



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**


No. O.A. 350/00493/2016

Date of order: 14th May 2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Nirmala Hela,
Wife of Shankar Hela,
Working as Safaiwala (TRS),
Eastern Railway,
Sealdah Division, District – Nadia,
Residing at Parbati Bazaar Para,
Ukilnara, Ranaghat, Nadia.

.. Applicant

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1. Union of India
Through the General Manager,
Eastern Railway, Sealdah Division,
Kolkata – 700 014.
 2. Sr. Divisional Personnel Officer,
Eastern Railway, Sealdah Division,
Sealdah, Kolkata – 700 014.
 3. Sr. Divisional Electrical Engineer (TRS),
Sealdah Division, Eastern Railway,
Kolkata – 700 014.
 4. Assistant Personnel Officer,
Eastern Railway, Sealdah Division,
Kolkata – 700 014.
 5. Sr. Section Engineer (IC)/TRS,
Ranaghat, Eastern Railway,
District – Nadia.

.. Respondents

For the Applicant

Mr. B.R. Das, Counsel
Ms. S. Dutta, Counsel

For the Respondents

Mr. S.K. Das, Counsel

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ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

- "(i) Rescind, recall, withdraw and/or modify, amend the order being Annexure 'A-1' in so far it concerns the petitioner and directs retirement of the petitioner w.e.f. 31.5.2018 by treating the purported affidavit being Annexure 'A-2' as withdrawn/cancelled as if it was never submitted.
- (ii) Treat the affidavit dated 26.9.2015, which has been affirmed by the mother of the petitioner, certifying the petitioner's date of birth 1.1.1967 and as proper for incorporation in all the service records for all intents and purpose:
- (iii) Certify and transmit the entire records pertaining to this case in order to grant reliefs as prayed for in paragraphs (i) and (ii) above.
- (iv) Any further order/orders and/or direction or directions as your Lordships may deem to be fit and proper.
- (v) Costs."

2. Heard both the Ld. Counsel, examined pleadings, documents on record and judgements cited in support by both Ld. Counsel.

Further, service records as produced by the respondents in compliance to directions dated 31.1.2017 were also examined for this purpose.

3. The contentions of the applicant, as canvassed by his Ld. Counsel, is briefly as follows:-

That, the applicant was appointed as Safaiwala after the demise of her husband, who was also appointed under the respondents as Safaiwala.

That, the applicant hails from a backward community and is illiterate.

That, one Shri Gopal Hela, had filed an affidavit at Kolkata on the request of the mother of the applicant, a resident of Varanasi, certifying the date of birth of the applicant. While doing so, the said Gopal Hela had erroneously recorded the applicant's date of birth as 10.5.1958 instead of 1.1.1967.

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That, documents such as Pan Card, voter identity card and the card relating to New Pension Scheme all support the date of the applicant's birth as 1.1.1967 and that the family return submitted by her husband, who died in 1996, was also to the same effect.

That, the action of the respondent authorities in recording the applicant's incorrect date of birth in the forms of family pension and Provident Fund amounts to "mischief" of the official concerned. The petitioner had been served with a notice along with other individuals for superannuation w.e.f. 31.5.2018 on the basis of incorrect recording of her date of birth and that the applicant had submitted a representation accompanied by an affidavit affirmed by her mother at Varanasi stating her date of birth to be 1.1.1967. As the respondent authorities have not responded favourably to the correction of the date of birth of the applicant, being aggrieved, the instant application has been filed.

The grounds which have been advanced by the Ld. Counsel for the applicant in the pleadings and also during oral submissions were as follows:-

- (i) The action on the part of the authorities seeking to retire the petitioner on the basis of an unauthenticated date of birth is contrary to law and justice.
- (ii) The affidavit sworn by Shri Gopal Hela is not admissible in absence of non-declaration of the source of information of the deponent herein.
- (iii) That, the respondent authorities ought to have ascertained the family particulars of Shankar Hela till his death i.e. 22.2.1996.
- (iv) That, the voter card issued by Election Commission of India shows her age as 28 years as on 1.1.1995.

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- (v) That, the respondent authorities ought to have amended her date of birth based on the affidavit sworn by her mother on 26.9.2015 annexed as "Annexure A-5" to the O.A.
- (vi) And that, the applicant being illiterate and being from the backward section of the society cannot be made liable for incorrect recording of her date of birth during her entry into service.
- (vii) And that the action of the respondent authorities is in violation of the rights guaranteed under Article 14 and 16 of the Constitution of India.

In support, the Ld. Counsel for the applicant has referred to the decision arrived at in *Md. Yunus Khan v. U.P. Power Corpn. Ltd.* (2009) 1 SCC (L&S) 83.

4. The respondents, who in addition to their reply, have also furnished the service records of the applicant, argued to the contrary, as follows:-

That, the only proof of birth that was furnished by the applicant during her entry into service was the affidavit sworn by Shri Gopal Hela on 31.8.2006.

That, when the offer of temporary appointment was made on 18.7.2006 to the applicant, it was clearly mentioned in para 1 thereof as follows:-

"No. EIC/CR-IV/E-18(TR)Pt.III Sealdah, the 18.7.2006

To Smt. Nirmala Hela, w/o Lt. Sankar Lal Hela
C/o. biswanath Saha, Vill.: Gopalpur,
P.O. Pritinagar, Rly. Stn. : Payradanga, P.S. : Ranaghat,
Dist: Nadia.

Sub: Temporary appointment in Gr.'D' category as Safaiwala
Under TRS/Sealdah Deptt. in pay Rs. 2550/- in grade
Rs. 2550-3200/-.

- 1) I am prepared to offer you a temporary post in grade and rate of pay specified above plus usual other allowances provided you

[Signature]

deposit Rs. 16/- or Rs. 24/- to Chief Booking Clerk/Sealdah for the prescribed Medical Examination as per CPO(Sl. No. 130/92 circulated vide Sr. DPO/SDAH's No. E/133/0/Vol. I(19) dated 12.8.93) and produce the receipt of this office and subject to your passing the prescribed Medical Examination by an authorized Medical Officer of this Railway, and no production of your satisfactory proof of your age. In case, if any false information is furnished or there has been suppression of factual information, your service would liable to be terminated."

6. The Respondents have further argued that (i) the affidavit sworn by Shri Gopal Hela dated 31.8.2006 was obviously furnished in response of such temporary offer of appointment. (ii) In the said affidavit of Gopal Hela, it has been mentioned that since his parents are dead, he is certifying the date of birth of his sister, Nirmala Hela. On the other hand, Smt. Nirmala Hela has produced an affidavit sworn on 26.9.2015 by Smt. Bhullan Devi, reportedly the mother of the applicant, stating that the date of birth of the applicant is 1.1.1967 and hence if the mother of the applicant was alive in 2006, the self-same affidavit could have been sworn as a proof of the applicant's age during her entry into service.

The respondents, in their reply, have further annexed a certificate from the Upapradhan of Pairadanga Gram Panchayat of District - Nadia wherein the said Upapradhan has certified that, as on 22.10.1996, when the spouse of the applicant had expired, the applicant's age was 37 years and the age of her four sons and two daughters are as follows:-

i)	Santosh Hela	-	Son	27 years
ii)	Km. Rekha Hela	-	Unmarried daughter	25 years
iii)	Km. Sangita Hela	-	Unmarried daughter	24 years
iv)	Shri Dipu Hela	-	Son	19 years
v)	Shri Dipak Hela	-	Son	17 years
vi)	Shri Suroj Hela	-	Son	15 years

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Hence, as the difference between mother's age and that of her eldest son is only 10 years, such certificate of the Upapradhan and the veracity thereof is in question.

From the Voter ID as well as the records of death of the spouse of the applicant Sankar Hela, it appears that Sankar Hela had expired in the age of 36 years i.e. 22.10.1996. If so, Shri Sankar Hela would have been 9 years old when his first son was born and his wife, according to the certificate of the Upapradhan of the Gram Panchayat, was one year older to him.

The respondents have also produced a statement for payment of Provident Fund money to the deceased employee in which the family details of the applicant has been recorded as follows:-

Sl. No.	Name	Relationship with the deceased employee	Age of the person shown in column 2
1.	Smt. Nirmala Hela	Widow wife	38 years 5 month as on 22.10.1996
2.	Sri Santosh Hela	Son	18 years 6 months
3.	Km. Rekha Hela	U/M Daughter	16 years 6 months
4.	Km. Sangita Hela	U/M Daughter	15 years 6 months
5.	Sri Dipu Hela	Son	10 years 3 months
6.	Sri Dipak Hela	Son	8 years 2 months
7.	Sri Suraj Hela	Son	6 years 4 months

The same statement has been counter-signed by the applicant and if, according to this declaration the applicant was 38 years 5 months old on the date of declaration i.e. 27.3.2002, her date of birth logically would be in the year 1958.

Similar recordings have been made in the application for family pension from the family of late Sankar Lal Hela, the spouse of the

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applicant, wherein the date of birth of Smt. Nirmala Hela has been recorded as 10.5.1958.

It is also seen from the service records of the applicant that the applicant was directed to appear for a certificate on medical fitness on 19.6.2006 before the Railway Medical Examiner wherein the same date of birth, namely, 10.5.1958 has been recorded.

The respondents, in their support, has furnished M/C No. 12/90 conveying E(NG)/I/90/BR/4 dated 19.11.1990 which lays down the procedure for recording date of birth on entering Railway service and its alteration. Part II thereof relates to the procedure in regard to alteration of date of birth and para (iii) of Part II is reproduced below verbatim from the said office memorandum:-

"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 225-RI).

In their support the respondents have cited the ratio laid down in Coal India Ltd. and another v. Ardhendu Bikas Bhattacharjee & others. (2005) 12 SCC 201 and Union of India v. Ram Suia Sharma 1996 SCC (L&S) 605.

ISSUE

5. The sole issue that requires to be resolved to adjudicate upon the instant matter is whether judicial review is warranted in the context of this application seeking amendment / correction in the date of birth as recorded in the Service Book of the applicant.

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FINDINGS

6. The respondents have issued a Master Circular No. 12/90 regarding procedure for recording date of birth on entering the Railway service and its alteration. The procedure for alteration of date of birth states that:-

"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' & Group 'B' Railway servants and a General Manager in the case of Group 'C' & Group 'D' Railway servants to cause the date of birth to be altered.

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"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 225-R1)."

The above is the condition that has to be fulfilled by the Railway employees as an essential procedure in regard to alteration of the date of birth. The incumbent, according to service records, had been offered the temporary appointment on 18.7.2006. The applicant, however, applied for alteration of her date of birth on November, 2015 (Annexure "A-5" to the O.A.) enclosing the affidavit sworn by her mother on 26.9.2015. Hence, it is established that the applicant did not submit her prayer for alteration of date of birth as noted in the service records either on completion of her probation or after three years of service which had expired in 2009.

In this, we seek guidance from the various decisions of the Hon'ble Apex Court in the following matter.

In **Union of India v. Harnam Singh (1993) 2 SCR 42 (SC)**, it has been held as follows:-

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"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 Courts and Tribunal. It is none the less competent for the Government to fix a time limit in the service rules, after which no correction of date of birth of a Government servant can be entertained."

In this case by Master Circular No. 12/90, the respondent authorities have clearly fixed the time limit for alteration of date of birth of Railway employees. Hence, in following the ratio of Harnam Singh (supra), the applicant's prayer for correction of date of birth in 2015, which is almost 9 years after her entry in service, cannot be entertained.

Further as laid down in **State of Uttar Pradesh v. Shiv Narayan Upadhyay (2005) 6 SCC 49** it has been held that a challenge to the date of birth as recorded in the Service Book made on the eve of retirement should clearly not be entertained and a Court or Tribunal should be slow in issuing directions for correction of date of birth or in granting relief or in continuation of service.

In **State of Assam v. Daksha Prasad Dea 1971(2) SCR 14 (SC)** the Hon'ble Apex Court has held that, in the controversy relating to date of birth it is the service record, which has the primacy and superannuation etc. will be determined on the basis of service record and not on what the employee claims to be his date of birth unless the service record is first corrected in conformity with the appropriate procedure.

In **R.K. Jangra v. State of Punjab (2009) 5 SCC 703** the competent authority was directed to apply its mind to material furnished regarding his actual date of birth. In the case of the instant applicant, the only evidence furnished at the fag end of the service career of the applicant was an affidavit sworn by the mother nine years after her entry into service.

In **Coal India Ltd. v. Ardhendu Bikas Bhattacharjee (2005) 12 SCC 201**, which the respondents have cited in their support, the Hon'ble

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Apex Court held that since on what basis (and after 38 years) the Secondary Education Board in Bangladesh corrected the matriculation certificate, is essentially a question of fact, and as such the High Court ought not to have exercised its writ jurisdiction to determine the real date of birth.

In the instant application, as applicant's mother has sworn her affidavit in September, 2015, she was obviously alive in 2006 when the applicant had entered service. The applicant, however, had chosen to submit an affidavit reportedly sworn by her brother as proof of her age. It is not understood that on what basis and after 9 years, the mother of the applicant came forward to swear an affidavit which she could have done during the point of entry of service of the applicant.

In *U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri* (2005) 11 SCC 465, as in the case of *Harnam Singh* (supra), wherein a statutory rule provided that application for correction of date of birth must be within two years of issuing certificate, correction of date of birth considered after several decades, especially on their eve of superannuation was disallowed and the plea of continuing cause of action was rejected by the Hon'ble Apex Court.

In this instant matter before us, the respondent authorities, having notified the period as after probation or three years after entry into service in their master circular No. 12/90, are quite within their rights not to allow the representation made by the applicant on the eve of her superannuation.

In *State of Tamil Nadu v. T.V. Venugopalan* (1994) 6 SCC 302, while commenting on the power of judicial review, the Hon'ble Apex Court had held that in exercise of power of judicial review, the Courts or

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Tribunals will not reappreciate the evidence to reach a different conclusion when the application for correction was rejected by the authorities.

In **Executive Engineer, Bhadrak RNB Division, Orissa v. Rangadhar Mullick** (1992) 5 SLR 77, the Hon'ble Apex Court on the same lines as decided in **Harnam Singh** (supra) had directed that as Rule 65 of the Orissa General Financial Rules stipulated that representations made for correction of date of birth near the time of superannuation shall not be admitted, the action taken by Government in rejecting his representation was in no manner illegal or against the principles of natural justice.

In **Regional Provident Fund Commissioner v. Bhavani** AIR 2008 SC 2957 as well as in **Eastern Coal Fields v. Bajrangi Ravidas** (2014) 134 AIC 55 (SC) it was held that cases of respondents should not be considered as they have applied at the fag end of their career for corrections of their date of birth in the appellant's records, a practice which has been strongly discouraged by the Hon'ble Apex Court.

In **Punjab and Haryana High Court at Ghandigarh v. Megh Raj Garg** (2010) 6 SCC 482 the question was as to whether the employer was justified in declining the respondents' request for correction of date of birth made after 35 years of his induction into service and whether the Central Administrative Tribunal was justified in allowing the Original Application filed by him. The Court held that an application for correction of date of birth by an public servant cannot be entertained at the fag end of his service.

In **State of Madhya Pradesh v. Prem Lall Shrivastava** AIR 2011 (SC) 3418 at 3420 the Hon'ble Apex Court has directed that it needs to be emphasised that in matters involving correction of date of birth of a

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Government servant, particularly, on the eve of his superannuation or at the fag end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing directions of correction of date of birth recorded in the Service Book at the time of entry into any Government service.

Similarly, as in **Harnam Singh (supra)**, in **Meghraj Garg (supra)**, the Hon'ble Apex Court has reiterated that declaration of age made at the time of or for the purpose of entry into Government service is conclusive and binding on the Government servant. And the only exception to this is that the Government servant can make an application for correction of age within two years from the date of entry into service as per rules which necessarily implies that an application made by a Government servant for correction of age after two years of his entry into service cannot be entertained by the competent authority.

The Ld. Counsel for the applicant in his support has cited the decision in **Md. Yunus Khan v. U.P. Power Corporation Limited and others (2009) 1 SCC (L&S) 83**. The ratio held by the Hon'ble Apex Court in this matter was that compliance with the principles of natural justice may be necessary in special situation i.e. when documents of two employees with the same name have got mixed up, with the result that the younger employees is shown as older and older is shown as younger. Hence, opportunity to show cause was necessary in the case of older employee and not in the case of younger.

In the instant application, the issue does not involve mixing up of documents of two employees and hence, we do not consider that this ratio lends support the claims made in the instant application.

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Hence, after having examined the conspectus of the case, we find the applicant had entered service by furnishing her brother, Gopal Hela's, affidavit dated 31.8.2006 as proof of age in response to the offer of temporary appointment dated 18.7.2006. It is seen that the applicant had put her signature while accepting the offer on terms detailed above which included proof of her age during entry in service. The applicant's contention that such affidavit was incorrect and that her correct date of birth has been sworn by her mother in an affidavit in 2015 does not hold water because nothing had prevented her mother to swear the same affidavit in 2006 when the applicant was about to enter her service as a Safaiwala on compassionate grounds. Secondly, we find from her service record that the applicant had been subjected to a physical fitness test on 19.6.2006 wherein the Railway Medical Commissioner had also recorded her date of birth as 10.5.1958. The certificate of Upapradhan of Piaradanga G.P. of Nadia records the mother's (applicant's) age as 37 years and that of her eldest son as 27 years which implies that the eldest son was born when the applicant was 10 years old which cannot be accepted as proof of her correct age. In the filled up form for family pension and provident fund too the details of date of birth have been counter-signed by the applicant hence the denial of such admissions at the end of her service career and on the eve of her superannuation is obviously an afterthought. The fact that such representation for alteration of date of birth, not having been made within the time period specified by master circular 12/90, does not deserve any consideration by the respondent authorities.

7. Hence, we are of the considered view that, as laid down in the master circular of the respondent authorities and as decided by the

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Hon'ble Apex Court in a number of judgments in various matters as noted above, judicial review is not called for/warranted to intervene in this matter. Being so, there is no scope of correcting the date of birth of the applicant and the respondent authorities should proceed to take further action with reference to the applicant according to her date of birth as recorded in the Service Book.

8. We, accordingly, hold the application should be dismissed and is dismissed on merit. There will be no order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Manjula Das)
Judicial Member

