

CENTRAL ADMINISTRATIVE TRIBUNALMUMBAI BENCH, MUMBAI.ORIGINAL APPLICATION NO.194 OF 2013.

Date of decision: 1st day of March, 2017.

CORAM:- HON'BLE SHRI. A.J. ROHEE, MEMBER (J).
HON'BLE MS.B. BHAMATHI, MEMBER (A).

Pannalal J. Saroj,

Age 55 yrs.,

Residing at Pathan Chawl, Third Floor,
Room No. 314, Dr. Moses Road,
Worli, Mumbai 400018.

...Applicant

(Applicant by Advocate Shri. Ramesh Ramamurthy)

Versus

1. **Union of India through**
General Manager, Western Railway,
Churchgate, Mumbai 400 020.

2. **Divisional Railway Manager**,
Western Railway, Mumbai Central,
Mumbai- 400 008.

3. **Senior Section Engineer (Carriage)**,
Western Railway, Mumbai Central,
Mumbai- 400 008.

4. **Assistant Personnel Officer**
Western Railway, Mumbai Central,
Mumbai- 400 008. *...Respondents.*
(Respondents by Advocate Shri. V.S. Masurkar)

Reserved on : - 08.02.2017

Pronounced on : - 01.03.2017.

O R D E R

Per : Ms. B. Bhamathi, Member (A)

This O.A. has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) This Hon'ble Tribunal be pleased

to quash and set aside the order dated 24.12.2012 and order dated 25.12.2012 and to set aside the premature retirement of the applicant;

b) This Hon'ble Tribunal be pleased to direct the respondents to allow him to continue in service till his actual retirement date i.e. 31.12.2017 and period from 31.12.2012 till joining of his duty should be treated as continuous for the service record;

c) This Hon'ble Tribunal be pleased to call upon the records and proceedings related to the appointment of the applicant from the respondents;

d) This Hon'ble Tribunal be pleased to direct the respondents to correct the date of birth as 01.01.1958 given at the time of the appointment in case there is any mistake in service sheet;

e) Any other order as this Tribunal may deem fit and proper in the facts and circumstances of the case.

f) The cost of the application may be directed to pay.

2. The case of the applicant is that he was appointed as casual labour on 19.12.1977 CWS, BCT in SC category. At the time of appointment, he submitted his school leaving certificate to the Railways. The date of birth on the said certificate clearly shows that the applicant's date of birth is 01.01.1958. Applicant states that his identity card,

medical card and salary slip throughout these years shows the birth date as 01.01.1958.

Therefore his retirement was due on 31.12.2017.

2.1. The Respondents, however, started the process of the retirement of applicant in January 2012 for effecting his retirement on 31.12.2012 itself. The applicant then came to know that in service sheet the date of birth is wrongly mentioned by the then clerk as 01.01.1953 instead of 01.01.1958 and hence the above premature retirement process.

2.2. As per the service sheet, the entry of date of birth as 01.01.1953 was done only on 18.07.1983 and not immediately after he was initially engaged in 1977-1978, on the basis of school leaving certificate submitted showing the date of birth as 01.01.1958. The same was verified by the Respondent no. 2 only 2008. This shows that the respondents were not maintaining the service records of the employees properly.

2.3. Immediately, on coming to KNOW about the premature retirement process, The

applicant gave representation dated 27.01.2012 to R-3 stating therein that the service sheet should be verified and his date of birth should be corrected to 01.01.1958. The same was forwarded by R-3 to the competent authorities on 30.01.2012. But the respondents vide letter dated 24.12.2012 rejected the said representation dated 27.01.2012 after 11 months and proceeded to superannuate the applicant on 31.12.2012. The rejection letter did not indicate any reason for not correcting the date of birth in the service sheet in consonance with the school leaving certificate available in the records of respondents. Applicant was retired on 31.12.2012, though his last drawn salary slip also mentions his correct date of birth i.e. 01.01.1958 and the actual retirement due date of 31.12.2017.

2.4. Applicant submitted his representation on 31.12.2012 itself once again. Applicant also followed up his matter by submitting various representations, through Rail Mazdoor Union, vide letters dated 09.01.2013 and 11.01.2013.

3. In the reply filed by the respondents to the OA, the respondents have stated that applicant joined the services as Khalasi w.e.f. 19.12.1977. the date of birth recorded in the service sheet is 01.01.1953 and this is duly signed by the applicant himself on the top of the particulars of the service sheet.

3.1. He retired on attaining age of superannuation w.e.f. 31.12.2012 and the present OA for change of date of birth is filed on 23.01.2013. The OA is also not filed within the prescribed time limit for purposes of correction of date of birth. It has been filed at the fag end of his service, which is not permissible as per guidelines and settled law. Therefore his request is not maintainable in law. In this connection, respondents have relied upon the following judgments:-

"(i) AIR 1971 SC 173 = 1971 (2) SLR 14 (SC)

S/O Assam v/s. Daksha Prasad Deka.

(ii) (1990) 2 SCC 682 = (1990) 13 ATC 713)

G/O A.P. v/s. M. Hayagrera Sarma.

(iii) (1994) 2 SCC 491 = 1996 (1) SLR 679 S/O

Orissa v/s. Brahamarba Senapati.

(iv) (1995) 28 ATC 522 = AIR 1995 SC 1349

Union of India v/s. K.H. Pandya.

(v) AIR 1996 SC 1000 = (1996) 32 ATC 658

Union of India v/s. Mrs. Saroj Bala.

(vi) (1996) 2 SCC 484 = (1996) 33 ATC 224

Visakhapatnam Dock Labour Board v/s. E.

Atchanna and Ors.

(vii) AIR 1997 SC 1986 = (1997) 1 SCC 247 *The*

Commissioner of Police v/s. Bhagwan V. Lahane.

(viii) 2007 (4) MH LJ 837 *Kakasaheb Shindu Mhaske Vs. State.*

(ix) (2005) 11 SCC 465 *UP Madhyamik Parishad and Others v/s. Raj Kumar Agnihotri.*

(x) (2005) 11 SCC 477 *S/o. Uttaranchal Vs. Pitamber Dutt Semwal.*

(xi) (2004) 3 SCC 394 *S/O. Punjab Vs. S.C. Chanda.*

(xii) (2203) 6 SCC 483 *State of UP Vs. Gulaichi.*

(xiii) 2008 (6) MH LJ 505 *Adhikrao Mahadeo Patil Vs. UOI.*

(xiv) 2009 (7) Scale 72. L/ *Muyhammed Aslam VS. S/o. Kerala.*

(xv) 2009 (5) Mh LJ 540 *P. Madhavan Nair Vs.*

IOC.

**(xvi) 2006 (3) SCT 607 S/o. Gujarat vs. Vail
Mohammed Dosabhai Sindhi.**

**(xvii) 2005 SCC (L&S) 794/ S/o. UP vs.
Shivnaraya Upadhyay.**

**(xviii) 2005 AIR (SC) 2491: Correction of
date of birth is not cause of continuing
cause of action."**

3.2. It is submitted that in the latest judgment of the Hon'ble Supreme Court in the case of **State of MP vs. Premalal Shrivastava reported in 2011 (10) Scale 600**, it was held that the time and again the Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time after his/ her induction into the service, particularly beyond the time fixed by the employer, he/she cannot claim, as a matter of right the correction of his/her date of birth, even if there is good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to aid of those who sleep over their

rights.

3.3. Regarding the applicant's contention that he has been issued identity card & salary slip wherein the date of birth is shown as 01.01.1958, it is stated that the identity card is issued by subordinate office and not by the office of R-2, which is the controlling office.

3.4. Applicant's representation was referred to HQ/CCG for advice. The GM (E) CCG vide letter dated 21.12.2012 conveyed, the decision regarding the date of birth confirming that date of birth of 01.01.1953 as recorded in the service sheet stands good. Accordingly, applicant was advised vide letter dated 24.12.2012 and has been superannuated on retirement on 31.12.2012 as Fitter.

3.5. Regarding, applicant's contention about representation dated 31.12.2012, it is pertinent to note that it is not understood, how the representation was made on the Sunday, which is a holiday.

3.6. Applicant has been retired on superannuation w.e.f. 31.12.2012 as per

statutory provision of rules and law. The representation dated 09.01.2013 by a non recognized union i.e. Rail Majdoor union does not carry any weight, as the action of the respondents is strictly in accordance with law.

4. In the rejoinder, the applicant has disputed the contentions in the reply to the OA while reiterating the contentions in the OA. Applicant has further stated during enquiry from the respective OS/Clerk he was informed that his representation was forwarded to HQ for approval of competent authority and because of which reason the applicant did not choose to move any higher authority or judicial forum, legitimately expecting that the clerical error in the date of birth in his service record will be rectified as per the oral assurances given to the applicant.

4.1. Applicant was sanctioned casual leave and had gone to his native place. He was shocked to receive the telephonic message on 25.12.2012 from R-3 that his representation dated 27.01.2012 has been rejected on

24.12.2012 and his superannuation was due on 31.12.2012. Applicant boarded the train the same day and arrived on 27.12.2012 and received the letter dated 24.12.2012.

4.2. Respondents have deliberately delayed the process of replying to the representation of the applicant in time though the administration was aware of the clerical mistake of recording wrong date of birth in the service record of the applicant despite the wrong entry of date of birth being brought to their notice almost one year earlier and the respondents have retired the applicant without completing other formalities of filing pension forms, no dues clearances. Hence, all dues to applicant like PF gratuity, pension etc are still pending. The delay in disposal of the representation was deliberate. The decision was communicated to the applicant with only a few days to go before 31.12.2012 so as to prevent the applicant from approaching a Court of law for interim orders, the action of the respondents is thus not bonafide and done only to cover up the

clerical error on the part of the Western Railway authorities in mentioning a wrong date of birth in the service record of the applicant. It is against the policy guidelines of Railway Board dated 07.05.1985 that the applicant was not given time to make representation against unjustified decision.

4.3. The applicant's request was not for change the date of birth but to correct and maintain the date of birth on service sheet in accordance with the date of birth shown in school certificate available with the service sheet. Therefore, his request cannot be treated as change the date of birth, as indicated in the letter of R-3. Hence, competent authority misinterpreted the representation of the applicant while rejecting his representation. Hence, the time limit to change the date of birth is not applicable in this case and therefore statement of respondents regarding time bar is disputed and denied.

4.4. Applicant states that in 1979 at the time of grant of temporary status as clerk in

foreman/C & W/BCT, the office took his signature on blank form of service sheet as a formality but the service sheet was actually filled in on 18.07.1983 i.e. after three years and seven months from the date of grant of temporary status. The applicant was asked to sign the blank service sheet. The same should have been filled up immediately at the time of appointment itself. Further, it is also seen that the service sheet was countersigned by R-4 on 18.08.1988 after further/ another five years from 18.07.1983. This shows the negligence and irresponsibility in maintaining the service record of employees by R-4.

4.5. As per IREM under the heading date of birth at Sr. No. 1, it is clearly mentioned that "in case of literate staff the date of birth shall be entered in the record of service in the Railway servant's own hand writing. The applicant was VIIIth standard pass but he was not allowed to fill up his date of birth in the service sheet in his own hand writing.

4.6. As per the IREM rule under heading

date of birth at Sr. No. 3 it is clearly mentioned that "Date of Birth should be based on either matriculation or Municipal Certificate or School Leaving Certificate or affidavit in Court of law. But the respondents have not been able to state in their reply as to the basis or which other document other than the school leaving certificate which was submitted in 1977 was relied upon to show date of birth as 01.01.1953 in the service sheet by the office of R-2, when the school leaving certificate showed DOB as on 01.01.1958.

4.7. Respondents have also not been able to show the basis of the mismatch between the service sheet showing date of birth i.e. 01.01.1953, while continuing to show the date of birth as 01.01.1958 in identity card, medical card and salary slip during his entire service, different from the service sheets. The medical card wherein date of birth shown as 01.01.1958 was issued to applicant by Sr. DPO, who is in charge of controlling office.

5. In the Sur-rejoinder filed by the respondents, the contentions in the reply to

OA have been reiterated.

5.1. It is further contended that, as per Railway Board Circular No. 12/II (2) dated 19.12.1985, after 31.07.1973 alteration in the recorded date of birth in service sheet cannot be done on request.

5.2. The applicant has not submitted school leaving certificate, in proper form which is compulsory as per railway board's letter dated 19.11.1990.

5.3. The process of retirement of employee was started by the administration on the basis of the date of birth recorded in his service sheet.

5.4. It is denied that any assurance for change of date of birth was given to the applicant, when his representation was forwarded to HQ office.

5.5. The CPI, Settlement has recorded by note date 17.12.2013 that he was advised by the applicant that decision for filing up the settlement documents be done only after the outcome orders of CAT Mumbai. Hence, the processing has been put on hold as per

applicant's own request.

5.6. It is not possible to examine his allegation at this point in time that he was not allowed to fill up his service sheet in his own handwriting prepared at the time of his appointment. But it cannot be denied that he signed and put thumb impression on service sheet only after checking his service particulars. Entry regarding date of birth requires a documentary evidence. Hence, the date of birth of employee entered in his service sheet on the basis of some documents submitted by him, then and which he failed to show.

5.7. The seniority list is issued from time to time. This contains service particulars of employee such as date of birth, date of appointment etc. Hence, the employee has never represented against the notified seniority list, which shows his date of birth as 01.01.1953.

6. We have gone through the O.A. along with Annexures A-1 to A-12, Rejoinder to respondents' reply filed on behalf of the

applicant.

7. We have also gone through Annexures R-1 & R-2 and Sur-rejoinder and the original file records filed on behalf of the official respondents.

8. We have heard the learned counsel for the applicants and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

9. The issue for consideration is what documents were relied upon by the respondents for entering his date of birth in service sheet as 01.01.1953. Secondly, whether the entry in the service sheet has any justification based on all the records available or whether it was only a typographical error. Thirdly, whether this OA is a case of seeking change of date of birth and whether change of date of birth must be done within 5 years after entry into the service or within reasonable time as laid down by DoPT/Courts of Law. Fourthly, whether the above delay in filing the OA renders the OA

non maintainable under section 21 of the AT Act 1985 as per respondents.

10. The service sheet shows that the applicant entered service as Khalasi on 19.12.1977 in the scale of pay Rs. 196-232/-. He was thereafter made permanent. In support of the applicant's contention, regarding date of birth proof submitted at the time of appointment we have noticed that the only record relating to his date of birth is the school leaving certificate issued by the concerned institution showing date of birth of the applicant as 01.01.1958 written in figures and words. The certificate is dated 11.05.1977. Respondents cannot deny that this was the document relied upon or cannot hold that some other document was relied upon, which applicant would have submitted at that time, although the same is not available with them. This is a vital document and hence, it can be safely held that the only document available on record is the school leaving certificate. No other document could have been relied upon. The respondents are legally

barred from questioning the proforma or the correctness of the school leaving certificate of 1977 RB instruction dated 19.11.1990. To the Tribunal there is not ground to question the credibility/ genuineness of the school Transfer Certification filled in and duly signed by the competent authority.

11. As per IREC, the Railway Ministry's decision under para 225 regarding date of birth is as follows:-

"225. Date 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)

(b)

(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 to obtain an advantage otherwise is admissible, 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.

Railway Ministry's decision.

(d) **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 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.**

(e) **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.**

(f) **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 labourer or as a substitute.

Note:- The source/basis on which the date of birth has been recorded in the Service Records of the employee at the time of entering service may be recorded below the date of birth recorded."

12. It is evident that the respondents entertained the legitimate document viz. school leaving certificate of the applicant, which is also the sole document available on record, in order to effect his appointment. There was no mismatch between the document submitted when he was taken on temporary status in 1977 and later on when he made permanent. Further, the applicant was VIII standard pass.

13. As per IREC applicant should have entered the details in his service sheet being VIII standard pass. But the service sheet first page was entered by some one from the respondents side. Hence, respondents were fully responsible for making correct entries based on the accepted proof of birth and then attesting and verifying and countersigning

entries by supervisory officers. The wrong entry made then and from thereon were never verified again when the vital mistake has liable to have got detected. Since, there is no evidence in the service sheet applicant was even shown the service sheet anytime later, as per subsequent laid down practice, it can be safely held that applicant never got to see his service sheet after he first signed it in 1983, and that too five years after his appointment. It was verified after another five years later. This clearly shows that not having allowed applicant to make his entries, treating him as illiterate, the office took upon itself to record, attest, countersign and verify, which lays the greater burden of correcting wrong entries on the respondents. Hence, as per provision of IREC respondents, cannot now treat him as literate staff while examining the case for change of service sheet.

14. The first page of the service sheet contains applicant's signature and thumb impression. The entries are shown to have been

made on 18.07.1983. There is also signature of a witness, a clerk. Entries are made sometimes in blue ink and in two to three different handwriting, sometimes in black ink, in addition to entries made in two different styles of handwriting. The date of birth is shown in figure as 01.01.1953 and in words is as First January, Nineteen Fifty Three respectively. He was medically examined on 18.12.1982 the counter signature was made on 22.08.1982 and Assistant Personal Officer affixed his verification signature on 01.08.2008.

15. The above countersigning signature of 1982, predates the date of service sheet entries shown as 18.07.1983. This means that the countersigning officer signed before completing all entries were made. Some entries were made after he signed the service sheet. Hence, when rule required that applicant should have entered the detail, being a literate, he was treated as illiterate and his thumb impression and signature was taken for which he is being held solely responsible.

Since it is conclusively proved that the school leaving certificate was the only record available and accepted to give appointment, which is also a genuine/ credible document, then the person entering the service sheet, the attesting, countersigning, verifying officers never consulted that very document containing date of birth of applicant of 01.01.1958. Hence, responsibility is on the respondents for changing 1958 to 1953 by mistake on commission of a typographical error. It could be argued that numeral 8 in Hindi looked like 3 and hence, 8 was made to 3. Even if that is factored in, typographical error occurred even after consulting the school leaving certificate. In either scenario the responsibility for the error rests on respondents. Since, applicant had no occasion to see his service sheet again, the wrong entry continued, to which only respondents were privy to.

16. The respondents have not been able to explain with any modicum of documentary evidence as to how they arrived at the date of

birth as 01.01.1953 when the only documents available on record as submitted by the applicant reads as 01.01.1958. If any other documents were relied upon this is not on their record.

17. On the other hand the applicant was VIII standard pass at the time of entry into service and he has affixed his thumb impression and his signature without noticing that date of birth is different from date of birth in the school leaving certificate. The format of the service sheet required the other crucial entry i.e. date of retirement etc., This date does not find any mention on the first page of the service sheet in the appropriate column.

18. Hence, we hold that no satisfactory explanation has been given by respondents for making a baseless/ wrong entry regarding date of birth and no entry regarding the date of retirement in the service sheet although the format requires provision for making both benchmarks i.e. beginning date and end date of end of service of any employee. This

omission to mention the date of retirement was also not detected by the attesting, the countersigning and verifying officials. Entry of date of retirement would have clearly shown whether the year of retirement was 2012 or 2017. The respondents started processing the papers for retirement in 2012 without even recording any date of retirement in the service book, be it 2012 or 2017. This also resulted in adverse civil consequences to the applicant on account of both acts of commission i.e. typographical error and omission i.e. failing to mention the date of retirement in the first page of service sheet.

19. Even while the applicant was in the service of the respondents the identity card, medical card and salary slip was issued containing the date of birth as 01.01.1958 and the date of retirement as 31.12.2017 in the salary slip of December 2011. Hence, not having seen the service sheet after his initial appointment, applicant had no further ground to challenge the wrong entry since the "visible" and "active" records showed date of

birth as in school leaving certificate and showed date of retirement of 2017 taking the base as 1958. Therefore, the applicant had no ground to file his representation for change of date of birth even as per the last salary slip of December 2011. It was only when the applicant's name was suddenly shown in the list of retiring employees of 2012 that the date of retirement, shown as 31.12.2012, was known to the applicant.

20. Hence, in view of the above, it is clear that entry of date of birth as 01.01.1953 had no basis, as per the admissible, permissible, available records of IREC as proof of date of birth. The only documentary evidence was school leaving certificate of the applicant showing year of birth as 1958 in both words and figures. It is true that the applicant signed the service sheet, even though he was a literate person studied upto class eight. The entry was made by someone other than the applicant treating him as illiterate and then wrongly accusing the applicant of having acquiesced in the

entries made in service sheet by treating him as literate and charging him for not having filed for change of date of birth in time or filing the OA at the time of retirement to get a wrongful advantage or filing the time barred OA. None of the above contention hold good in view of the Tribunal. The fact is that while the applicant did not notice the entries, the respondents, in fact 4 of them, also did not realize that the date of birth entry in the service sheet did not match the school leaving certificate. The greater responsibility rests on the respondents, since they have no record now to support the entry of 1953. All evidence supports the contrary.

21. When the applicant made representation it was even appropriate for the respondents to have made enquiry from the school which issued the certificate to ascertain whether the entry regarding date of birth as 01.01.1958 which is in consonance with all other available records viz. Medical card, identity card, salary slip etc. The entry of date of birth in the cards was based only on the school leaving

certificate. The respondents have wrongly transferred the whole blame on to applicants for signing wrong entry, having deemed him to be as "illiterate" person, when as per Rules the witness viz. attestation officer, the countersigning and verifying officers all literate and all supervisory officers failed to correct it at that very time when the entries were made contrary to the school leaving certificate, to which the above all had immediate access to. For their fault, the typographical error remained undetected and the wrong entry continued on record.

22. The respondents contention that the applicant should have sought change of date of birth within a period of 5 years after appointment cannot be applied to the case of the applicant, in the light of above analysis. On the other hand, it was for the respondents to have made suo moto correction and harmonizing all the records i.e. service sheet, medical card, identity card and the school leaving certificate to show the same date of birth and date of retirement. The

respondents have miserably failed to detect the mismatched entries in the service sheet and ignoring the only documentary evidence available on record regarding his date of birth as 01.01.1958.

23. There is no bar as per guidelines for respondents to suo moto effect change of date of birth at any point in time and in this case since there was a mismatch between the school leaving certificate and the service sheet it was for the respondents to have detected the said mismatch when the service sheet was first belatedly filled in after his initial appointment in 1977 and countersigned and verified belatedly by the Supervisory Officer in 1982 and 2008, respectively. Since, the mistake of typographical error and act of omission in mentioning date of retirement, at the same point in time in the service sheet, the responsibility was on the supervisory officers to have detected the mismatch and taken suo moto action by way of issue of notice to the applicant to come up with the all appropriate/ other corroborating

documentary evidence in support of school leaving certificate. No notice was issued, it is deemed that respondents accepted dated 01.01.1958 the school leaving certificate but still entered date of birth as 01.01.1953. Delay was by respondents for not having acted in time to set right the mismatch and further continuing the wrong i.e. by showing his date of birth as 01.01.1958 in the medical card, identity card and salary slip, the case of which showed the date of retirement as 31.12.2017. Since salary slip of December 2011 itself showed date of retirement as 31.12.2017, it is clear that the respondents detected the mismatch between service sheet and the school leaving certificate in January 2012 about eleven months before retirement. Fearing that applicant should not be allowed to continue in service, for their own fault, they delayed the reply to the representation filed on 27.01.2012 immediately after it was brought to the notice of applicant. The reply, in fact, was given so late and waited till December 2012 and without any explanation of

delay from January to December 2012. Hence, respondents succeeded in effecting the retirement on 31.12.2012 against the only proof of date of birth being the school leaving certificate. This caused serious prejudice, adverse civil consequences and violated the right of applicant to remain in service till 2017.

24. It is not acceptable to simply claim that the controlling office did not issue the identity card or the medical card or the salary slip. None of these documents can be issued without approval of competent authority who is bound to look into the records of date of birth before entering vital service particulars of an employee such as date of birth and date of retirement in any official document whether it be service sheet or medical or identity card. There can be only date of birth and one date of retirement. The only source being the records admissible and acceptable at the time of appointment as per IREC. Hence, respondents made typographical error; they omitted to mention date of

retirement in the service sheet leaving it incomplete and non mention of date of retirement became an alibi for wrong entry regarding date of birth. But the wrong continued in continuing to show date of birth as 01.01.1958 and date of retirement as 31.12.2017 against their own service sheet entries, rendering detection of the wrong done by the applicant impossible.

25. The question is also if the service sheet was dated 01.01.1953 how could the salary slip, the medical card as well as the identity card have shown the date of 01.01.1958 and why, how and from where they selected the date of 01.01.1953 for which no records are available on their own files.

26. The respondents have relied upon the judgment of the Hon'ble Supreme Court in case of **Premlal Shrivastava (Supra)** wherein the Court held that the respondents while not placing evidence on record by the respondents to show that the date of birth recorded as 01.06.1942 was due to the negligence of some other person. He failed to show that the date of

birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him and hence, it was held that Appellant cannot be directed to correct the date of birth. The above ratio is not applicable to the present case. Further, the facts in the said case is that the respondent had applied for correction of his date of birth in 1990 i.e. 25 years after his induction into service as a constable. The respondent was aware ever since 1965 that his date of birth as recorded in the service book was different. The documents were signed by the respondent giving the later date of birth. Hence, it was conclusively proved that respondent was aware of the error in the service record. In view of the above, the Court held that the entry of date of birth for at the time of entry into government service is conclusive and binding on the government servant. But the Court also stated that an exception has been carved out in the rule, permitting the public servant to

request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake.

"14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

15. In Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane⁵, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which

the relief should not be granted to him.

16. Again, in *Union of India Vs. C. Rama Swamy & Ors.*⁶, it has been observed that a *bonafide error* would normally be one where an officer has **indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.**"

27. We have already held that it was on account of typographical error on the part of the respondents that the applicant's date of birth was got wrongly recorded and it was never known to the applicant till January 2012 when his papers for retirement were put in process. Hence, the above judgment in fact supports the contention and advances the case of the applicant.

28. In view of the above the Tribunal has already established the following:-

(i) There was typographical/ clerical error in the entry of date of birth in the first page of the service sheet.

(ii) The school leaving certificate containing the date of birth as 01.01.1958 is

admissible document as per IREC.

(iii) There is nothing to questioned the genuineness/ validity of the said certificate.

(iv) The school leaving certificate is the only certificate proof of date of birth available on the records.

(v) Respondents have failed to disclose the basis of the entry as 01.01.1953.

(vi) It is true that the applicant had signed the service sheet but although 8th standard passed he was treated as illiterate and the entries were made by the concerned clerical staff of the respondents. Since, he was treated as illiterate the respondents cannot treated now as a literate person and charged him for having signed on the service sheet and not pointing out the wrong entry to show that he had knowledge of the date of birth as 01.01.1953.

(vii) The entries in the service sheet show the employment of both black ink and blue ink and contends at least four different

styles of handwriting written over a period of time between 1982-88. Hence, it is not clearly established that the signature of the applicant was taken at the time when the date of birth was wrongly entered.

(viii) The countersigning officer has signed the service sheet before in 1982 whereas the entries are shown to have been made in 1983. this shows that the signatures of countersign officer were done before three days in the service particulars including date of birth in the service sheet.

(ix) The applicant was considered as illiterate person and hence, entries were made from the respondents' side.

(x) At least four level of literate supervisory officers have appended their signature that the attesting official as witness. The countersigning officer and the verifying officer and also the clerical staff who made the data entry did due diligence to consult the school leaving certificate while mechanically putting their signature to wrong

entry regarding date of birth.

(xi) The greater responsibility lies upon the respondents than the applicant. There was no periodical reattestation on first page as required under rules. There is nothing also on record to show that the applicant had any chance to see their service sheet hence, neither the respondents never detected the mistake. At the same time only respondents being privy to the service sheet. Applicant had no occasion to see the service sheet after he first signed it. For these reasons also the greater responsibility also the error remaining undetected lies on the respondents. Along with the commission of the typographical/ clerical error there was also an omission on the part of the respondents when they failed to make entries regarding date of retirement as per the proforma of the service sheet. Had this being done there was a greater likelihood of the wrong based benchmark of 01.01.1953 being detected by the respondents themselves.

(xii) Since, the medical card, identity card are corroborative documents. These documents are no issued except that the approval of the competent authority. The competent authority is presume to have consulted the school leaving certificate when they prepared the above cards. It is a legal presumption in view of the basis of the school leaving certificate it further clinches the applicant's contention that there was no other contemporaneous confirming any other confirmatory documentary evidence having recorded the date of birth is 01.01.1953. Thereby eliminating the scope of presence of any other documents than the school leaving certificate on the record.

(xiii) The record produced at the time of entry in the service on temporary status and later on permanent status remaining the same. There was no mismatch.

(xiv) Last salary slip issued to the applicant contends date of birth was as 01.01.1958 and date of retirement is 31.12.2017. This was based on the school

leaving certificate.

(xv) Since, the medical card, identity card and the salary slip contends the date of birth of 01.01.1958 and date of retirement was 31.12.2017 the applicant remained unsuspecting about the wrong entries. Since, the active and visible sheet shows the date of birth as per the school leaving certificate. Hence, the respondents are themselves responsible for preventing timely detection of the error in the service sheet by the applicant. The responsibility for making suo moto correction of date of birth rested with the respondents since they were privy to all the relevant documents regarding date of birth. Hence, it was respondents' **neejake** action in January 2012 which was an own explanation departure from the salary slip entries regarding date of birth and date of retirement with respondents' triggered applicant's knowledge about the wrong entry regarding date of birth in the service sheet. If respondents themselves came to know of the wrong entry only in January 2012 then the applicant cannot be changed with

delay and hence, the suddenness of the knowledge of date of birth as 01.01.1953 was equally applicable to respondents and applicant.

(xvi) Therefore, no delay on the part of the applicant in filing his representation within a few days after such knowledge was communicated by the respondents to the applicant by way of processing the pension papers of the applicant along with other retiring employees,.

(xvii) There was no delay on the part of the applicant but there was delay on the part of the respondents in taking almost 11 months time between January and December to communicate the rejection.

29. In view of the above, none of the judgments relied upon by the respondents in *Vishakhapatnam Dock Labour Board (Supra)*, *Shiv Narain Upadhyaya (Supra)*, *S.C. Chadha (Supra)*, *Pitamber Dutt Semwal (Supra)*, *L. Muhammed Aslam (Supra)*, *Smt. Gulaichi (Supra)*, *Daksha Prasad Deka (Supra)*, *Mrs.*

Saroj Bala (Supra), Kantilal Hemantram Pandya (Supra), Brahamarbar Senapathi (Supra), M. Hayagreev Sarma (Supra), U.P. Madhyamik Shiksha Parishad (Supra) and Premlal Shrivasis (Supra) are all distinguishable in toto from the facts and circumstances of the present applicant's case. In fact in the case of Premlal Shrivasis (Supra) the Court held that in case whether clerical error stands established applicant's case belongs to that exception in Premlal Shrivasis (Supra).

30. Accordingly, the impugned order is liable to be interfere with. The applicant has overwhelmingly established that the entry of the date of birth as 01.01.1953 as against the date of birth as 01.01.1958 was in fact a clerical error and therefore OA is liable to be allowed based on facts and law.

31. Accordingly, OA is allowed.

(Ms. B. Bhamathi)
Member (A)

(Shri. A. J. Rohee)
Member (J)

*srp**