

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
XNXXWXXDXRILXKI

O.A. No. 525/88
 XXXXX No. 525/88

DATE OF DECISION 5-5-1989

K. B. Bedi

Petitioner

Shri P. S. Maine

Advocate for the Petitioner(s)

Versus

UOI rep by General Manager, Northern Railway & Others.

Shr. Inderjit Singh Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

The Hon'ble Mr.

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

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

DATED FRIDAY THE FIFTH DAY OF MAY ONE THOUSAND NINE
HUNDRED AND EIGHTY NINE.

PRESENT

Hon'ble Shri S.P.Mukerji, Vice Chairman

ORIGINAL APPLICATION No. 525/88

K.B. Bedi .. Applicant
Vs.

Union of India through
the General Manager,
Northern Railway,
Headquarters Office,
Baroda House, New Delhi. .. Respondents

Counsel for the applicant .. Shri P.S. Mainee

Counsel for the respondent .. Shri Inderjit Sharma.

O R D E R

Shri S.P.Mukerji, Vice Chairman

In this application dated 29.3.1988 under Section 19 of the Administrative Tribunals Act the applicant who has been working as Head Clerk in the Northern Railways Headquarters at New Delhi has prayed that the orders of the respondent to retire him with effect from 31.3.1988 should be set aside and the respondent be directed to correct his Date of Birth on the basis of his representations, from 16.3.1930 to 27.12.1932. The applicant was retired on the basis of the impugned Date of Birth with effect from 31st March, 1988.

2. The brief facts of the case are as follows.

On the partition of the country in 1947 the applicant migrated from Sindh ^(now in Pakistan) and joined the Railways in Class IV post of Daftry on 3.9.1948. On the basis of his declaration given by him on the basis of his horoscope, His Date of Birth was entered as 16.3.1930 in the service records. This Date of Birth was never challenged by him throughout his service till he made a representation on 3.3.1988 when he was to retire on 31.3.1988.

According to the applicant the error in the recorded Date of Birth came to light when the applicant's elder sister who was working in the Ministry of Food and Civil Supplies revealed that she would be retiring in December 1988 while the applicant younger than her was to retire in March, 1988. The applicant made frantic efforts to get the school leaving certificate from the school where he had studied in Sindh and on 3.3.1988 he represented (Annexure A.IV) to the respondents that his Date of Birth be corrected from 16.3.1930 to 31.3.1932. In that representation he also mentioned that he was making efforts to get relevant certificates from Pakistan. In reply to the representation the respondent asked him (Annex.A.V) to submit the school certificate and other documents in support of his claim. The applicant thereafter with proper permission went to Pakistan and brought the school certificate issued by the H.M. Government Boys School, Hyderabad Sindh, according to which he studied in that school upto 9th Class and his date of birth was 27.12.32

(Annexure-A.III). He submitted this certificate along-with his representation dated 28.3.1988 (Annexure A.VI) and he also filed this application dated 29.3.1988 before the Tribunal. The respondents were directed by the Tribunal on 17.1.1989 to dispose of his representation and when his representation was rejected the matter was taken up for adjudication. According to the applicant his Date of Birth having been confirmed as 27.12.32 he has a right to be retained in service till 31.12.1990. The impugned order of retirement from 31.3.1988 therefore, is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

3. According to the respondents, having accepted the Date of Birth recorded on his own declaration 40 years ago the applicant cannot go back on it by his first ever just representation filed four weeks before his impending date of superannuation. They have also indicated that on the basis of his Date of Birth as 27.12.32 claimed by him now, at the time of his recruitment in 1948 he could not have been recruited ~~as his~~ as his age in that case would have been less than 18 years. They have produced various documents in which the applicant himself had been declaring his Date of Birth as 16.3.30 and argued that he never represented for change of Date of Birth throughout his career of 40 years except in the last month of his retirement.

4. In the rejoinder the applicant has indicated

that having migrated from Pakistan leaving everything behind the applicant had no documentary proof of his Date of Birth and declared the Date of Birth on the basis of his horoscope. He came to know about the incorrect Date of Birth through his sister when he was told that she will retire in December, 1988. It is the respondent, who called upon him on his representation dated 3.3.1988 to produce school certificate and other documents. He also indicated that the copy of the certificate issued by the school authorities in Pakistan are duly attested by the Protocol Officer of the Ministry of Foreign Affairs of Pakistan as also Consulate General's Office at Karachi. He has argued that a wrong entry in the service record cannot deprive him of being in service till the age of 58 years reckoned on the basis of his actual Date of Birth. As regards his being disqualified from entering service in 1948 on the basis of the Date of Birth now claimed by him, he has quoted some instances where some persons were recruited at ages below 18 years and continued in service till superannuation on the basis of those dates. He has argued that in accordance with the Railway Establishment Code valid at the time of his recruitment in 1948 there was no lower age limit for recruitment.

5. I have heard the arguments of the learned counsel for both the parties and have gone through the documents carefully. I have no doubt in my mind that the date of entry in the service records entered in a bonafide manner can be reverted at any stage and even after retirement on production of indisputable evidence of the correct Date of Birth. There are catena of rulings on this point. I have also little hesitation in accepting the authenticity of the certificates issued by the school authorities in Pakistan and duly attested to indicate that his Date of Birth entered in the Primary School and the Higher Secondary School in Pakistan where the applicant studied was 27.12.1932.

6. The only hurdle in accepting the claim of the applicant is that the applicant might have declared a wrong Date of Birth as 16.3.1930 at the time of his recruitment on 3.9.48 presumably to show that on 3.9.48 he was more than 18 years of age. Had he indicated his Date of Birth which he is claiming now as 27.12.32 he would have been on 3.9.48 less than 16 years of age and perhaps could not have been inducted in service. The point is that having derived an undue advantage of premature entry in service by declaring an allegedly wrong Date of Birth? The general principle is that if by entering a wrong Date of Birth purposely to gain entry

in Government service the applicant has got an undue advantage, he should not be allowed to gain another advantage of extended service by going back from the incorrect Date of Birth to the correct Date of Birth howsoever indisputable the correct Date of Birth is. If this is allowed it will be putting a premium on fraud on the Government by allowing the person to get premature entry at one end and postponed exit at the other end of his service career. This concept is recognised in Note 5 below F.R.56(m), which allows alteration in the Date of Birth inter alia if "the Date of Birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service." The learned counsel for the applicant agreed that if a fraud is committed at the time of entry, the double advantage of extended tenure of service cannot be allowed by correct the fraudulent Date of Birth and the person must retire on the basis of the fraudulent Date of Birth. He however, argued that there is nothing to indicate that the applicant had fraudulently entered an incorrect Date of Birth.

in order to gain a premature entry into service when he was under-aged. The fact however, remains that the entry was made at the declaration of the applicant made on 3.9.48 to the effect that his Date of Birth was 16.3.1930. By that date the applicant would be above 18 years of age by a few months. Though the learned counsel for the applicant stated that at that time there was no lower limit of date of entry in Railway service he could not produce any evidence to support his claim. His further argument that a number of persons whose names appeared in the "Classified List of Gazetted Establishment of Indian Railways" had entered service at less than 18 years of age cannot be accepted to give the applicant a right to be inducted in service at less than the age prescribed in the Railway Establishment Manual. In Shri Hari Kishan Walia Vs. Union of India, ATR 1988 (2) CAT 606, the Principal Bench of the Tribunal presided over by the then Chairman observed as follows:

"In this background we are fully convinced that the applicant is estopped from challenging the recorded Date of Birth which he had himself declared and continuously accepted for more than 30 years. Allowing the applicant to claim the benefit of the revised date of birth to our mind will encourage and embolden unscrupulous elements to declare wrong dates of birth at various stages of their career for reaping undue benefits."

On the other hand, the learned counsel for the respondents brought to our notice Sub-Section IV of Section A, Chapter 1 of Indian Railway Establishment Manual (1960 Edition) in accordance with which for Class IV Railway

servants "the age for recruitment should be between 18 and 25 years. Preference may, however, be given to candidates in the age group of 18 to 21 years. The upper age limit is relaxable by 5 years in the case of candidates belonging to Scheduled Caste and Scheduled Tribe."

7. Thus a reasonable presumption can be made that the applicant entered his Date of Birth as 16.3.30 could be considered so that he was eligible to be recruited to ~~xxx~~ Class IV service and that had he declared his Date of Birth as 27.12.1932 as claimed by him now, he could not have been recruited. Thus it can be presumed that the applicant derived a benefit of premature recruitment on the basis of the impugned Date of Birth entered in the service record on the basis of his own declaration. He conceded this Date of Birth continuously for 40 years of his service. In the Railways as is well-known, an opportunity was given across the board to the entire staff during 1972-73 to get the Dates of Birth corrected. The applicant did not question his recorded Date of Birth at that time. In Ghansite Lal Vs. Union of India, (1988) 6-AIC-224, it has been held by the Tribunal that where the Date of Birth was recorded on employee's own declaration and accepted by him he is estopped from challenging it later.

8. In the facts and circumstances I see no merit in the application and reject the same. There will be no order as to costs.

S.P. Mukerji 5.89
(S. P. Mukerji)
Vice Chairman
5-5-1989

Sn.