



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 25th July, 2023*

+ W.P.(C) 9735/2023, CM APPL. 37313/2023

MOHAR SINGH

..... Petitioner

Through: Mr. A.K. Bhakt, Adv.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Raj Kumar, SPC for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 37313/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 9735/2023

1. The challenge in this writ petition is to the orders dated July 29, 2021, in the Original Application No.1309/2019 ('OA', for short) and order dated October 12, 2022, in R.A. No.69/2021 in OA 1309/2019, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) whereby the Tribunal has dismissed the OA as well as the review application filed by the petitioner herein.



2. The case of the petitioner in the OA was basically with regard to the change of his date of birth. As per the respondents, the petitioner's date of birth is July 6, 1961 whereas the petitioner was claiming his date of birth to be July 6, 1968. The petitioner was appointed as Casual Khalasi with the respondents in the year 1986. He was appointed as unscreened substitute (Cleaner) on July 13, 1994. It was his case that in the year 2013, he came to know that his date of birth in the monthly pay slip has been shown incorrectly. He made several representations for correcting the same since 2013. Finally, he filed OA No. 815/2018, the same was disposed of on February 20, 2018 directing the respondents to consider the representations of the petitioner and pass a reasoned order. The respondents passed the order dated June 25, 2018, rejecting the request of the petitioner for change of date of birth. It is this order which was challenged before the Tribunal.

3. The petitioner's case was that as per various documents submitted by him including Ration Card, Aadhaar Card and Pan Card, his date of birth is July 6, 1968. There is no dispute that he has retired on July 31, 2021. The reasoning given by the respondents while rejecting the representations of the petitioner are the following:

"Sub:- Compliance order of CAT/NDLS Dt:20.02.2018 passed in OA No. 815/2018 in the matter of Sh. Mehar Singh s/o Sh. Phool Singh, Helper Carriage Cleaner/HNZM.



The Hon'ble CAT/NDLS has disposed of the above said OA on 20.02.2018 at admission stage with the following directions

"Accordingly, respondents are directed to decide the representation of the applicant dated 08.04.2016 & 21.10.2017 and pass a reasoned speaking order within a period of four weeks from the receipt of certified copy of the order. The OA is disposed off. It is made clear that nothing has been commented on merits of the case"

With reference to above, it is being reiterated that you were appointed on 13.07.94 as cleaner in mechanical department. In your service record your Date of birth is mentioned as 06.07.1961. This record has been seen & endorsed by you on two dates i.e. 24.08.99 & 24.07.14. This can clearly be seen in your service record (Annexure-1).

You have now requested after 24 years of service that your date of birth is incorrect & that the same may be changed. As per Mater Circular 12 regarding "procedure for recording date of birth on entering railway service" It is clearly mentioned that the date of birth recorded in accordance with rules shall be held to be binding & no alteration of such date shall ordinarily be permitted.

Taking into account the above policy of Railway Board & the fact that you have been shown your service record twice, with, your clear signature, the competent authority has decided that your claim after 24 years of service for change in date of birth is not tenable.

The orders of Hon'ble CAT may henceforth be considered complied with.

*Sr. Divisional Personnel Officer-II
Delhi Division, Northern Railway"*



4. The Tribunal has rejected the OA by stating in paragraphs 5 to 8 as under:

“5. After perusing the record, it is evident that the OA has not been drafted carefully and suffers from various anomalies and mistakes including the very crucial DOB. In Para 1.3 of Page-2, the incorrect DOB of the applicant (as per the applicant) is mentioned as 07.06.1961. Similarly on Page-8, Para-8 i.e. Relief Sough in Item (i) the wrong DOB (as per applicant) has been indicated as 07.06.1961 and the correct DOB has been indicated as 06.07.1068. These, however, have been treated as typographical errors.

6. The applicant was initially appointed as Casual Labour (Cleaner) on 13.07.1994 in the Delhi Division of Northern Railway. He was subsequently screened for regularisation vide letter dated 15.12.1996 and was listed at Sl. No. 380 and his DOB is indicated therein as 06.07.1961. The same has been recorded in his service book, which is signed by the applicant. On two other occasions i.e. on 24.08.1999 and 24.07.2014, he has seen the service book and signed the same in acknowledgement. The applicant made his first representation on 21.10.2013 and subsequently on 05.05.2014, 08.04.2016 and 21.10.2017 requesting that his DOB as reflected in the service book as 06.07.1961 is incorrect and the same should be corrected as 06.07.1968. This plea was also raised by the applicant in OA No. 815/2018 filed by him before Principal Bench of this Tribunal. The Tribunal vide order dated 20.02.2018 disposed of the OA directing the respondents to pass speaking orders on the representations of the applicant dated 08.04.2016 and 21.10.2017. In terms of the order of this Tribunal dated 20.02.2018, the respondents passed a compliance order dated 25.06.2018 stating that the applicant was



appointed on 13.07.1994 as Cleaner in the Mechanical Department and that his DOB has been correctly mentioned as 06.07.1961 in his service record which has been seen and acknowledged by the applicant on two subsequent occasions i.e. on 24.08.1999 and 24.07.2014. Reference is also made to the Master Circular 12 regarding “procedure for recording date of birth on entering railway service”. The claim of the applicant was rejected vide this impugned order by the competent authority. The applicant has been relying on a few documents including list of casual labour of 1994, copy of the Pan Card, Ration Card and Aadhar Card and a few pay slips, etc., wherein his DOB has been indicated as 06.07.1968.

7. It is a fact that the applicant’s DOB is mentioned as 06.07.1961 in the service record, which has been signed by him. He has twice inspected this service record and signed the same in 1999 and 2014. Other documents provided by him are basically the documents that are relevant for the purpose of residence proof or income tax, etc. He has not been able to produce any birth certificate or any school certificate as a proof of his DOB. In the counter affidavit an official screening list issued by Delhi Division, Northern Railway dated 15.12.1996 is enclosed in which the applicant has been placed at Sl. No. 380 and his DOB is mentioned as 06.07.1961. The subject matter of recording the DOB and subsequent alteration etc. has been clearly outlined in the Railway Board’s Master Circular – 12. The Circular provides that no such request for change of DOB should be entertained after completion of probation period or three years of service, whichever is earlier. In terms of Item –II of Master Circular -12, one time exception is given by the Railway Board for those who were in service on 03.12.1971 for alteration of DOB till 1973 and it is clearly mentioned that at subsequent stage no



request for alteration can be entertained if the same has not been accepted before completion of three years of service. The applicant, despite the fact that, he was aware of formal screening list for regularisation and subsequently while signing the service record did not challenge the DOB which was recorded as 06.07.1961. He made representations only after a lapse of about 20 years. The applicant has produced certain documents in support of his claim for the DOB being 06.07.1968, but these all are the documents issued at a much later stage. The very fact that he has seen and signed the service record for the DOB as 06.07.1961 not only at the time when the entries were being made but also subsequently many years later in 1999 and 2014 makes it more than evident that he has no objection to the DOB as requested in the service book.

8. The applicant's claim after more than two decades for correcting his DOB in the face of the service record and screening letter cannot be sustained. The applicant has also approached the Tribunal by filing OA No. 815/2018, with the same request. The impugned order dated 25.06.2018 which is under challenge in this OA passed by the respondents in terms of the directions given by the Tribunal covers all the aspects. There is no infirmity or illegality in the impugned order."

5. The Tribunal held that when the services of the petitioner were regularized on December 15, 1996, his date of birth was recorded as July 6, 1961. It is their case that the same is recorded in the service book which was signed by him. Thereafter, even on August 24, 1999 and July 24, 2014, he signed the service book, wherein his date of birth was recorded as July 6, 1961.



6. They also relied upon the master circular No.12 with regard to alternation of date of birth. The same was for those who were in service on February 3, 1971 and could have sought the correction of date of birth till 1973. It is clearly stated that the request on date of birth shall be entertained, if the same is not accepted within three years of appointment of service.

7. The plea of the learned counsel for the petitioner is that the date of birth was for the first time reflected differently in his pay slip. In this regard, our attention has been drawn to pages 69-70 which are the pay slips issued on May 1, 2016 and thereafter. The petitioner has not placed any material to show his knowledge of 2013. In any case, it is his case that he came to know the wrong recording of his date of birth in 2013 itself. If that be so, filing of the petition in 2018, cannot be justified. In fact the pay slip of 2016 depicts the date of birth as recorded in the service book. It is not his case that service book has been tampered.

8. According to the respondents, the circular in place only contemplates the change of date of birth can be sought within three years from the date of appointment and not thereafter. So, in that sense, the petitioner should have objected to the date of birth recorded in the service book immediately thereafter. Further, no document issued by any authority at the time of his birth has been placed on record to show the genuineness of his date of birth as July 6, 1968. The reliance placed on the documents like Aadhar Card, Pan Card or for that matter Ration Card cannot be said to be a conclusive proof with regard to date of birth, as they have been



made much after his appointment when the date of birth is recorded as July 06, 1961.

9. We are of the view in the facts of this case, the Tribunal was justified in rejecting the OA and consequently the Tribunal was also justified in rejecting the review application. We do not see any reason to interfere with the impugned orders of the Tribunal. The petition is dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

JULY 25, 2023/aky