

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:BILASPUR

Original Application No.203/00236/2018

Jabalpur, this Tuesday, the 3rd day of December, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

**Banshi Maity S/o Late Nalini Maity Aged about 55 years
R/o QR. No.989/4 New Colony Bilaspur (C.G.) PIN
495004 Mob. 9039946282 -Applicant**

(By Advocate –Shri Ravi Ranjan Sinha)

V e r s u s

1. Union of India, Through the Secretary
Ministry of Railways Rail Bhawan,
Raisena Road, New Delhi 110001

2. General Manager, South East Railway
Bilaspur Division Bilaspur (C.G.) 495004

3. Sr. Divisional Personnel Officer,
South East Central Railway Bilaspur Division
Bilaspur (C.G.) 495004

4. Chief Personnel Officer,
South East Central Railway,
Bilaspur Division, Bilaspur (C.G.) 495004

5. Assistant Personnel Officer, South East Central
Railway, Bilaspur Division
Bilaspur (C.G.) 495004 - Respondents

(By Advocate –Shri H.S. Ahluwalia)
(Date of reserving the order:-10.01.2019)

ORDER

By Ramesh Singh Thakur, JM:-

By way of this Original Application the applicant is seeking direction to the respondents for correction of his date of birth in service record as 09.03.1955 to 10.04.1961 and to reinstate him in service by providing all the service benefits from 2015.

2. The applicant has prayed for the following reliefs:-

“8.1 That the Hon’ble Tribunal may kindly be pleased to call the entire records from the respondent for correction of date birth.

8.2 That this Hon’ble Tribunal may be kindly be pleased to correct the date of birth in the service record as 9.3.1955 to 10.04.1961 and to reinstate the service of respondent authority.

8.3 It is therefore may kindly be leased to give direction the respondents to give all the service benefits from 2015 where the applicant has forcefully retired.

8.4 That any appropriate directions or order may also be granted in favour of the applicant which this Hon’ble Court deem fit in circumstances of the case.

8.5 Cost of the petition be awarded.”

3. Precisely the case of the applicant is that the applicant was appointed on 09.05.1985 as Bearer in Bilaspur Division. At the time of joining, the applicant had submitted affidavit dated 10.04.1985 (Annexure A/1) in support of his date of birth as 10.04.1961. As directed the applicant appeared for physical fitness, wherein his date of birth in physical fitness certificate dated 26.04.1985 (Annexure A/2) was shown as 10.04.1961. Thereafter the applicant came to know that in his service record his date of birth is recorded as 09.03.1955 (Annexure A/6). The applicant preferred representations dated 10.10.2009 (Annexure A/7), 15.07.2010 (Annexure A/8), 05.12.2012 (Annexure A/9), 05.08.2013 (Annexure A/10) and 21.11.2014 (Annexure A/11). In response to this, the respondent-department vide letter dated 24.11.2014 (Annexure A/12) has stated that there shall be no change in date of birth after 29 years of service and the date of birth recorded in service book will remain the same. The applicant has again given reminder dated 02.02.2015

(Annexure A-13) as well as emigration certificate dated 10.08.2018 (Annexure A-14) for correction of his date of birth. The applicant has also highlighted the norms “extract of Para 225 of Indian Railway Establishment Code Volume-I wherein it has been stated that:-

“Railway Ministry’s decision.—(a) 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 produce 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.

(b) 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.

(c) 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.

4. On non-receipt of any response from the respondent-department, the applicant approached this Tribunal by filing O.A. No.203/00134/2015 which was dismissed by granting liberty to the applicant to file appropriate application before the General Manager requesting him to consider correction of his date of birth based on the affidavit filed by him at the time of joining of service. The applicant filed his detailed representation dated 13.02.2015 (Annexure A/17) to the respondent department followed by reminders dated 17.04.2015 and through a legal notice dated 09.05.2016. The respondents vide letter dated 01.08.2016 (Annexure A-21) rejected his claim by passing a detailed and reasoned order. Hence this Original Application.

5. The respondents have filed their reply. It is submitted that the applicant has not annexed the order of superannuation w.e.f.31.03.2015. The respondents

submitted that the applicant was superannuated on 31.03.2015 and has approached this Tribunal in the year 2018 which is much after the prescribed period of limitation. It is submitted by the respondents that the applicant has not challenged the order dated 01.08.2016 passed by the Chief Personnel Officer. The respondents further submitted that vide Railway Board letter dated 18.01.1972 it has clearly indicated in Para 145 (3)(iii) RI which lays down that where a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) is submitted, it is open to the competent authority to alter the recorded date of birth. The Board have had under consideration the period of time that should normally be accepted as a reasonable time for the purpose of Rule 145(3)(iii)-RI. They have decided that no alteration in date of birth should be allowed after completion of the probation period of three years in service whichever is earlier, and the applicant has failed to challenge instant instruction of the Railway Board. The

respondents further submitted that the physical fitness certificate though have recorded his date of birth as 10.04.1961, it cannot be said to be an authentic document which can be relied upon for change of date of birth. It is submitted by the respondents that the date of birth while preparing of PTO's Identity/Medical Card is not verified with the date of birth recorded in the service book and therefore it cannot be said to be a validation for the wrong date mentioned in these records. It is further submitted that the applicant brought this fact during the fag end of his career with an intention for enjoying the service for extended period. Furthermore, the applicant failed to mention the effective date when he came to know about the fact that his date of birth has been erroneously recorded in the service book. The affidavit submitted by the applicant cannot be relied for necessary correction of service record.

6. The respondents submitted that the reference dated 17.12.2014 was made to the Headmaster Kenda Dangri

Middle School Calooniya, District Singbhumi, in which the applicant had stated to be imparted with education upto class 7th was required to verify the date of birth to the applicant from the school register and submit report in response. It was reported by the Headmaster vide letter dated 19.12.2014 (Annexure R/2) that the name of Shri Banshi Bandan Maity S/o Shri Nalini Maity is not properly founded in their school admission register but the name Banshi Bandan Mohanty S/o Nalini Kant Mohanty Village Chaluniya Post Kenda Dangri P.S. Chakulia, East Singbhumi mostly tally with the referred name but the date of birth of Shri Banshi Bandan Mohanty is 11.04.1953 as per admission register of the said School.

7. Heard the learned counsel for both the parties and have perused the pleadings and documents annexed with O.A.

8. From the pleadings it is clear that the applicant was superannuated on 31.03.2015 and has approached this

Tribunal in 2018. The contention of the applicant is that the applicant was appointed on 09.05.1985 as Bearer in Bilaspur Division and at the time of joining, the applicant had submitted affidavit dated 10.04.1985 (Annexure A/1) in support of his date of birth as 10.04.1961. Subsequently the applicant came to know that in his service record his date of birth is recorded as 09.03.1955 (Annexure A/6). The applicant preferred representations dated 10.10.2009 (Annexure A/7), 15.07.2010 (Annexure A/8), 05.12.2012 (Annexure A/9), 05.08.2013 (Annexure A/10) and 21.11.2014 (Annexure A/11) and in spite of giving several reminders his date of birth was not corrected.

9. The contention of the respondents are that the instant case has been filed beyond the period of limitation as the applicant had superannuated on 31.03.2015 and this Original Application has been filed in the year 2018. The respondents have relied upon the Railway Board Estt. Serial No.17/72 dated 18.01.1972 which clearly indicates in Rule 145 (3)(iii) RI which lays down that where a

satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) is submitted it is open to the competent authority to alter the recorded date of birth. The said Estt. Srl.No.17/72 dated 18.01.1972 (Annexure R/1) is stipulated as under “Rule 145 (3)(iii) RI which lays down that where a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) is submitted, it is open to the competent authority to alter the recorded date of birth. The Board have had under consideration the period of time that should normally be accepted as a reasonable time for the purpose of Rule 145(3)(iii)-RI. They have decided that no alteration in date of birth should be allowed after completion of the probation period of three years in service whichever is earlier.”

10. The respondents have further submitted that the physical fitness certificate, where his date of birth is written as 10.04.1961, cannot be said to be an authentic document and cannot be considered for change of date of

birth. Further the date of birth while preparing of PTO's Identity/Medical Card is not verified with the date of birth recorded in the service book. So, it cannot be said to be a validation for the wrong date mentioned in these records. It has been further submitted by respondents that the applicant only brought this fact during the fag end of his career only, with an intention for enjoying the service for extended period. So, the affidavit submitted by the applicant cannot be relied for necessary correction of service record. Furthermore, that the reference dated 17.12.2014 made to the Headmaster Kenda Dangri Middle School Calooniya, District Singbhum, in which the applicant had stated to be the imparted education upto class 7th, was required to verify the date of birth to the applicant from the school register. The concerned Headmaster vide letter dated 19.12.2014 (Annexure R/2) has reported that the name of Shri Banshi Bandan Maity S/o Shri Nalini Maity is not properly founded in their school admission register but the name Banshi Bandan

Mohanty S/o Nalini Kant Mohanty Village Chaluniya Post Kenda Dangri P.S. Chakulia, East Singbhum mostly tally with the referred name but the date of birth of Shri Banshi Bandan Mohanty is 11.04.1953 as per admission register of the said School.

11. The respondents have relied upon the judgment passed by the Hon'ble Apex Court in the matter of ***Union of India vs. Harnam Singh*** (1993) 2 SCC162, wherein the Hon'ble Apex Court has already held that the stale claim for correction in date of birth cannot be entertained at this belated stage. The respondents have also relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in Writ Petition No.19334 of 2013 decided on 13.04.2018 (***Prabhat Kumar Dwivedi vs. Union of India and others***). The respondents have also relied upon the judgment passed by the Hon'ble High Court of Chhattisgarh at Bilaspur in Writ Petition (s) No.2886/2017 decided on 07.07.2017 (Dr. Krishna Kumar Kawre vs. State of Chhattisgarh and others) wherein the Hon'ble

High Court has referred the judgment of Hon'ble Apex Court in case of ***Union of India vs. Harnam Singh.*** 1993

(2) SCC 162. Replying respondents have specifically submitted in their reply in Para 14 that the applicant himself has submitted that he made a representation dated 10.10.2009 (Annexure A/7) wherein he himself admitted that the pay slip was showing his date of birth as 09.03.1955 whereas the actual date of birth was 10.04.1961. The respondents have taken this specific plea that the various representations in the intervening period and after due consideration was rejected vide letter dated 24.11.2014 and the decision taken by the concerned authority was absolutely consonance with the provision of existent rules.

12. It is admitted fact that the applicant superannuated on 31.03.2015 and representation was made in the year 2009 and subsequent dates. As per reply of the respondent-department the request for correction of the date of birth has been finally rejected on 24.11.2014. The applicant has

approached this Tribunal on 26.02.2016. As per the judgment of Hon'ble High Court of Madhya Pradesh in the matters of ***Prabhat Kumar Dwivedi*** (supra), wherein it has been held that applicant seeking correction of date of birth, application must be preferred within reasonable time, failing which such delay itself can be ground of deny the relief. The applicant has approached the respondents and the respondent-department has decided the representation on 24.11.2014, which has been challenged before this Tribunal that to on the basis of documents which are not relevant /permissible and has not corroborating the evidence as has been supplied by the applicant. So, as per law settled by the Hon'ble Apex Court in the matters ***Harnam Singh*** (supra), the applicant has not approached the respondents in a reasonable period for correction of date of birth and moreover, all the representation have been decided in the year 2014 and has approached this Tribunal in 2018 without explaining their reasons for condonation of delay by giving the plausible reasons.

13. In view of the above, we do not find any reasons to interfere with the action of the respondent-department. O.A. is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

kc