

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order reserved on 12.02.2020****Order delivered on 20.05.2020****Writ Petition (S) No.908 of 2020**

Banshi Maity son of late Nalini Maity, aged about 55 years,
R/o Qtr. No.989/4, New Railway Colony, Bilaspur, District
Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. Union of India, through the Secretary, Ministry of Railways,
Rail Bhawan, Raisena Road, New Delhi
2. General Manager, South East Railway Bilaspur Division
Bilaspur, District Bilaspur Chhattisgarh
3. Senior Divisional Manager, South East Central Railway
Bilaspur Division Bilaspur, District Bilaspur Chhattisgarh
4. Chief Personnel Officer, South East Central Railway
Bilaspur Division Bilaspur, District Bilaspur Chhattisgarh
5. Assistant Personnel Officer, South East Central Railway
Bilaspur Division Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner : Shri Raghvendra Pradhan, Advocate
For Respondents/Railways : Shri Abhishek Sinha, Standing Counsel

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order**Per Parth Prateem Sahu, Judge**

1. The Petitioner has challenged the correctness and sustainability of the order dated 03.12.2019 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter referred to as 'CAT') in Original Application No.203/00236/2018 whereby the original application preferred by the Petitioner was dismissed.

2. Facts of the case in nutshell are that, the Petitioner was appointed as Bearer on 09.05.1985 with the Respondent-Department in Bilaspur Division. He submitted representations before the Respondent Authorities on 10.10.2009, 15.07.2010, 05.12.2012, 05.08.2013 and 21.11.2014 for correction of his date of birth in service record as 10.04.1961 in place of 09.03.1955. Subsequently, one reminder representation was also submitted on 02.02.2015. When his representations were not decided by the Respondent-Department, he preferred Original Application bearing No.203/00134/2015 before the CAT. The CAT taking into consideration the nature of dispute raised by the Petitioner in the original application, disposed off the same with a liberty to file appropriate application before the General Manager requesting him to consider correction of his date of birth in service record on the basis of affidavit submitted by the Petitioner at the time of joining of service. The Petitioner submitted representation in pursuance to the liberty granted by the CAT on 13.02.2015 and when the representation was not decided by the Respondent-Department, the Petitioner submitted reminder letter followed by legal notice dated 09.05.2016. The representation submitted by the Petitioner was considered and dismissed.

3. The Petitioner thereafter again approached the CAT by filing Original Application No.203/00236/2018 on the grounds mentioned therein. The Respondents after service of notice entered their appearance and submitted reply to the original application. The Respondents have pleaded that the Petitioner was superannuated

from service with effect from 31.03.2015, but he has not enclosed or brought on record the order of superannuation and approached the CAT in the year 2018, which is beyond the prescribed period of limitation. The order of rejection of application dated 01.08.2016 has not been challenged, which is an order passed by the Chief Personnel Officer. It was also pleaded that the Department has already considered the representation submitted by the Petitioner/Applicant in the light of Rule 145(3)(iii) RI of the Railway Board Establishment Serial No.17/72 dated 18.01.1972. The date of birth mentioned in the physical fitness certificate and medical card cannot be said to be an authentic document and the application for correction of date of birth has been made at the fag end of his service without specifically mentioning as to how and when the Petitioner/Applicant get knowledge of wrong recording of his date of birth in service record. Lastly, it was also mentioned that the date of birth of the Petitioner/Applicant has been verified from the Headmaster of the Kenda Dangri Middle School Calooniya, District Singbhum, in which, the Petitioner took education up to Class-VII, for the purpose of verification of his date of birth. Vide letter dated 19.12.2014 (Annexure R/2), it was intimated by the Headmaster that the name of Shri Banshi Bandan Maity S/o Shri Nalini Maity was not properly mentioned/founded in their school admission register, but the name of Banshi Bandhan Mohanty S/o Nalini Kant Mohanty, Village Chaluniya Post Kenda Dangri, P.S. Chakulia, East Singbhum is mentioned and the date of birth recorded against Shri Banshi Bandan Mohanty is 11.04.1953 as per admission register of the

School.

4. The learned CAT after considering the pleadings and submissions made by the respective counsel appearing before it, has taken note of Rule 145(3)(iii) RI of the Railway Board Establishment Serial No.17/72 dated 18.01.1972 and also the information supplied by the Headmaster of the Kenda Dangri Middle School Calooniya, District Singbhum dated 19.12.2014 (Annexure R/2), dismissed the original application vide order dated 03.12.2019.

5. Shri Raghvendra Pradhan, learned counsel for the Petitioner submits that at the time of joining of service, the Petitioner has submitted an affidavit dated 10.04.1985, in which, it has been specifically mentioned the date of birth as 10.04.1961, which was one of the relevant documents for the purpose of considering the date of birth of an employee. The CAT dismissed the application by taking one of the grounds of delay, which in fact, is not correct observation or approach of the CAT as the Petitioner has filed several representations one after the other since 10.10.2009 till 21.11.2014. The Respondents for the first time considered the representation dated 21.11.2014 and rejected the same by refusing to correct the date of birth of the Petitioner on the ground that the date of birth cannot be corrected after lapse of 29 years of service. He pointed out that the delay in approaching the CAT is on account of non-considering and not deciding the representations submitted by the Petitioner with the Respondent-Department timely and in between, the Petitioner was made to superannuate from service with

effect from 31.03.2015. Learned counsel for the Petitioner also submits that Establishment Code (Vol. I) of the Respondent-Department prescribed for submission of the affidavit for the purpose of declaring his date of birth and further Railway Board Letter dated 18.01.1972 bearing No.17/72 specifically provides in Para 145(3)(iii) RI that the date of birth can be corrected after showing satisfactory explanation within reasonable time and the Petitioner herein has given his explanation for mentioning of wrong date of birth in service record from the documents, which is part of the Railways itself and that too within reasonable time, but even then, his representation was rejected by the Respondent-Department and the learned CAT without considering the aforementioned procedure for correction of date of birth of an employee, had erroneously dismissed the original application filed by the Petitioner/Applicant.

6. Per contra, Shri Abhishek Sinha, learned standing counsel for the Respondents has supported the impugned order passed by the CAT and argued that the application for correction of date of birth by the Petitioner is highly belated as the application has been made after completion of 29 years of service. He points out that continuously making representations one after the other cannot stop the period of limitation. He submits that in the affidavit which is filed along with the writ petition as Annexure P/3 though it bears the date of birth of the Petitioner as 1st day of April 1961 and in the same affidavit, he has also declared that he has prosecuted his studies up to Class-VII from Kenda Dangri Middle School Calooniya, District Singbhum and based upon the said declaration, the date of birth of

the Petitioner was verified from the Headmaster of the Kenda Dangri Middle School Calooniya, District Singbhum. The Headmaster in his letter dated 19.12.2014 (Annexure R/2) mentioned that the name of Shri Banshi Bandan Maity S/o Shri Nalini Maity was not properly recorded/founded, but the name of Banshi Bandhan Mohanty S/o Nalini Kant Mohanty, Village Chaluniya Post Kenda Dangri, P.S. Chakulia, East Singbhum is recorded in the school admission register and the date of birth is mentioned as 11.04.1953. In support of his submission, learned counsel for the Respondents placed reliance on the verdict passed by Hon'ble Supreme Court in the matter of **Bharat Coking Coal Ltd. & Ors. v. Shyam Kishore Singh** passed in **Civil Appeal No.1009 of 2020** decided on **05.02.2020**.

7. We have heard learned counsel appearing for the respective parties and perused the record.

8. From perusal of the personal details of the Petitioner as mentioned in the affidavit Annexure P/3 as well as the information supplied by the Headmaster of the Kenda Dangri Middle School Calooniya, District Singbhum, it has been shown that though surname appears to be differently mentioned in the school admission register as well as the name shown by the Petitioner in service record, but the name and father's name appear to be one and the same. This can be taken to be details of the Petitioner himself firstly for non-disputing the school, of which, the Headmaster has sent information and secondly, for the reason that the Petitioner

in his affidavit submitted by him in the year 1985 at the time of joining of service that he has prosecuted his studies up to Class-VII from Kenda Dangri Middle School Calooniya, District Singbhum and also the name of village, police station and district are mentioned in the affidavit as well as particulars of the school mentioned in the letter dated 19.12.2014 (Annexure R/2).

9. The argument raised by learned counsel for the Petitioner cannot be accepted for other reason also that the Petitioner himself has mentioned in the affidavit dated 10.04.1985 that he has prosecuted his studies up to Class-VII from the Kenda Dangri Middle School Calooniya, District Singbhum, but has not produced any document in the nature of school leaving certificate or copy of school admission register showing his name and date of birth.

10. So far as the argument raised by learned counsel for the Petitioner that the representation submitted by the Petitioner for correction of his date of birth in service record is not belated is concerned, perusal of paragraph-3 of the impugned order would show that for the first time, the Petitioner has submitted his representation only on 10.10.2009, which is more than after 24 years of service. The Petitioner further did not approach the CAT for redressing his grievance when his representation was not considered by the Authorities, but waited till 2015 and filed his first original application before the CAT in the year 2015.

11. From the above, it is clear that the Petitioner has approached the Authorities by way of filing of representation for correction of his

date of birth after inordinate delay and no explanation has been offered by him in his representation. Even before this Court, the learned counsel for the Petitioner has not made any submission with regard to the mode and date when he came to know about wrong mentioning of date of birth in the service record. The learned CAT while dismissing the original application has given following reasons :

“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 Singhbhum, 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 of Banshi Bandan Mohanty S/o Nalini Kant Mohanty Village Chaluniya Post Kenda Dangri P.S. Chakulia, East Singhbhum 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 relief upon the judgment passed by the Hon'ble Apex Court in the matter of ***Union of India vs. Harnam Singh (1993) 2 SCC 162***, 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 refereed 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 inconsonance with the provisions 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.”

12. While dismissing the original application, the learned CAT has taken into consideration the judgment passed by Hon'ble Supreme Court in the matter of **Harnam Singh** (supra).

13. The Hon'ble Supreme Court has time and again held that the delayed application for correction of date of birth should not be entertained. In **Bharat Coking Coal Ltd.** (supra), Hon'ble Supreme Court has considered its earlier judgment passed in **State of Madhya Pradesh v. Premlal Shrivastava** reported in **(2011) 9 SCC 664** and held as under :

“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag

end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has 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 induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he 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 (see *Union of India v. Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. Be that as it may, in our opinion, the delay of over two decades in applying for

the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

14. In view of above law laid down by Hon'ble Supreme Court, if the facts of the present case are considered, though the Petitioner joined his service in the year 1985, but he has made representation for the first time in the year 2009 and approached the CAT by filing original application after six year after filing of the representation only in the year 2015. Apart from the above delay, when the particulars of the Petitioner were verified from the School as mentioned and named by him in his affidavit of the year 1985, except the surname, other particulars are co-relating with the Petitioner, in which, date of birth has been shown to be mentioned

as 11.04.1953 in the school admission register as informed by the Headmaster of the Kenda Dangri Middle School Calooniya, District Singbhum vide Annexure R/2. The Petitioner did not make any attempt by filing the copies of school admission register or the school leaving certificate of the School, in which, he studied to contradict Annexure R/2.

15. For the foregoing reasons, we do not find any tenable ground to interfere with the impugned order passed by the CAT. The petition being devoid of any substance, is liable to be and is hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge