

BEFORE

THE HON'BLE MR. JUSTICE AMITAVA ROY
THE HON'BLE MR. JUSTICE P.K. SAIKIA

Judgment and Order (Oral)

Amitava Roy, J

Intervention of this Court in the exercise of its writ jurisdiction has been sought for by the petitioner, who, on the face of his date of birth as recorded in his service book is scheduled to retire today i.e. 31.07.2012 from service. The parties have exchanged their pleadings and, therefore, this petition is being disposed of finally by this adjudication.

02. We have heard Mr. IH Saikia, Advocate assisted by Ms. S Kanangoe, Advocate for the petitioner and Ms. B Devi, learned Standing Counsel, NF Railways, Maligaon, Guwahati for the respondents.

03. The pleaded version of the petitioner reveals that he was appointed as Trackman (Grade-IV) under the Rangia Division of NF Railway on 17.11.1982 and is presently posted as Senior Trackman under the Senior Section Engineer (P.Way), Rangia. According to him, at the time of his entry in service on the date aforementioned, he had declared his date of birth to be 31.07.1962 and had produced documents in endorsement thereof. On the assurance of the authorities concerned that his correct date of birth as above would be recorded in his service book, he, on good faith, subscribed his signature at the place pointed out to him.

According to him, it was only in the last part of 1986 that he came to learn from reliable sources that his date of birth had been wrongly recorded as 31.07.1952 in his service book. Contending that at the time of joining the service he had submitted the certificate dated 07.11.1979, issued by the Headmaster of Government Aided Sandha ME School, Sandha, disclosing his correct age, and that there was an apparent error in recoding his date of birth to be 31.07.1952 instead of 31.07.1962 in the service book, he successively submitted representations for necessary rectification on 01.12.1986, 03.08.1987 and subsequently on 24.06.1996. As, according to him, though assured, no remedial step was taken by the respondent authorities and instead his name was shown in the list of employees scheduled to retire during the period January and July, 2012, he filed an appeal on 02.01.2012 before the Divisional Railway Manager (P), Rangia for correction of his date of birth as 31.07.1962 in place of 31.07.1952. He, inter alia, contended therein that at the time of his preparation of his service book, he had submitted his school certificate dated 07.11.1979 and that the date 31.07.52 was an obvious mistake.

This appeal having been rejected on 19.04.2012, he approached the learned Central Administrative Tribunal, Guwahati Bench, Guwahati (for short hereafter referred to as the Tribunal) for redress. By judgment and order dated 25.06.2012, rendered in OA No. 196/2012, his impugnment having been negated, he is before this Court. As, admittedly, before the learned Tribunal, the respondents had no opportunity for filing their response, having regard to the nature of the issue involved, they were permitted to do so in the instant proceedings.

04. In the affidavit-in-opposition filed by them and affirmed by the jurisdictional Divisional Personal Officer, Rangia, they have asserted that the petitioner's date of birth as 31.07.1952 was recorded in his service book as per his own declaration, which, he affirmed by putting his signature thereon without any demur. That, at the time of his medical examination by the Asstt. Divisional Medical Officer, New Bongaigaon on 15.07.1986 to ascertain his fitness for a appointment as Gangman and at the time of his verification of his service book on 13.09.2002, the petitioner, though, aware that his date of birth had been recor

ded as 31.07.1952, he did not raise any objection, has also been mentioned. The answering respondents denied the allegation that the authority concerned had taken his signature on the first page of a blank service book on the assurance that the other columns would be filled up later on after verification of his document. They, in categorical terms, denied also the receipt of the representations dated 01.12.1986, 03.08.1987 and 24.06.1996 said to have been submitted by him for correction of his date of birth. They questioned the authenticity of the certificate dated 07.11.1979, which, they contended was received by the authorities for the first time on 27.02.2012. They denied as well of any verbal assurance for correction of his date of birth. Referring to the Railway Board's letter dated 03.12.1971, the answering respondents have mentioned that no alteration of the petitioner's date of birth was permissible in terms thereof. According to them, the appeal filed by him for correction of his date of birth had been rightly dismissed. They endorsed the determination made by the learned Tribunal on 25.06.2012 in OA No. 196/2012.

The petitioner in his additional-affidavit has clarified on oath that the averment made by him in the writ petition to the effect that at the time of his entry in service he had furnished documents in support of his date of birth i.e. 31.07.1962 and that he came to learn for the first time about the wrong date in the last year of 1986 was true to his knowledge, belief and information.

05. Mr. Saikia has urged that it is evident from the transfer certificate dated 07.11.1979 that had been submitted before the respondent authorities at the time of his entry in service as Gangman/Trackman on 17.11.1982 that his date of birth was 31.07.1962. According to him, in the last part of 1986, he came to learn for the first time that his date of birth was wrongly recorded as 31.07.1952, whereafter, immediately, he submitted representations on 01.12.1986, 03.08.1987 and 24.06.1996 seeking the remedial intervention of the authorities concerned to restore his correct date of birth i.e. 31.07.1962. Mr. Saikia, has, therefore, urged that the petitioner cannot be held liable for any delay in his response for the correction of his date of birth as alleged by the Railways. Referring to Rule 225 of the Indian Railway Establishment Code Volume I (for short hereafter referred to as the Code) and the Railway Board's letter dated 03.12.1971 referred to hereinabove, the learned counsel has maintained that in the facts and circumstances of the case, the ceiling of 3 years is inapplicable and that having regard to the unimpeachable proof of his date of birth to be 31.07.1962, the respondents ought to have acceded to his request. According to Mr. Saikia, no such exercise on the basis of the certificate was undertaken on the plea of bar of 3 years. He further urged that the learned Tribunal also fell in same error while rejecting the petitioner's challenge to the impugned decision of the respondent authorities of retiring him from service on the basis of his wrong date of birth i.e. 31.07.1952. According to Mr. Saikia, the petitioner being a literate staff, he, in terms of Rule 225 of the Code, ought to have been permitted to record his date of birth in his own hand and he having been denied that opportunity, the plea taken by the respondents in contravention of his claim of his correct date of birth to be 31.07.1962 is clearly untenable in law. Mr. Saikia, in endorsement of his contentions relied upon the decision of the Hon'ble Apex Court in Mohd. Yunus Khan Vs. UP Power Corporation Ltd. & Ors., (2009) 1 SCC 80.

06. The learned Standing Counsel, Railways, per contra, while referring to the original records pertaining to the petitioner has reiterated the respondents' pleaded stand of not having received representations said to have been filed by him in 01.12.1986, 03.08.1987 and 24.06.1996. She insisted that his date of birth was correctly recorded as declared by him to be 31.07.1952 and in view of his subsequent affirmation thereof at the time of his medical examination as well as perusal of his service record in the year 2002, his plea to the contrary had been rightly rejected by the learned Tribunal with reference to the Railway Board's letter dated 03.12.1971. According to her, the certificate dated 07.11.1979 had not been submitted by the petitioner before the filing of the appeal by him on 02.01.2012 and, therefore, all contentions to the contrary are liable

to be rejected in limine.

07. The pleadings of the parties and the arguments have received our due consideration. Admittedly, the petitioner had been appointed as Gangman/Trackman, a post in Grade-IV of Service under the NF Railways on 17.11.1982. A perusal of his service book, in clear terms, reveals that his date of birth was recorded therein on that date as 31.07.1952. The service book discloses that the petitioner at the relevant point of time had read upto Class VI and that on the reverse of the first page containing his date of birth, he had put his thumb impression as well as the signature. A typed copy of the transfer certificate dated 07.11.1979, claimed by him to have been produced before the authorities at the time of entry in service, is available in his service book. The document is, however, not attested. The certificate of his medical examination to ascertain his fitness for appointment as Gangman/Trackman, as found in original in his service book, also mentions the date of birth as 31.07.1952. This was, however, on 15.07.1986. That he verified the service book on 13.09.2002 is also evident therefrom. Official records pertaining to the petitioner, as laid before this Court, do not contain his representations said to have been filed on 01.12.1986, 03.08.1987 and 24.06.1996. In the appeal petition dated 02.01.2012 (wrongly mentioned by him to be 02.12.2012), there is a reference of the certificate dated 07.11.1979. This document, which is attested, is also available on record. It is, therefore, in the above factual premise not possible to conclusively determine as to whether the aforementioned representations, now claim to have been filed by the petitioner, were really submitted on the aforementioned dates along with the certificate dated 07.11.1979.

08. The order dated 19.04.2012, addressed to the petitioner communicating to him the factum of dismissal of his appeal, is based fully on the Railway Board's letter dated 03.12.1971 prescribing against any alteration in the date of birth after the completion of the probation period or 3 years of service, whichever is earlier. Admittedly, on the date of the submission of the first representation (even, if it is assumed to have been submitted as claimed by the petitioner) on 01.12.1986, he had crossed the ceiling limit of 3 years as referred to in the letter dated 03.12.1971. The learned Tribunal as well, had rejected the petitioner's challenge on the same ground. Vis-a-vis the certificate dated 07.11.1979, it, however, had, further observed that the name of the School inscribed thereon was hand written and not printed and that the veracity of this document had, never, been examined and, thus, is not conclusive in nature. A close scrutiny of the official records laid with us, reveals that a typed copy of the certificate dated 07.11.1979 is available in addition to the one in the prescribed form issued by the Headmaster of the Government aid Sandha ME School, Sandha and attested on 03.01.2012.

The Apex Court in Mohd. Yunus Khan (Supra), while dwelling on the permissibility of correction of date of birth in the service record, if sought for belatedly by an incumbent in the service, observed in the contextual facts that the same did not disclose any time frame statutorily fixed. Their Lordships, however, were of the view that even if there was such a statutory provision, the same would not be of much significance as the affected employee would take action as is permissible in law for correction of his date of birth only after he came to know that a mistake in connection therewith had occurred. This decision, therefore, admits of some flexibility in approach in the matter of time frame, even, if statutorily fixed within which an aggrieved employee may seek remedial steps for correction of his date of birth originally recorded.

09. A bare reading of Rule 225 of the Code reveals that every person, on entering railway service would declare his date of birth, which should not differ from any declaration expressed or implied for any public purpose before entering railway service. Whereas, for the literate staff, the date of birth has to be recorded in the railway servant's own handwriting, for the illiterate staff, the declared date of birth has to be recorded by a senior railway servant and witnessed by another railway servant. Vis-a-vis a request for alteration of a d

ate of birth recorded in accordance with Rule, the same is permissible, inter alia, where a satisfactory explanation of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempt made to have the record amended. Sub-Rule 4 to Rule 225, however, enjoins that this explanation would not be entertained after the completion of the probation period or three years service, whichever is earlier. A perusal of the Railway Board's letter dated 03.12.1971 discloses that the contents thereof, in substance, are the replica in essential particulars of those of Rule 225 of the Code. The ceiling of time frame of three years and/or the probation period whichever earlier is, thus, a reproduction of the relevant excerpt of the said Rule.

10. Noticeably, at no point of time, in view of the perceived embargo based on the time frame prescribed by Rule 225 of the Rule and the Railway Board's letter dated 03.12.1971, any endeavour had ever been made by the respondents to ascertain the authenticity or otherwise of the certificate dated 07.11.1979, which *prima facie* discloses that the petitioner's age on 31.03.1975 was 13 years and 8 months. On plain arithmetic, if the certificate is proved to be authentic, his claim of date of birth to be 31.07.1962 cannot be lightly brushed aside. In the face of the enunciation made by the Hon'ble Apex Court in *Mohd. Yunus Khan (Supra)*, we are of the considered opinion, having regard to the disputed questions of facts involved, that an endeavour ought to be made to obviate any kind of injustice to the parties to ascertain the tenability or otherwise of the petitioner's claim of date of birth to be 31.07.1962. In the above view of the matter, the petition stands disposed with a direction to the Divisional Railway Manager (P), Rangia Division, NF Railway to cause an inquiry to be made into the veracity of the petitioner's claim of date of birth to be 31.07.1952 on the basis of the transfer certificate dated 07.11.1979.

11. Needless to say, that in undertaking this exercise the authority concerned would be at liberty to probe into all essential facets of the issue referred to him and arrive at a conclusion supported by reasons. The decision reached, would be communicated to the petitioner in writing forthwith. If, at the conclusion of the inquiry ordered, the petitioner's claim of date of birth as 31.07.1962 is found to be established, he would be restored in service maintaining continuity thereof alongwith all consequential service benefits. Ordered accordingly.

The process indicated above, should be completed within a period of two (2) weeks from the date of receipt of the certified copy of this order. We make it clear that this time frame is final and absolute in terms and ought not to be transgressed under any circumstances. No costs.