

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1544/2003

This the 30th day of January, 2004

HON BLE SH. SHANKER RAJU, MEMBER (J)

Ami Chand
S/o Dhanji Ram
Res. at Village Khera, Harijan Colony,
Najafgarh, New Delhi.

(By Advocate: Sh. M.K.Bhandwajt

Versus

Union of India & Ors. through:

1. The Secretary
Ministry of Railway,
Rail Bhavan, New Delhi.
2. The General Manager,
Western Railway,
Mumbai.
3. The Divisional Railway Manager,
DRM Office, Western Railway,
Jaipur.
4. The Section Engineer,
Western Railway,
Ateli, Haryana.

(By Advocate: Sh. R.L.Dhawan)

O R D E R

1. Applicant a retired Railway servant impugns respondents order dated 30.12.2002 and 20.2.2003 and has sought correction in date of birth by treating it 3.1.46 instead of 21.2.43.

2. Applicant who had worked as a Beldar from 21.10.61 till 9.11.63 was appointed on the regular strength on 6.1.1965. The date of birth figured in the attestation form is 21.2.1943 and age 20 years. However, the educational qualifications have not been entered. Applicant from time to time had been apprised alongwith other Railway servants through circular to have the date of birth corrected and alongwith the seniority

list of different grades the date of birth was reflected with an opportunity to get any illegality or irregularity in the service record corrected. On 11.4.2000 a list of officers retiring from 1.1.2001 to 31.12.2005 had been circulated where the name of the applicant had figure and also on 10.7.2002 the aforesaid list of retirees from 1.1.2003 to 31.12.2003 was circulated.

3. Applicant alleges that in December 2001 when had gone to collect his overcoat he was apprised of wrong recording of his date of birth, i.e. 21.2.43 instead of 3.1.46. He preferred a representation on 11.4.2002 and thereafter file a civil suit. The aforesaid suit for declaration was decided on 15.5.2003 the same was dismissed. Appeal preferred against it was withdrawn.

4. Applicant served a legal notice.

5. By an order dated 30.12.2002 request of the applicant for altering his date of birth and correction was turned down, giving rise to the present OA.

6. Counsel of the applicant Sh. M.K.Bhardwaj contends relying upon the decision of the Apex Court in Union of India vs. Harnam Singh 1993 (24) ATC 992 that a credible proof of date of birth and an evidence produced by the Govt. employee cannot be discarded and has to be considered.

7. In so far as delay is concerned, it is stated that the applicant had produced at the time of his appointment his school leaving certificate of 6th class where the date of birth is reflected as 3.1.46 but merely on the basis of medical examination which has to ascertain the fitness of a Railway

servant in the medical category the same cannot be a valid proof of date of birth. As the applicant was apprised of wrong recording of date of birth in 2002, the claim of the applicant cannot be belated. He relies upon a decision of the Division Bench of Himachal Pradesh High Court in Manak Chand Vaidya vs. State of Himachal Pradesh and others reported in SLR 1976 (1) 402 to substantiate his plea.

8. According to learned counsel, date of birth recorded in the school leaving certificate is a valid proof of date of birth.

9. On the other hand respondents' counsel Sh. R.L.Dhawan vehemently opposed the contentions and stated that at the belated stage a year before the retirement it is not open for the applicant to have applied for correction of date of birth.

10. According to him vide circular PS No.5719 dated 28.3.72 procedure for recording date of birth and its alteration was circulated and as a last opportunity to those who had been in employment on 3.12.71 were given a last opportunity to correct their date of birth by 31.7.73. Despite having due publicity and notice applicant had failed to get the date of birth rectified.

11. Sh. Dhawan, counsel for respondents states that not only the retirement notices which had been issued and served upon the applicant which he had the knowledge, the applicant had not applied for correction of date of birth but also the seniority list issued from time to time circulated duly reflected the date of birth and the applicant having failed to take any remedial steps for correction is estopped at the fag end of his service tenure to apply for correction.

12. Sh. Dhawan by referring to the facts contends that applicant was engaged as a casual labour on 21.10.61 and if the date of birth is assumed to be correct, i.e. 3.1.46 he was underage, i.e., below 18 years ineligible to be appointed.

13. Sh. Dhawan states that in the attestation form applicant has not shown himself to be literate and had never produced his 6th class school leaving certificate and rather described his age as 20 years which comes to be 1943. The 6th class certificate issued was produced only on 23.1.2001 which is not ~~valid~~ proof as the only admissible evidence is matriculation certificate.

14. It is further stated that the applicant was medically examined and his date of birth was assessed as 21 years as in 1964 which comes to 21.2.1943. Learned counsel relies upon the decision of the Apex Court in Union of India vs. R.S. Sharma reported in JI 1996 (3) SC 72 to contend that at the belated stage it is not open for the Tribunal to entertain the claim for correction of date of birth at the fag end of service career.

15. In the rejoinder applicant reiterated his pleas taken in the OA.

16. It is not disputed that the applicant was engaged as casual labour with the respondents on 21.10.61. Assuming the date of birth of the applicant is correct as per the school leaving certificate on that day he is below 18 years and he is not eligible for Railway service. The Apex Court in State of M.P. vs. Mohan Lal Sharma SC SLJ 2003 (1) 50 held as follows:-

"We have heard counsel for the parties and perused the record. It is not disputed that the date of birth recorded in the Matriculation Examination as also in the service record is 19th April, 1935. It is also not disputed that the respondent joined service on 24th January, 1955. If the contention of the respondent is that the correct date of birth is 3rd February, 1937 in that event the respondent could not have been appointed in service in the year 1955, as he was much less than 18 years of age. The date of birth, as recorded in the Matriculation Examination, carries a greater evidential value than the evidential value attached to the certificate given by the retired Headmaster showing the date of birth of the respondent. Such ana evidence is not to be preferred when admittedly the age of birth of the respondent as recorded in the Matriculation Examination was 19th April, 1935. The Tribunal erred in relying on the certificate issued by the retired Headmaster as well as the horoscope furnished by the respondent."

17. In my considered view, if one has regard to the above though a school leaving certificate is not a valid legal proof for date of birth yet in the attestation form I do not find any educational qualification written by the applicant which is a deemed acknowledgement of date of birth as in 1943, which on medical examination has been found to be 21 years in 1964.

18. Apex Court in Union of India vs. Harnam Singh 1993 (24) ATC 90 held that entertaining a grievance by the Tribunal at the fag end of service of a Govt. servant for correction of date of birth is an illegality. I also find from the record that the applicant's school leaving certificate was only produced on 3.1.2001 whereas the applicant had ample opportunities in the past right from 1972 when the circular for alteration of date of birth and last opportunity to the Railway servant was afforded to correct the date of birth. Applicant from time to time had been duly served with the seniority list where his date of birth was reflected. He had not objected to it. Now at this belated stage on an invalid proof of date of birth he is estopped from challenging or in

any manner altering or correcting the date of birth which has attained finality as has been in the record of the respondents.

20. I also rely in the Apex Court in Hindustan Lever Limited vs. S.M. Jadhav & another reported in JT 2001 (4) SC 129 has held as follows:-

"We have heard the parties. It is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth. The case of the 1st respondent that he had intimated the Company in 1953 itself is not believable. In the application, which had been filed by the 1st respondent he himself had given his date of birth as 12th of June, 1927 and also mentioned his age as 25 years. On the basis of this application and the matriculation certificate the Manager had issued a certificate. Thereafter this service record provident funds, booklet and even the annual reports contained the 1st respondent's date of birth as 12th June, 1927. It is impossible to believe that for all these years the 1st respondent was not aware of the date of birth in his service record or the provident fund booklet. It is impossible to believe that he has not read a single annual report in all these years. If, as claimed by him, he had informed the Company in 1953, he would surely have made some enquiry whether the service record was corrected. This would have been done, if not earlier, at least at the time when the settlement took place between the Union and Company. That was the time when other employees were getting their age corrected and therefore it is impossible to believe that the 1st respondent would not have at that time ascertained what his date of birth was in the service record."

21. Having regard to the above, I am of the considered view that the date of birth of the applicant cannot be corrected at the belated stage. As the OA is bereft of merit, the same is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
Member (J)