

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1953
T.A. No.

1988.

DATE OF DECISION 9.10.90.

Shri. Bhagwan Dass.

Petitioner

Shri V.P.Sharma,

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri Jagjit Singh,

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. P.C. Jain, Member (Administrative)

The Hon'ble Mr. J.P.Sharma, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86 15,000

(J.P.Sharma)
Member (Jud.)

(P.C. Jain)
Member (Admn.)

Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn. No. OA-1953/88

Date of Decision: 9-10-1991

Shri Bhagwan Dass

... Applicant.

Vs.

Union of India

... Respondents.

For the applicant

... Shri V.P.Sharma,
Advocate.

For the respondents

... Shri Jagjit Singh,
Advocate.

CORAM: Hon'ble Shri P.C.Jain, Member(Administrative)
Hon'ble Shri J.P.Sharma, Member(Judicial).

JUDGEMENT

(Delivered by Hon'ble Shri J.P.Sharma)

The applicant, Bhagwan Dass, who was working as Driver 'B' in Western Railway, Phulera (Jaipur), moved this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 11.8.1988 passed by the D.R.M., Jaipur retiring the applicant on 31.7.1988 on attaining the age of superannuation.

2. The applicant seeks the following relief:

That the date of birth of the applicant be corrected as 29.7.1933 in the service-sheet entitling him to remain in active service till 31.7.1991 and the retirement of the applicant from 31.7.1988 be declared as illegal, unjust and arbitrary.

3. The facts, in brief, according to the applicant are as follows: The applicant was born on 29.7.1933 somewhere in the territory now known as Pakistan and joined Railway department on 8.4.1954 as Khalasi and was posted at Loco Shed Abu Road. The Loco Foreman, Western Railway, prepared the service-sheet of the applicant which contained all the relevant entries, including the date of birth. The applicant was transferred from Abu Road, Ajmer Division, to Jaipur Division in the year 1955 on 6.8.1955 on mutual exchange with one Shri Satya Narain Sharma. The service-sheet and the personal file of the applicant was to be transferred from Ajmer Division to Jaipur Division. However, the applicant's service-sheet

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was never transferred from Ajmer Division to Jaipur Division and it is alleged that the same is lying with the Ajmer Division. The applicant has been working at Loco Shed Fulera since 6.8.1955 till the date of his retirement on 31.7.1988. That the respondent No.2 without summoning the service-sheet and personal file of the applicant from Abu Road, Ajmer Division, himself prepared a fresh service-sheet in which the date of birth has been entered as 29.7.1930, which is wrong. In the seniority list circulated by the respondents (Annexure A-5) at Serial No.54, the name of the applicant is entered and in the column of date of birth, the applicant's date of birth has been shown as 29.7.30. The applicant made many representations for correction of the above date of birth in the service record but to no effect. The applicant made further representation on 18.5.87 and a reminder was also sent on 9.1.1988 (Annexure A-18 and 19) but no action has been taken by the respondents. The applicant has also referred to some correspondence by Railway authorities wherein efforts were made to find out the old record but no further action was taken on that correspondence and the applicant was retired from service on 31.7.1988, treating his date of birth as 29.7.1930.

4. The respondents filed the reply contending that the applicant was appointed as Cleaner in Loco Shed, Abu Road by District Mechanical Engineer (D.M.E) on 6.8.1955. He came on mutual transfer from Abu Road to Phulera in October, 1955. The service record of the petitioner was prepared at Abu Road and the same was transferred to D.M.E. Bandikui. The applicant declared his date of birth as 29.7.30 at the time of his appointment. The service-record of the applicant was lost by the respondents, so the same was reconstructed in the year 1973 and the duplicate service-sheet was prepared based on the record available in the Divisional Office, Jaipur

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and in this duplicate record the date of birth of the applicant is recorded as 29.7.1930. This service-sheet was signed by the competent authority and also by the applicant, in testimony of the entries made therein which were based on the record available in the D.R.M. Office. The duplicate service-sheet bears the signature of the applicant (Annexure R-1). The applicant did not dispute the date of birth recorded in the service sheet at any time and as such, has no right now to challenge the same. The applicant is a literate person, who has signed the duplicate aforesaid service-sheet in English.

5. It is further contended that the respondents in 1964 and in subsequent years issued various seniority lists in which the date of birth of the applicant was shown in the year 1930 and not the year 1933 and the applicant never protested or raised any dispute (Annexure R-2 to R-4). The applicant on his representation was asked to give the evidence of his date of birth on 9.6.88 but the applicant did not produce any evidence. The applicant got the matter represented through the Union and after discussion the matter was finally replied on 18.8.88 when the matter was dropped. The applicant at the date close to his retirement/made a representation in 1987 and the representation was rejected after considering the service record of the applicant. The respondents have also denied the date of joining of the applicant at Abu Road as 8.4.54 and said that it was 6.8.55 and it was in October, 1955, that the applicant came by transfer to Loco Shed, Phulera (Jaipur). The respondents have also contended that a copy of the seniority list (Annexure-5) filed by the applicant is unauthenticated and ~~xxxxxxxxxx~~ that no such list was issued by Jaipur Division. The said list lacks credibility. The applicant had purposely concealed the list issued/time to time from time to time in the year 1971, 1974, 1977 and 1983, in which the name of the applicant is shown at serial No. 30,47,220 and 195 respectively and the date of birth under the relevant column is 29.7.1930. In view of the above submissions, the respondents contended that the applicant is not entitled

to the relief prayed for.

6. We have heard the learned counsel for the parties at length and have gone through the record of the case. The main contention of the learned counsel for the applicant is, that applicant's date of birth was rightly recorded as 29.7.33 in the service record on the date when he joined at Abu Road in 1954. He sought a mutual transfer to Phulera in and Jaipur Division in 1955, / his service record was not sent and was reported lost and a duplicate service-sheet was prepared showing 27.9.1930 an incorrect date of birth. There is no evidence that the applicant first joined service on 8.4.54 at Abu Road nor he has given any secondary evidence of Shri Satya Narain Sharma with whom he got effected a mutual transfer in 1955 from Ajmer Division to Jaipur Division to testify the fact that he joined there on 8.4.54. The respondents on the other hand have filed photo-copy of the transfer order dated 10.10.1955 of mutual exchange. Thus, the date of joining of the applicant on 8.4.54 at Abu Road and the date of transfer to Jaipur Division in August, 1955 is not established by the applicant. It is admitted by the respondents, that the service record of the applicant was lost and a duplicate record was prepared in 1973. The respondents have filed the duplicate service-sheet and in this service-sheet the date of birth of the applicant is written as 29.7.1930. The applicant has signed the service-sheet in English, and blanks in it are also filled up in English. There is nothing to show that the duplicate service-sheet was prepared wrongly out of malice. Even assuming ~~xxxxxx~~ that the date of birth is wrongly mentioned in the duplicate service-sheet, then there should be some basis to show that the correct date of birth as alleged by the applicant is 29.7.33. No evidence, ~~xxxxxxxxxxxxxx~~, has been filed in support to corroborate the contention.

7. The learned counsel for the applicant had only laid

stress on the fact that his service sheet is still lying with the Ajmer Division but this fact is denied by the respondents in their reply. Even if, this contention may be true then it was for the applicant to give best evidence regarding the correct date of birth. The applicant is a literate man. In the representation made by the applicant, the applicant did not file any evidence, as is evident by the reply to the representation of the applicant, communicated to him on 9.6.88. The carbon copy of the same has been filed by the respondents. The burden lay ~~xxxx~~ on the applicant to show that his date of birth is not correct and he had to discharge

the same by filing best evidence regarding his date of birth, which has not been discharged in the matter nor furnished before the respondents when called for.

8. The learned counsel for the respondents placed more stress on the various seniority lists issued by the respondent (Annexure R-2 to R-4) and the applicant at no time raised any objection to the entries of his date of birth as 27.9.33 shown in these seniority lists. The applicant only a few months before his retirement in 1987 for the first time made a representation. Though, Rule 225 of the Indian Railway Establishment Code Vol. I gives a right to an employee to get his date of birth corrected subsequently but it should be shown that there was some clerical error or other error not to the knowledge of the applicant. However, the applicant could not give any basis for correction of his date of birth as 29.7.1930.

9. The learned counsel for the respondents also filed a copy of the judgement in OA-549/86, Harnam Singh Vs. Union of India decided by Jodhpur Bench on 24.11.1987. The above authority relates to non-filing of evidence by the applicant like the certificate of education, and for want of that the applicant of that OA could not get the relief prayed for.

9. The learned counsel for the respondents also referred to the following authorities.* All these authorities relate to the fact that there should be sufficient evidence in support of Date of Birth desired to be entered in the service-sheet in place of alleged recorded wrong date of birth. The applicant failed to produce any evidence nor he has mentioned any ground in the application to assail the alleged wrong entry of date of birth. In fact, the applicant has no basis for the alleged incorrect date of birth as 29.7.1933.

10. The application is, therefore, devoid of merits and is dismissed leaving the parties to bear their own costs.

Jainam
(J.P. Sharma)
Member (Judl.)

C. S. Jain
(P.C. Jain)
Member (Admn.)

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1. ATR 1986 (1) CAT 193
2. ATR 1986 (1) CAT 345
3. ATR 1987 (2) CAT 254
4. ATR 1987 (1) CAT 15
5. ATR 1988 (1) CAT 269
6. ATR 1988 (1) CAT 254
7. ATR 1988 (1) CAT 537