

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12143 OF 2017

Union of India and others ... Petitioners

Versus

Panalal J. Saroj ... Respondent

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Mr. Suresh Kumar for the Petitioners – Union of India.

Mr. Ramesh Ramamurthy i/b Mr. Saikumar Ramamurthy for
Respondent.

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**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. KARNIK, J.**

DATE : 14th DECEMBER, 2017.

ORDER : [PER M. S. KARNIK, J.]

1. The petitioners – Union of India, by this petition challenge the order dated 01/03/2017 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in Original Application No. 194 of 2013. The respondent filed Original Application, seeking a direction to the petitioners to correct his date of birth as 01/01/1958 instead of 01/01/1953. The respondent also challenged the consequential orders dated 24/12/2012 and 25/12/2012 retiring him prematurely from service.

2. The respondent was appointed as casual labour on 19/12/1977. He submitted his school leaving certificate to the Railways at the time of his appointment. It is the respondent's case that the said certificate clearly shows his date of birth as 01/01/1958. Before the Tribunal, the respondent relied upon the identity card, medical card and salary slip issued by the petitioners, which remained valid all throughout his service career, which shows his date of birth as 01/01/1958. According to the respondent his retirement was due on 31/12/2017.

3. The petitioners started the process of retirement of respondent in January-2012 for effecting his retirement on 31/12/2012. The respondent at that point of time, came to know that in the service sheet his date of birth is recorded as 01/01/1953 instead of 01/01/1958. The respondent realised that the petitioners were not maintaining the service sheet records properly as the service sheet would go to show that the entry of the date of birth as 01/01/1953 was done only on 18/07/1983 and not immediately after he was initially engaged in 1977-1978. Even this entry is on the basis of the school leaving certificate submitted by him showing the date of birth as 01/01/1958. The

same was verified by the petitioner No.2 only in 2008. The respondent thus submitted before the Tribunal that the petitioners were not maintaining the service records properly.

4. The respondent preferred a written representation dated 27/01/2012 to the petitioner No.3 objecting to the process of prematurely retiring him and requested that the service sheet should be verified and his date of birth be corrected as 01/01/1958. The same was forwarded by the petitioner No.2 to the competent authorities on 30/01/2012. By letter dated 24/12/2012, the respondent's request came to be rejected and he was superannuated on 31/12/2012. He, again submitted his representation on 31/12/2012.

5. Before the Tribunal, the petitioners by filing written statement contended that the respondent joined as Khalashi with effect from 19/12/1977. The date of birth is recorded in the service sheet as 01/01/1953 and this is duly signed by the respondent himself on the top of the particulars of the service sheet. The petitioners contended that the respondent has made a representation for change of his date of birth at the fag end of his

career and therefore, his request is not maintainable in law. The petitioners relied upon several decisions of the Apex Court in support of their contention.

6. Learned counsel for the petitioners relying upon the decision of the Apex Court in the case of *State of Madhya Pradesh & Others Vs. Premlal Shrivastava, (2011) 9 SCC 664*, urged that the Apex Court has time and again expressed the view that “if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his/her induction into the service, particularly beyond the time fixed by his/her employer, he/she cannot claim, as a matter of right, the correction of his/her date of birth, even if he/she has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights.”

7. Learned counsel for the petitioners further submitted that the identity card and salary slip on which the respondent's date of birth is shown as 01/01/1958 had been issued by the subordinate officers and not by the petitioner No.2 which is the controlling

authority. Learned counsel for the petitioners assailing the order of the Tribunal submitted that as the respondent had made request for change in date of birth at the very fag end of his service, the Tribunal was not justified in allowing the Original Application.

8. On the other hand, learned counsel for the respondent invited our attention to the reasons recorded by the Tribunal while allowing the Original Application. The service sheet shows that the respondent entered in service as Khalashi on 19/12/1977 and was thereafter made permanent. The Tribunal has found that the only record regarding the respondent's date of birth is school leaving certificate issued by the concerned institution, which indicates the date of birth of respondent as 01/01/1958. We have also perused the original school leaving certificate dated 11/05/1977. Learned counsel for the petitioners has not denied the authenticity of this document. His contention however is that the respondent should have applied for change in date of birth within a reasonable time and not at a fag end of his service.

9. The Railway Ministry's guidelines quoted in the Tribunal's order provides that in case of literate staff the date of birth shall be entered in the record of service in the Railway servant's own hand writing. Insofar as the respondent's service sheet is concerned, the details were filled by the petitioners. The Tribunal cannot be faulted in arriving at a conclusion that the petitioners are responsible for making correct entries on the basis of accepted proof of birth and then having these entries counter-signed by superior authorities. The wrong entry then made was never verified again. Had it been verified, the mistake could have been detected. There is nothing on record to show that the service sheet was ever shown to the respondent any time later. It appears that the service sheet was purportedly signed by the petitioners for the first time in 1983 i.e. five years after the appointment of respondent. The Tribunal has recorded a finding that the counter-signature of 1982 predates the date of service sheet entries shown as 18/07/1983 thus holding that counter-signing authority signed before filling up the complete entries. In our opinion the Tribunal has rightly come to the conclusion that the

Rules are clearly violated while making of entry of the date of birth in the service sheet.

10. The rules clearly provide that the respondent being literate, the entries in the service book should have been made by him. The only available document on record being the school leaving certificate, is the basis for making the entry. There is no satisfactory explanation is offered by the petitioners as to how the date of birth is recorded as 01/01/1953 when the only document on record is submitted by the respondent shows his date of birth as 01/01/1958. The Tribunal has further observed that in the format of the service sheet the crucial entry i.e. date of retirement etc does not find any mention on the first page of the service sheet in the appropriate column. In this view of the matter the Tribunal was on the opinion that the petitioners have made wrong entry regarding date of birth, to which there is no satisfactory explanation.

11. It would be also material to note that the identity card, medical card and salary slip issued to the respondent mentions the date of birth as 01/01/1958 and even in the salary slip of

December-2011 the date of retirement is shown as 31/12/2017.

Paras 20 and 21 of the Tribunal's order read thus;

“20. Hence, in view of the above, it is clear that entry of date of birth as 01.01.1953 had no basis, as per the admissible, permissible, available records of IREC as proof of date of birth. The only documentary evidence was school leaving certificate of the applicant showing year of birth as 1958 in both words and figures. It is true that the applicant signed the service sheet, even though he was a literate person having studied upto class eight. The entry was made by someone other than the applicant treating him as illiterate and then wrongly accusing the applicant of having acquiesced in the entries made in service sheet by treating him as literate and charging him for not having filed for change of date of birth in time or filing the OA at the time of retirement to get a wrongful advantage by filing this time barred OA. None of the above contention hold good in view of the Tribunal. The fact is that while the applicant did not notice the entries, the respondents, in fact 4 of them, involved in seeking the Service Sheet also did not realize that the date of birth entry in the service sheet did not match the school leaving certificate nor that the date of retirement was recorded. The greater responsibility rests on the respondents, since they have no record now to support the entry of 1953. All evidence supports to the contrary.

21. When the applicant made representation it was even appropriate for the respondents to have made enquiry from the school which issued the certificate to ascertain/corroborate the entry regarding date of birth as 01.01.1958 which is in consonance with all other available records viz. Medical card, identify card, salary slip etc. No such thing was done. The entry of date of birth in the cards was based only on the school leaving certificate. The respondents have wrongly transferred the whole blame on to applicants for signing wrong entry, having deemed him to be as “illiterate”

person, when as per Rules the witness, the attestation officer, the countersigning and verifying officers all literate and all supervisory officers failed to correct it at that very time/s when the entries were made contrary to the school leaving certificate, to which document only the above officials had immediate or subsequent access to till his retirement. For their fault, the typographical/clerical error remained undetected and the wrong entry continued on record.”

12. The Tribunal has thus given good reasons for coming to the conclusion that it was on account of typographical/clerical error on the part of the petitioners that the respondent's date of birth was wrongly recorded and it was never known to the respondent till January-2012. It is only when his papers for retirement were put in the process for retirement that the respondent realised this error. The IREC also permits rectification of typographical/clerical error in case of group “C” and group “D”. Though, it is a settled law that the Court or Tribunal should not be allowed to correct date of birth on service record at fag end of the employee's career, we are satisfied that the irrefutable proof of date of birth in the form of the school leaving certificate which is not denied by the petitioners, and as the very same document was the basis of making the wrong entry in the date of birth column, has caused real injustice to the respondent.

13. The Tribunal has found that even as per the IREC, viz. Railway Ministry guidelines regarding recording of date of birth, the entry in the service book of the date of birth is not in accordance with the procedure prescribed. As the only document available which formed the basis of the entry is the school leaving certificate, we are satisfied that the incorrect date of birth recorded in the service sheet is on account of typographical/clerical error.

14. In our opinion, the Tribunal, upon consideration of the materials on record and by a well reasoned order came to the conclusion that it is on account of a clerical mistake that an incorrect entry as regards date of birth was made in the service book. Therefore, we are not inclined to interfere with the order passed by the Tribunal in the exercise of writ jurisdiction under Article 226 of the Constitution of India. The petition is accordingly dismissed with no order as to costs.

(M. S. KARNIK, J.)

(ACTING CHIEF JUSTICE)