

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

MISCELLENOUS APPLICATION NO.740/2016
in
ORIGINAL APPLICATION No.583/2016

DATE OF DECISION: 22nd November, 2018

CORAM:HON'BLE DR. BHAGWAN SAHAI, MEMBER (A)
HON'BLE SHRI R.N. SINGH, MEMBER (J)

Shri Sattappa Bassappa Boin
 Motor Lorry Driver,
 Under SSE(Tele/MW/CSTM.
 Under the Executive Control
 of D.R.M. C.Rly., Mumbai CSTM
 Mumbai No.1.,
 Aged 48 Years, Resident of Jiva
 Chawl, Room No.275, Kumbhar
 Wada Road, Laxmi Nagar, Dharvi,
 Mumbai - 400 017. **... Applicant**

(By Advocate Ms.Darshna Indulkar)

VERSUS

1. Union of India
 Through the General Manager,
 Central Railway,
 Mumbai CST, Mumbai - 01
2. The Divisional Railway Manager
 Mumbai Division, Office of the
 DRM, Central Railway, Mumbai
 CST, Mumbai - 01. **... Respondents**

(By Advocate Shri V.D. Vadhavkar)

O R D E R (ORAL)

Per: Shri R.N. SINGH MEMBER (J)

MA No.740/2016: In this MA, the applicant
 has prayed for condonation of delay of about 413
 days in filing of the present Original

Application. In the OA, the applicant has challenged the order dated 10.02.2014 (Annex A-1) which reads as under:-

<p>“CENTRAL RAILWAY</p> <p>No.BB/P/558/S&T/OA 435</p>	<p>Divisional Office Personnel Branch P/Court Section Mumbai CST Dt:10.02.2014</p>
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To
Shri S B Boin
Staff Motor Driver

*Sub: OA No.435/13 before Hon'ble CAT BB Field
by Shri S B Boin V/s. UOI & Ors.*

I have perused the order of Hon'ble CAT BB dt 23/08/13 in OA No.435/13, your service records and other documents attached by you along with your OA. In compliance of the order of Hon'ble Tribunal you were granted personal hearing on 07/02/2014. In the personal hearing you have submitted an application along with the letter of Advocate Shri K.B. Talreja dt. 03.02.2014.

From perusal of your service record it is noticed that your Date of Birth was initially recorded as 15/04/1962. However, the same was disfigured with intention to change the same as 15/04/1968. While filling the attestation form at Internal Page 3 your have written your date of birth as 15/04/1962 however the same was score and over written as 15/04/1968. The difference of the ink and pen even in handwriting is clearly visible. At the time of Regularization you were sent for medical examination. In the report of medical examination dt 09/12/1988 your age has been shown as 26 years which also match with your original recorded Date of birth as 15/04/1962 and not with the over written date of birth as 15/04/1968.

Your Advocate Shri Talreja in his letter dt.03/02/2014 has stated that the entry in service record showing that you had worked as DBRB from 02/02/1981 is incorrect however from the perusal of entry in page 2 and page 3 of your service record it is recorded that you had worked under DBRB as casual labour from 02/02/1981 to 17/09/1983 against the casual Labour card No.283482. Your

contention that you were initially appointed in July 1987 cannot be accepted on the ground that as per the instruction of Railway Board Casual labour cannot be appointed on or after April 1981 without the prior approval of General Manager in your case no such approval was obtained from the GM. Moreover you have not produced any documentary proof that your date of appointment is in July 1987.

As per service record and attestation form filled and signed by you it is amply clear that you were initially appointed as Casual Labor wef 02/02/1981 (CL card No.283482). At the time of initial appointment in year 1981 you were about 19 yrs old if your date of birth is 15/04/1962, your date of birth would have been 15/04/1968 in that case your age at the time of initial appointment would be less than 13 yrs. The appointment of any person in age of 13 is void being against the rule.

It is also seen from the service record that before you brought on monthly rate wages on 22/05/1989, you were medically examined on 09/12/1988, wherein your age was recorded as 26 yrs by the doctors accordingly your date of birth would have been 15/04/1962. Thereafter your service register was constructed on 06/07/1989. However, the duplicate date of birth certificate dated 1/08/1989 issued by Mahim Municipal Secondary School on which you have relied upon for correctness of your date of birth was issued subsequent to your medical examination and construction of your service record. The said school leaving certificate was submitted by you along with your representation dt.17/09/2012. As per rule 225(4)(iii) of IREC Vol I you have to request for change of date of birth within the period of 3 yrs along with authenticated school leaving certificate. All other documents such as Driving license, Pan Card etc are issued by the concern authorities after your appointment in Railway service hence, same cannot be the basis for the change of date of birth.

In view of the above, I do not find any merit in your contention/representation that your date of birth is required to be changed from 15/04/1962 to 15/04/1968 thus your representation dated 13/12/2012 is disposed of."

2. The reason given by the applicant for delay in filing of the present application is

that first he filed a Contempt Petition before this Tribunal being CP No.185/2014, which was dismissed vide order dated 31.07.2015 (Annex A-15) and he was advised to challenge the order dated 10.12.2014 in a separate OA. The other ground taken by the applicant is that once the applicant took the matter with his counsel, his daughter fell sick with breast cancer and, therefore, he could not approach the Tribunal within the period of limitation. In view of the aforesaid, the applicant has prayed for condonation of the delay.

3. The respondents have filed reply to the aforesaid MA and contend that it is misconceived as the applicant is claiming a delay of only 413 days.

4. Learned counsel for the applicant argues that he was appointed as MRCL on 17.03.1988 and for change of date of his birth in service record, he has made representation on 17.09.2012 meaning thereby that for the first time he has made a representation after about 24 years. In these facts and circumstances, even if the respondents have passed the order dated 10.02.2014 disposing of the extremely belated

representation of the applicant in view of the direction of this Tribunal in order dated 23.08.2013 in OA No.435/2013 (Annexure A-14), it cannot be claimed by the applicant that the cause of action has accrued to him on or after 10.02.2014. It is further argued by Shri Vadhavkar, learned counsel for the respondents that in view of law laid down by the Hon'ble Supreme Court in **Union of India & Others Vs. M.K. Sarkar reported in 2010 (1) SCC (L&S) 1126,** even such belated representations should be considered with reference to the original cause of action, the same are not going to extend the period of limitation. He further relies upon the Supreme Court view in **State of Tripura Vs. Arabinda Chakravarti reported in 2015 SLR 12.**

5. Learned counsel for the respondents further submits that if at all the applicant is having any grievance against recording of his date of birth by the respondents, he should have raised the issue within three years in view of Rule 225 (4) (iii) of IREC Volume -I and not after 24 years as done by him.

6. We have considered the facts and circumstances of the case as well as submissions

made on behalf of the parties. The applicant has not been able to explain any reason as to why he could not raised earlier the issue of requirement of any change in date of birth in his service record prior to 2012.

7. In view of the facts and circumstances of the case, discussion noted above and keeping in view the law laid down by the Hon'ble Apex Court in catena of cases including in *M.K. Sarkar (supra)*, we are of the considered opinion that the MA is devoid of any merit and it deserves to be dismissed. Accordingly, MA No.740/2016 is dismissed. In view of the above, the Original Application also fails and it is dismissed. No order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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