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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 142 of 2017

Date of order: 7.1.2019.

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Sona Muni Devi,
Wife of Late Ganesh @ Ganesh Karmokar,
Village Mayur Kola,
Post Office Kotalpukur,
District Sahibganj,
Pin - 816 105, Jharkhand.

... Applicant.

Versus

1. Union of India
through the General Manager,
Eastern Railway,
Having his office at Fairlie Place,
Kolkata - 700 001.
2. The Divisional Railway Manager,
Eastern Railway,
Having his office at Malda,
D.R.M. Building,
Post Office Jhaljhalia,
Police Station English Bazar,
District Malda, Pin - 732 142.
3. The Senior Division Personnel Officer,
Eastern Railway, Malda Town,
Having his office at Malda,
Post Office Jhaljhalia,
Police Station English Bazar,
District Malda, Pin - 732 142.

... Respondents.

For the Applicant : Mr. S. Banerjee, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

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

Heard both Ld. Counsel, examined pleadings and documents on record.

2. The case of the applicant, in brief, is that the applicant's spouse was an employee with the respondent authorities in the post of Trackman and had passed away on 5.2.2007. That, the said ex-employee were first married to one Dayamuni Devi, whose date of birth was recorded as 16.3.1957 but the said Dayamuni Devi had died on 15.11.1987. After expiry of his first wife, the ex-employee married the applicant, but, as the ex-employee expired on 5.2.2007, the applicant was appointed as a Safaiwala on compassionate grounds.

The applicant has no knowledge of Bengali, Hindi or English as well as rules and regulations of the Respondents. Consequently, when the departmental staff of the respondent authorities filled up the necessary forms ignoring her school certificate and inserting the date of birth of the applicant incorrectly, the applicant had executed the same. That the applicant came to know only in the year 2013 that her date of birth was erroneously recorded. Despite having preferred several representations for correction of date of birth, she was ultimately served with a retirement notice on 18.8.2016, on receipt of which, the applicant approached the Tribunal seeking the following relief:-

"(i) An appropriate order, directing the respondents, their agents, servants and subordinates to correct the date of birth to the service records and other records in view of school certificate submitted by the applicant.

(ii) An appropriate order do issue, directing the respondents, their agents, servants and subordinates to consider the representation made by the applicant dated 1.7.2016 and to dispose of the same upon giving an opportunity of hearing in accordance with law and to pass a reasoned order for saving poor, less literate ignorant widow and to dispose of the same within a period of 4 weeks in accordance with law upon giving opportunity of hearing and to pass a reasoned order within a period of 6 weeks.

(iii) An appropriate order to set aside the impugned order passed on 16.2.2016 passed by the respondent No. 4 with regard to correction of date of birth of the applicant.

(iv) An appropriate order, calling upon the respondents to transmit the entire records of the case, so that conscionable justice may be rendered.

(v) Such further order or orders and/ direction or directions as to your Lordship may seem fit and proper."

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The applicant has advanced the following grounds in support of her claim.

- (a) That, the date of birth of the first wife was recorded against the date of birth of the applicant and she was completely unaware of this wrong doing.
- (b) That, the staff of the respondent authorities ignored her school certificate and filled up all the necessary forms mentioning her date of birth as 16.3.1957 in lieu of 2.6.73, the latter date being her actual date of birth as per the school certificate.
- (c) That, the applicant came to know of the wrong recording of her date of birth in July, 2013 and
- (d) That, the applicant was not given any opportunity prior to rejection of her representation by the respondent authorities.

3. The respondents per contra, have filed a counter-affidavit and have argued as follows:-

That, the applicant was appointed as a Safaiwala in the Medical Department on 27.3.2009 on compassionate ground on the death of her husband while in service. At the time of appointment, she submitted the following documents in support of her date of birth:-

- (i) Affidavit sworn in before Sub-Divisional Magistrate, Pakur, Jharkhand declaring her date of birth as 16.3.1957.
- (ii) Attestation form duly filled in with her LTI declaring her date of birth on 16.3.1957.
- (iii) Family declaration declaring her date of birth as 16.3.1957 with her LTI and duly attested by Sr. Supervisor.

That, in accordance with the above documents, her date of birth was recorded in her service record and she also put her LTI in the first page of her service record. She submitted her school leaving certificate much after her appointment. In the said certificate it was mentioned that she had read upto

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Class III but at no point of time she had put her signature in any of the pre-appointment forms casting a serious doubt about the genuineness of her school certificate.

The applicant continued in service for more than eight years and, although seniority lists were published and circulated widely inviting complaints, if any, the applicant never submitted any representation disputing her date of birth.

That, the most notable point is that in her appointment letter as Safaiwala her date of birth was mentioned as 16.3.1957, but she did not object to such insertion. Her representation for correction of her date of birth was responded to in 9.9.2013, 7.8.2015 and 16.2.2016 respectively. Hence, according to the respondents, the present O.A. has got no legal footing to stand on and is liable to be dismissed.

4. The sole point of determination in this matter is whether the applicant has a right for correction of her date of birth in her Service record as per the rules and regulations of the respondent authorities.

5. At the outset, we refer to the order as impugned, dated 16.2.2016 (Annexure A-2 to the O.A.), which is reproduced below:-

Eastern Railway

No.E/Med/Misc/MLDT/Pt.III

Malda, dt. 16/2/16

Smt. Sonamuni Devi,
Safaiwala under HI/MLDT

(Through : HI/MLDT)

Sub: Prayer for correction of D.O.B in Service Record.

Ref: Your application dt. 01.02.2016.

Your appeal dt. 01.02.2016 for claiming DOB 02.06.1973 against recorded DOB 16.03.1957 has been scrutinized at length by the administration. Before joining in Railway you submitted Attestation Form dt. 09.06.2008 in which you declared your DOB 16.03.1957 and present age 51 years 2 months. Moreover Affidavit submitted by you before Sub Divisional Magistrate, Pakur you declared DOB 16.03.1957. You also declared DOB as 16.03.1957 in your family declaration dt. 18.07.2007.

In terms of Para 225 of IREC Vol-I every person has to declare his DOB before entering in Railway service. As such on the basis of your

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declaration made on Attestation Form your DOB has been recorded as 16.03.1957 which cannot be altered at this stage.

Sd/-
(A.K. Dikshit, APO-I, Ph. 72102)
For Sr. Divisional Personnel Officer
Eastern Railway/Malda

The said rejection letter refers to Para 225 of IREC Vol. I and in this context the contents of Para 225 of IREC Vol. I is reproduced as under:-
(emphasis supplied)

"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) 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 to obtain an advantage otherwise in 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."

Upon an analysis of Para 225 of IREC Vol. I, the following is inferred:-

- (i) Every person has to declare date of birth on entering the Railway service;
- (ii) 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 case of

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illiterate staff, the date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

- (iii) The date of birth recorded in accordance with these rules shall be held as binding and ordinarily no alteration of such date should be permitted. For Gr. 'C' and 'D' railway servant, the General Manager, however, can cause the date of birth to be altered.
- (iv) Any explanation for amendment of the date of birth has to be satisfactory and should not be entertained after completion of the probation period or three years of service, whichever is earlier. The explanation should clarify the circumstances vide which the wrong date came to be entered to be furnished by the Railway servant concerned. The said Railway servant proposing to amend his date of birth in the records of service should also place a statement of previous attempts made to amend the records of date of birth.

In this case, the applicant had entered service on compassionate ground in 2009. Hence, any explanation for amending her date of birth explaining the circumstances for incorrect incorporation should have been advanced by the applicant within 2012 which is three years after her entry into service. According to the applicant, she has come to know about the incorrect date of birth in July, 2013 and hence, failed to move such representation for amendment on time. The applicant, however, had received her appointment letter in March, 2009 wherein her date of birth was inserted as 16.3.1957. Hence, her statement of ignorance on incorrect recording of date of birth until July, 2013 is not borne out by facts.

The respondents, on the other hand, have produced certain documents, as follows:-

- (a) An affidavit sworn on 14.3.2007 with the Sub Divisional Magistrate, District - Pakur (Jharkhand). In the same, the applicant had categorically stated that her date of birth is 16.3.1957.

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- (b) In her attestation form furnished to the respondent authorities, she has once again agreed that her date of birth is 16.3.1957 and that her present age is 51 years 2 months at the time of entering employment in 2001.
- (c) In her family declaration, the applicant has reiterated the date of birth as 16.3.1957.

The applicant has held the officers of the respondent authorities responsible for incorrectly recording her date of birth despite submission of his school certificate, and that, being illiterate, she was not able to peruse the contents of the forms that were filled on her behalf.

The affidavit sworn by her prior to her interaction with respondents, however, under no circumstances, was influenced by the respondent authorities. The applicant has sworn the affidavit as true and best of her knowledge and belief as per her own declaration. Hence, her averment that the respondent authorities had misled her and recorded a wrong date of birth which actually was that of the first wife of the deceased employee is contradicted by her affirmation in the affidavit which was sworn independently, irrespective of the respondent authorities.

Admittedly, she received the appointment letter in 2009. Hence, her averment that she became aware of the incorrect recording of date of birth only in 2013 stands contradicted.

If the applicant wanted to seriously pursue her amendment of date of birth, she should have taken steps immediately upon receipt of the appointment letter. The medical certificate dated 17.3.2009 also does not disagree with the date of birth as submitted in the affidavit attestation and family declaration forms.

It appears from Annexure R-5 to the reply that she had filed another affidavit claiming that her ex-husband had wrongly recorded her date of birth as 16.3.1957. As her husband had expired on 2007, the respondent authorities were



surprised as to how he could have recorded her date of birth in a service book opened on August, 2009 and rejected her claim as baseless.

Another contradiction in the pleading is that the applicant has insisted that she had left school after studying in Class III. In all her forms, however, she has been consistently recording her thumb impression but in her applications for change of date of birth, we find that she has placed her signature in Hindi. Hence, her contention that she was completely ignorant of any letters or alphabets falls through.

From Annexure R-6 to the reply, it appears that the applicant had produced two school certificates and that the dates of leaving the school are different in the two certificates. The respondents have also stated in the said communication that although the said school leaving certificates have been issued in 1984 and 1986 respectively, they were not submitted to the respondent authorities while her service records were being initiated. Furnishing of two different school certificates showing school leaving dates differently and submission of such school leaving certificates long after entry of date of birth in service records raises questions on the veracity of the said school certificates itself.

Accordingly, we do not find, that the respondents' actions in rejecting the claim of the applicant for changing her date of birth in service records, suffer from any infirmity whether factually or in law. The applicant has clearly failed to satisfy the provisions of Para 225 of IREC Vol. I.

Herein we are also guided by the following decisions of the Hon'ble Apex Court on the subject matter of amendment of date of birth:-

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

"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

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which no correction of date of birth of a Government servant can be entertained."

Also, in **Executive Engineer, Bhadrak RNB Division, Orissa v. Rangadhar Mullick** (1992) 5 SLR 77, the Hon'ble Apex Court 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.

With reference to Para 225 of IREC and in terms of ratio laid down in **Harnam Singh (supra)** and **Executive Engineer (supra)** we find that this case has no merit and hence, the application should be dismissed.

6. The O.A. is dismissed accordingly. There will be no order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

B.t.
(Bidisha Banerjee)
Judicial Member

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