

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

**OA/21/505/2019 &
MA/21/589/2019**

Dated: 09/09/2019

Between

Venkateswarlu,
S/o. Gopaiah,
Aged about 56 years,
Gateman, TM-II,
Pandillapalli, SSE/PW/MDR,
South Central Railway.

... Applicant

AND

1. Union of India rep. by
General Manager,
South Central Railway,
Rail Nilayam, III Floor,
Secunderabad ó 500 071.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad ó 500 071.
3. The Senior Divisional Personnel Officer,
Sanchalan Bhavan,
South Central Railway,
Secunderabad.

... Respondents

Counsel for the Applicant : Mr. K. Sudhaker Reddy
Counsel for the Respondents : Mr. D. Madhava Reddy, SC for Rlys.

CORAM :

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mrs. Naini Jayaseelan, Admn. Member

ORAL ORDER

(Per Honøble Mr. Justice L. Narasimha Reddy, Chairman)

The applicant was appointed as Gateman in the Secunderabad Division of South Central Railway on 01.01.1984. Through a communication dated 28.09.2016, he was informed that his date of birth, 18.04.1964, which was entered in the Service Register is altered as 01.07.1959. Accordingly, he was sought to be retired from service on 30.06.2019. The applicant proposes to challenge the action of the respondents in seeking to retire him w.e.f. 30.06.2019. He contends that he has undergone just primary education and the date of birth was entered in the Service Register as 18.04.1964, by the appointing authority. According to him, the date of birth was altered in the year 2016 without any basis and without following the prescribed procedure.

2. The respondents filed detailed counter affidavits on 20.06.2019 & 17.07.2019. It is stated that when the applicant joined the service, his date of birth was entered in the Service Register as 01.07.1959 and the Assistant Engineer (AEN) has altered that as 18.04.1964, on the basis of the affidavit submitted by the applicant. According to the respondents, AEN is not the competent authority and any alteration could have been done only by the Principal Chief Personnel Officer. The respondents further state that the applicant herein submitted various documents in support of his claim under the LARSGESS, together with sworn in affidavits and other records, indicating his date of birth as 01.07.1959, and came forward with the present version namely date of birth being 18.04.1964, when it became clear that his

case is not being considered under LARSGESS. It is also stated that the representation made by the applicant was rejected vide order dated 28.09.2016 and the same has not been challenged in this O.A.

3. In the Additional Affidavit, some more facts are supplemented and the prayer is made for vacation of interim order.

4. We heard Sri K. Sudhaker Reddy, learned counsel for the applicant and Sri B. Sreehari representing Sri D. Madhava Reddy, learned counsel for the respondents.

5. This is a peculiar case in which, the versions of the employee as regards his date of birth are not consistent. The various documents that are filed by him, would indicate that the applicant comes forward with the plea as regards date of birth, according to his convenience.

6. The respondents informed the applicant through an order dated 28.09.2016 as under:

With reference to the above cited letter, the date of birth alteration cases of staff working under SSE/PW/MDR sec is already submitted to your office vide ref. No.2 of above, now the same is re-submitting for your kind information and further disposal please.

S.No.	Name of the employee	Design	Original D.O.B.	Altered D.O.B.	Remarks
1.	Yacoob-Gnanaiah P.F No.04470345	Sr. Gateman	01.11.1963	01.07.1961	
2.	Venkateswarlu-Gopaiah PF No.04480405	Sr. Gateman	18.04.1964	01.07.1959	

7. In the place of 18.04.1964, the date of birth which was existing in the Service Register by that time, the date of 01.07.1959 was substituted. If it is a step taken by the respondents on their own, the procedure prescribed under the relevant rules was required to be followed. What prompted the issuance of the said order is evident from the record itself. For the purpose of this O.A, the applicant insists that his date of birth must be taken as 18.4.1964 and not the date, 01.07.1959. May be due to accidental omission or clerical error, the prayer in the O.A. is made in exactly the opposite terms. It reads as under:

ø8. MAIN RELIEF: Hence, in the interest of justice this Honøble Tribunal may be pleased:

To declare the action of respondents in taking the altered Date of Birth i.e. 18.04.1964 for the purpose of determination of age of superannuation of the applicant from service as illegal, arbitrary and clear violation of the applicantø fundamental rights guaranteed under Article 14 and 21 of the Constitution of India

And

Consequently direct the respondents herein to take the original entry of Date of Birth of the applicant as entered in the service register i.e. 01.07.1959 for the purpose of declaring the date of superannuation of the applicant from service for all purposes and pass such other and further order or orders as this Honøble Tribunal may deem fit and proper in the circumstances of the case.ö

In the first part of the prayer, the applicant presented as though 18.04.1964 is an incorrect date of birth, and that the action of the respondents in acting in accordance with that, is illegal and arbitrary. Without standing on technicalities, we take the plea of the applicant that the date of birth must be taken as 18.04.1964, for the purpose of determining the age of his superannuation.

8. A copy of the first page of the Service Register of the applicant is filed. Original was also produced for our perusal. Against the column of date of birth, there was profuse overwriting. What is a bit visible in the overwriting is 18.04.1964. However, just underneath that the date 01.07.1959 was entered in numbers as well as words.

9. The applicant filed an affidavit sworn before First Class Magistrate, Madhira in the year 1993, which reads as under:

I, Thallari Venkateswarlu ó Gopaiah, S/o. Gopaiah, aged 35 years, Gangman, S.C. Railway, R/o. Chinthakani, Village and Mandal Khammam District do hereby solemnly and sincerely affirm and state on oath as follows:

1. That I was born on 1st day of July Month, 1959 year, at Chintakani village and Mandal Khammam District, due to ignorance of my parents, my date of birth was not intimated to the concerned Birth Registering authority, so I am not in a position to produce the date of birth certificate. But as per the family my date of birth was noted as 01.07.1959. As per the said date of birth my present age is 34 years and 3 months and 7 days.

2. I, therefore, state that my date of birth is 01.07.1959 and should be noted in all the records wherever it is necessary. What I have stated above is true to my knowledge and belief.

10. There is no other record to suggest that his date of birth is 18.04.1964. Added to that, the applicant made a detailed representation together with his son, for the purpose of seeking the benefit under LARSGESS. The date of birth of the employee, who seeks to retire from service, becomes relevant. The form consisted several pages and at more places than one, the date of birth is entered. It is only the employees up to certain age that would be eligible to avail the benefit. Consistently, the applicant mentioned his date of birth as 01.07.1959. Not a word is said by him in his O.A., explaining the

circumstances under which the application for LARSGESS was made or the affidavit in the year 1993 was filed.

11. In paragraphs 4 & 5 of the counter affidavit, the respondents stated as under:

54. In reply to Para 4.1 of OA it is a fact that the applicant joined in Railway on 1.1.1984. It is fact that the applicant was not matriculate at the time of joining in Railway service and he has passed 6th class as per entry in service register. It is submitted that the employee's date of birth at the time of engagement in Railway service had been entered as 01.07.1959 both in figures as well as in words. However, another entry in respect of date of birth 18.4.1964 both in words and in figures made by AEN as per affidavit produced by the employee at a later date, for that records are showing wrong date of birth. It is submitted that the entry made by an incompetent authority i.e. AEN. In terms of schedule of powers followed by South Central Railway date of birth alteration should be made after following the due procedure i.e. verification of school/ Municipal records, on inquiry by nominated official. The competent authority is Principal Chief Personnel Officer. Where the date of birth alteration made by the incompetent authority only based on the Affidavit submitted by the employee which is incorrect as due procedure was not followed.

5. In reply to Para 4.2 of OA it is respectfully submitted that the applicant be put to strict proof of the facts submitted in this Para. The various contentions raised by the applicant in this para are unsupported by any material/ documentary evidence/ papers. In order to get the appointment to his son under LARSGESS, the applicant has requested the authorities to consider his date of birth as 1.7.1959 (Annex.R-V), which was originally recorded in the service register (Annex.R-II). Moreover, the applicant had executed sworn affidavit duly registered before First Class Magistrate declaring his date of birth as 1.7.1959 (Annex.R-III). After knowing that his case was not being considered under LARSGESS, now the applicant is claiming that the date of birth is 18.4.1964 which is not correct. The applicant is expecting the administration to act as per his wish and will without following the rules and due procedure in the subject matter.

The erroneous act of the incompetent authority i.e., alteration of date of birth without following due procedure by AEN/MDR now have been rectified by the competent authority and was communicated to the applicant vide letter No.SCR/P.SC/407/W3/VW/DOB Alter dated 28.09.2018 (Annex.R-VI). The applicant having accepted the same, filed this OA without any cause of action.

12. The applicant did not file any rejoinder, contradicting the statement in the counter affidavit. The pension papers submitted by the applicant, have also been placed before us and they reflected the date of 01.07.1959.

Whatever may be the claim of the applicant, at least from the point of view of preponderance of evidence in the form of admission, we find that it is mostly in favour of the date of 01.07.1959 and nothing whatever as regards the date of 18.04.1964.

13. We find no merit in the O.A. and it is accordingly dismissed. The interim order passed on 27.06.2019 is vacated and MA/21/589/2019 is accordingly disposed of. There shall be no order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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