (E (NG) I/86/BR/7 dated 19.10.1986)."

As per provisions above, no request for alteration of recorded date of birth can be entertained, if it is not submitted before completion of probation period or three years of service, whichever is earlier.

8. Assuming the contention of the applicant that he had submitted his request for correction of the date of birth on 20.09.1983 is correct then it was necessary on his part to pursue the matter with the respondents and get the decision as quickly

as possible. If no decision is taken by the respondents on his request within a reasonable time, it was open to the applicant to have approached the appropriate court of law for redressal of his grievance relating to his date of birth, but no such recourse was taken by the applicant. Although the applicant submitted representations from time to time to the respondents, but he failed to raise the matter before the competent court prior to filing of this OA in 2017 i.e. just before one year of his retirement. Further, no postal receipt or any other proof for submission his various representations has been furnished, except for the representation dated 15.04.2016 and 27.01.2017 (Annexure A-6) for which the copy of postal receipt has been enclosed.

9. In the case of Dinabandhu Mazoomdar (Supra) cited by the respondents' counsel, the Hon'ble Apex Court has held that unless there is a compelling reason, the correction in date of birth should not be permitted at the fag end of service career of the employee. Similar principle has been laid down by the Hon'ble Apex Court in the case of Harnam Singh (Supra). The relevant para 15 of the said judgment in the case of Harnam Singh (Supra) is reproduced as under: -

“15. In the facts and circumstances of this case, we are not satisfied that the Tribunal was justified in issuing the direction in the matter in which it has been done. The application for correction of date of

birth , entered in the service book in 1956, for the first time made in September, 1991, was hopelessly belated and did not merit any consideration. As already noticed, it had not been made even within the period of five years from the date of coming into force of Note 5 to FR 56 (m) in 1979. The Tribunal, therefore, fell in error in issuing the direction to correct his date of birth and the impugned order of the Tribunal cannot be sustained.”

10. In the case of Tej Ram Kashyap (Supra) cited by the learned counsel for respondents, Hon’ble Allahabad High Court has held as under: -

11. In this background, both on facts as we have indicated and having due regard to the provisions of law noted above, the learned Single Judge was manifestly in error in entertaining the writ petition and in directing the grant of relief for correction in the date of birth of the respondent from 15 February 1956 to 15 February 1959. The writ petition ought not to have been entertained in the first phase having been filed in 2015, for seeking correction in the date of birth. When the writ petition was filed, the respondent was virtually on the eve of his retirement. A long time after the respondent had entered into service, a correction in the date of birth in the service record ought not to have been entertained.”

11. In this case, the applicant at the time of joining of the service had submitted documents stating his date of birth to be 01.07.1958, as mentioned in the counter reply filed by the respondent. Further, the applicant before joining had indicated the date of birth to be 01.07.1958 in the initial application to the respondents for employment for the post of Fitter, copy of which has been enclosed at Annexure R-3 to the counter reply

by the respondents. Further, the bio-data in the service record (copy at Annexure R-4 to the counter reply), the applicant had also entered his date of birth as 01.07.1958, which has been duly signed by him as . As per provisions of Master Circular No. 12. No credible explanation has been furnished by the applicant recording his date of birth as 01.07.1958 at the time of appointment, whereas, as per his subsequent claim that his date of birth is 10.07.1960 as per the high school certificate.

12. In view of the above, we are unable to accept the contention of the applicant for change of his date of birth at this belated stage since the date of birth as per service record was declared by the applicant himself at the time of joining the service in 1982 and no action was taken as per law in case he had submitted the request for correcting the date of birth as per provisions of the Master Circular No. 12. The O.A is accordingly devoid of merit and is dismissed.

13. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...