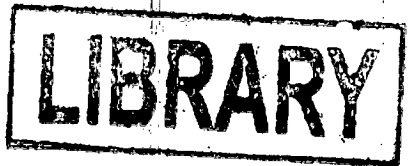


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA



O.A. 350/00101/2015

Order dated: 18.03.2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

SUDARSHAN YADAV

VS.

UNION OF INDIA & ORS. (E. Rly.)

For the Applicant : Mr. A.K. Bairagi, Counsel

For the Respondents : Ms. Gopa Roy, Counsel

ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard Ld. Counsel for the parties.

3. The applicant would file this application seeking the reliefs as under:

"8.(a) To pass order/and or direction upon the Respondents Authorities to correct and rectify the wrong recording of date of Birth in the Service Record as 15.10.1976 instead of 05.4.1961 as per authentic documents as Birth Certificate, Family Register, and Voter Identity Card by cancelling the wrong recording in the SR within the stipulated period.

(b) To pass such other order or orders as your Lord Ship may deem fit and proper."

The case of the applicant is a nutshell would be as under:

"The Applicant was appointed a Trackman on 04.0.2008 under SE(PW)/Mills/SNR at Nahati. The applicant an illiterate person never read in the school. The time of appointment the Birth Certificate was not in his possession for which on presumption the AEN/Kanchrapara i.e. the Appointing Authority recorded the date of Birth of the applicant at his own will as 05.4.1961. As per Birth Certificate and Family register the date of Birth should be record as 15.10.1976 instead of 05.4.196. When the applicant came to learn about wrong recording of date of Birth by the appointing Authority the AEN/Kanchrapara he submitted a representation to correct and rectify his wrong recording of date of birth with vital documents as Birth Certificate, and as also his Father's Affidavit but due he got no response. He filed a "RTI application and in reply of the said RTI application the Sr. DEN/Co-Ord. And P.I.O. E. Railway/Sealdah replied on

21.8.2014, that his representation was not acceptable since both birth certificate and his Father's Affidavit were issued / sworn after your appointment."

4. The applicant would therefore seem to be particularly aggrieved in regard to the communication dated 21.8.2014 which is as under:

"No.658-W / RTI Act / SC / 13.
Sri Sudarshan Yadav,
Rly. Qtr. No.61 / B,
East Colony,
Ward No.05,
Ranaghat,
Pin - 741 201.

Sealdah, dt. 21.08.2014.

Sub: Information sought under RTI Act' 2005 in regards to change of date of birth.

Ref: Your letter No. Nil dt. 10.7.2014 received by this office on 22.7.14.

In reference to your letter quoted above, this is to inform you that you have sought for information in regards to your change of date of birth in service record but your representation is not acceptable since both the birth certificate and your father's affidavit were issued/ sworn after your appointment in Railway service.

(S.K. Singh)
Sr. Divisional Engineer/ Co. Ordn.,
& P.I.O.
Eastern Railway, Sealdah."

5. Citing the aforesaid Ld. Counsel for the applicant would argue that the authorities have wrongly disallowed correction in date of birth which was sought for on the basis of birth certificate which constituted a valid the best proof of age.

6. Per contra Ld. Counsel for the respondents would submit as under:

"The applicant, Sri Sudarshan Yadav was initially a Licensed Porter of Sealdah Division. After screening, he was provisionally appointed as Trackman/ Gangman in Group 'D' category on pay of Rs. 2610/- in scale Rs. 2610-3540/- (Revised Scale Revised Pay) under Engineering Department alongwith other 22 candidates. The order of appointment was issued by the Assistant Personnel Officer, Eastern Railway, Sealdah Division, vide letter No. 41 E/52/08/E-12/ Licensed Porter dated 23.8.2008. The appointment letter, specified as under:

"The appointment is done on clear stipulation as recorded in the offer of appointment alongwith stipulation that if any false information is furnished or on Police Verification/ School Verification, Caste Certificate Verification, antecedents are found undesirable, the service of the concerned Licensed Porters will be terminated even if appointed in Group 'D' service"

At the time of appointment, the applicant, Sudarshan Yadav gave a self declaration by way of an Affidavit which was affirmed by the Executive

Magistrate, Ranaghat, Nadia on 7.8.2008 where he mentioned his date of birth as 5.4.1961 and he also gave declaration in para 5 of this Affidavit as under:

"That I further give undertaking that if any of my declaration is found to be false at later stage or any of the documents submitted by me is found to be fake / forged on verification, I may be discharged from service alongwith any other allied action as deem fit, even if I am regularized in Railway Service in the meantime."

On the basis the said Affidavit and order of appointment, issued by the Assistant Personnel Officer, Sealdah dated 23.3.2008, his date of birth was recorded as 5.4.1961 in the Service Book in the year 2008."

7. Ld. Counsel for the respondents would cite the provisions of chapter 2 of Indian Railway Establishment Code, Volume – I that contains 'General Conditions of Service'. Para 225 there deal with "Date of Birth".

The provision is set out hereunder with emphasis, for clarity:

"225. Data of Birth.-(1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of the illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3)(a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(4) The date of birth as recorded in accordance with these 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 a Group A & B railway servant, and a General Manager in the case of a Group C & D railway servant to cause the date of birth to be altered.

(i) Where in his opinion it had been falsely stated by the railway servant is obtain in advantage otherwise in admissible, provided that such alteration shall not result in the railway servant being assign longer than if the alteration had not been made.

(ii) Where in the case of illiterate staff, the General Manager is satisfied that a claim 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.

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,

(b) If he could not produce any authority in accordance with (a) above he should be asked to produce an affidavit in support of the declaration of age.

(c) In the case of Group D employees care should be taken to see that the date of birth as declared on entering regular Group D service is not different from any declaration expressed or implied, given earlier at the time of employment as casual labour or as a substitute.

Note.- The sputa/basis on which the date of birth has been recorded in the service Book of the employee at the time of entering service may be recorded below the date of birth rectify.

(Authority Railway Board's letter No. E(G)99FR VI dt. 7.12.99)"

Citing the same Ld. Counsel would argue that date of birth ^{once} entered could not be changed.

8. The arguments were considered and materials perused.

9. The legal position is regard to request for alteration of date of birth could be noted in the following:

In **Union of India -vs- Harnam Singh [1993 (2) SCC 162]** the Hon'ble Apex Court considered the question whether the employer was justified in declining the request of the employee for correction of the date of birth made after 35 years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the Original Application filed by him, While reversing the order of the Tribunal the Hon'ble Court observed as under extracted with supplied emphasis for clarity :

"A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispersed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that right to continue in service stands decided by its entry in the service record.

A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in State of Assam & Anr. v. Daksha Prasad Deka & Ors., [1971] 2 SCR 687 a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he can not claim to continue in service on the basis of the date of birth claimed by him. (emphasis supplied)

In **Home Department -vs- R.Kirubakaran [1994 Supp (1) SCC**

165] Hon'ble Apex Court considered the question whether Tamil Nadu Administrative Tribunal had the jurisdiction to entertain an application made by the respondents for correction of his date of birth just before the superannuation. While answering the question in the negative the Hon'ble Court observed as under :

"An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, 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 materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is 3 1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276: (1993) 23 ATC 4 (1993) 2 SCC 162: 1993 SCC (L&S) 375 :(1993) 24 ATC 92 issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior. (emphasis supplied)

In **Union of India -vs- C. Rama Swamy [1997 (4) SCC 647]** the Hon'ble Apex Court, after an in-depth analysis of Rule 16(A) of the All India Services (Death cum Retirement Benefits) Rules, 1958, reversed the order passed by the Hyderabad Bench of the Central Administrative Tribunal which had directed alteration of the date of birth of the respondent and observed as under :

"In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing office. In fact, where maturity for a

responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

(emphasis supplied)

In **State of Madhya Pradesh & Ors. -vs- Prem Lal Shrivastava [2011 (9) SCC 664]** the Hon'ble Apex Court held that change of date of birth in service record at the end of career is to be permitted only in exceptional cases on irrefutable proof.

In **Md. Yunus Khan -vs- U.P. Power Corporation Ltd. & Ors. [2009 (1) SCC 80]** the Hon'ble Apex Court noticed that there was still a period of about four years before appellant was to retire on the basis of his uncorrected date of birth. Hence it held

"his request for correction should have received favourable consideration".

In **State of Punjab -vs- Mohinder Singh [Appeal (Civil) 3739 of 2005] [SLJ 2005 (2) pg 477]** the Hon'ble Apex Court held:

"As observed by this Court in *Umesh Chandra v. State of Rajasthan* (1982 (2) SCC 202), ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of

the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam.

(emphasis supplied)

In **Kamta Pandey -vs- M/s BCCL through its Chairman cum Managing Director, Koyla Bhawan, Dhanbad & Ors. [2007 (3) JLR 7216]** Hon'ble High Court of Jharkhand at Ranchi found that "Matriculation Certificate issued by recognised Educational Board has been obtained by an employee before his employment, and the date of birth as per Matriculation Certificate having been mentioned in I. Card issued by Company, immediately after appointment". The Hon'ble Court held that "the respondents cannot claim that only service register should be taken note of for determination of date of birth even though instructions No. 76, a product of Bilateral Agreement is binding on their Company". Hence, correction of date of birth at the fag end of service was found permissible on the condition expressed in the words infra :

"if the Court is fully satisfied that there has been real injustice to the person concerned and his claim for correction has been made in accordance with the procedure prescribed and when a clear case, relating to date of birth is made out on the basis of clinching materials, necessary direction to make a declaration of said date of birth can be given".

(emphasis supplied)

In **Ramanand Tiwary -vs- Indian Iron & Steel Co. Ltd. [LPA 493 of 2000]** the Hon'ble High Court of Jharkhand at Ranchi considered the following facts :

"The petitioner-appellant was appointed as a General Mazdoor in the company of the respondents on 20.2.1970. After 10 years, on the basis of his Matriculation Certificate containing his date of birth as 31.12.1950, he was promoted to the post of Attendant Clerk on 23.5.1980. Though the appellant submitted his Matriculation Certificate and other Certificates containing his date of birth to be 31.12.1950 the respondents asked him to appear before the Medical Board. Accordingly he was subjected to the medical test. The Medical Board on 29.9.1989 on physical assessment of the

appellant, found him to be 40 years of age. As per the report of the Medical Board his date of birth was 29.9.1949".

The Hon'ble Court therefore held as under :

"We are of the considered opinion that the respondent authorities committed grave illegality in issuing the letter impugned treating his date of superannuation as 31.1.2006, since as per the Matriculation Certificate he is to retire on 31.12.2010. Accordingly, the impugned letter is quashed, the order of the learned Single Judge is set aside and the respondents are directed to correct the petitioner-appellant's age in their records in terms of the Matriculation Certificate and pass consequential orders, like reinduction into service with all the benefits and allow him to continue till he attains superannuation."

(emphasis supplied)

In **Home Department -vs- R.Kirubakaran [1994 Supp (1) SCC 165]**

Hon'ble Apex Court held as under:

"An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, 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 materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is 3 1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276: (1993) 23 ATC 4 (1993) 2 SCC 162: 1993 SCC (L&S) 375 :(1993) 24 ATC 92 issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the

strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.

(emphasis supplied)

A sum up of the legal proposition on alteration of date of birth would be as under :

- (1) A Government servant who has declared his age at the initial stage of the employment is not precluded from making a request later on for correction of his agexxx.....xxx.....xxx.... if he is in possession of an irrefutable proof relating to his date of birth as different from the one earlier recorded and even if no period of limitation was prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. (**Harnam Singh** supra)
- (2) Unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. (**R.Kirubakaran** supra)
- (3) A Tribunal or a Court must be "fully satisfied that there has been real injustice to the person concerned and his claim for correction can be made in accordance with the procedure prescribed and within the time fixed by any rule or order". (**R.Kirubakaran** supra)
- (4) Correction of date of birth can be allowed even at the fag end of service when a clear case, relating to date of birth is made out on the basis of clinching materials. (**Kamta Pandey** supra)
- (5) The onus is upon the applicant to prove the wrong recording of his date of birth in his service book.
- (6) The date of birth entered in the school record is the source of materials for making entry in the service records. (**T.V.Venugopalan** supra)
- (7) Entries in school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty particularly those made 'ante litem motam'. (**Mohinder Singh** supra)

10. That apart, it could be noted that in **Gendalal -vs- UOI [(2007) 15 SCC 553]** an employee made a representation for change of date of birth on the basis of school

certificate within six years his joining the service in 1964 followed by another. It was rejected after 21 years on the ground that correction was sought for at the fag end. Tribunal dismissed his application on the ground that he approached the Tribunal at the fag end.

Hon'ble Apex Court held in favour of the employee in view of his representation that "he could not be said to have not acted diligently".

11. While claim for correction may be defeated by delay [**State of Tamil Nadu -vs- T.V. Venugopalan (1994) 6 SCC 302**] this Tribunal cannot lose sight of the fact that an entry in Municipal Births and Deaths Register prevails over the entry in school register as held in **CIDCO -vs- Vasudha Gorakhnath Mandevlekar [(2009) 7 SCC 283]**.

12. The Date of Birth Certificate issued by Municipality in terms of entry would be in the nature of a Public Document in terms of (Mohinder Singh supra) and **R. Jayalakshamma -vs- Election Tribunal-Cum-Senior (2004)5 ALD 525, (2004)5 ALT 400** decided on 27.08.2004 by Hon'ble High Court of Andhra Pradesh.

13. In the aforesaid legal backdrop, it could be noticed that the applicant sought for correction on the basis of Municipal Birth Certificate which constituted a public document as age proof. The Railways Rules cited by the respondents envisage that the declared age should not differ from any declaration expressed or implied for any public purpose before entering railway service. It also enjoins that a person entering railway service would be required to produce Municipal Birth Certificate which is considered to be irrefutable proof of one's age, failing which he may produce school Leaving Certificate. In the case at hand the recorded date of birth was different from the Municipal Birth Certificate which had the greatest probative value as age proof. If the other conditions enumerated herein above were fully met and it was not a case where advantage was gained by giving a different date of birth at the time of entry there was no reason to disallow correction on the basis of Municipal birth certificate which constituted irrefutable proof of one's age.

14. Further the rules provide that the General Manager can consider the alteration of date of birth in service book where the declared date of birth does not seem to be given in order to seek any advantage.

15. In the aforesaid backdrop, the O.A. is disposed of with a direction upon the General Manager to pass appropriate order for alteration of date of birth on the basis of Municipal Birth Certificate of the applicant. For the purpose he may make suitable enquiry, if required, to ascertain the genuineness of the birth certificate.

16. Order be passed by 3 months. No costs.

(Bidisha Banerjee)
Judicial Member

drh