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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1093/86 1986
T.A. No.

DATE OF DECISION 29.6.1987

Shri Subodh Kumar

Petitioner

Shri Hot Chand

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri Sanat Kumar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

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 ? No

Ch. Ramakrishna Rao

(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji

(S.P. Mukerji)
Administrative Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. CA-1093/86

Date: 29.6.1987

Shri Subodh Kumar

.... Petitioner

Versus

Union of India & Ors.

.... Respondents

For Petitioner

.... Shri Hot Chand, Advocate.

For Respondents

.... Shri Sanat Kumar, Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

(Judgement delivered by Shri S.P. Mukerji)

The applicant joined service as Junior Machineman in Class IV Grade on 2.12.1954 under the Superintendent, Printing & Stationery of the Northern Railways Printing Press. His date of birth was recorded as 1.7.1929. The petitioner claims that at the time of entry he had declared his date of birth as 30.11.1934 along with the school leaving certificate on which that date had been recorded. In the seniority list (Annexure 'A') published by the respondents on 10.1.1972 and admitted by the respondents his date of birth was recorded as 11.6.1934.

The applicant states that since his date of birth was 30.11.1934 and not 11.6.1934, he represented on 15.1.1972 (Annexure 'B') even correction of 11.6.1934 to 30.11.1934 but there was no reply. In November, 1983, when he was asked to furnish a certificate regarding his date of birth for the purpose of standing surety for his colleagues, he was surprised to be informed that his date of retirement has been shown as 30.6.1987, whereas, according to him, it should have been 30.6.1992. Again he made a representation on 16.7.1984 to the General Manager with a reminder on 30.10.1984. In the combined seniority list of 18.1.1985,

his date of birth was left blank. He again sent a reminder on 13.3.1985 to the General Manager, reiterating his claim that his date of birth was 30.11.1934 and also asserting that his service book had not been verified by him every five years as prescribed in the rules. The respondents vide their letter of 20.2.1985, asked the applicant to submit a school leaving certificate from the school last attended and the applicant replied to the letter on 4.6.1985 enclosing a copy of the certificate as also an affidavit from his mother. His immediate superior officer forwarded his representation indicating that his date of birth and other particulars of service were filled by some office staff at the time of his entry and also referred to the photostat copy of the school leaving certificate where his date of birth was recorded as 30.11.1934. On 5/6.2.1986, the applicant was informed that his representation had been rejected by the General Manager.

2. According to the respondents, the applicant did not produce the school leaving certificate at the time of his initial recruitment but gave his age as 25 years and, accordingly, in accordance with the Railway Establishment Code, his date of birth was recorded as 1.7.1929 which was signed by the applicant. On the verification role also, he signed on the same recorded date of birth. The date of birth shown as 11.6.1934 on the seniority list of 1972 has been explained by the respondents as a clerical/typographical mistake and denied that the applicant had made any representation on 15.1.1972. They have also denied having received any representation, dated 16.7.84.

They have, however, accepted that the representation at Annexure 'B' was dated 5.1.1985 and had been received by the respondents. In that representation, the applicant had not referred to his earlier letters or representations. The respondents have admitted that they had called upon the applicant to submit his school leaving certificate in their letter, dated 20.2.1985 and further accepted that the applicant had replied in his letter, dated 14.6.1985. The respondents have rejected the certificate issued by the Headmaster of the School, dated 11.8.1980 certifying his date of birth as recorded in the school as 30.11.1934. The order of rejection of his representation was passed on receipt of the decision of the General Manager at Annexure R-2 to the counter affidavit. They have further stated that some information was called for on the applicant's representation of 14.2.1986 from the school, but since the information was incomplete, a further reference was made to the Headmaster of the School but no reply has been received and, accordingly, the applicant's representation was still pending.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The case law which has developed so far on the question of correction of the date of birth is quite clear and unambiguous. In State of Orissa Vs. Binapani D/o, AIR 67 SC 1269 and Sarju Prasad Vs. General Manager, AIR 1981 SC 1481, it has been held by the Supreme Court that change of the date of birth of employee involves civil consequences and another order to the prejudice of the employee can be made only after an enquiry is made in which the employee is given adequate opportunity to set up his defence and to correct or controvert the

evidence which is being relied upon against him. If a unilateral determination of the age of the employee is made, such an order is likely to be quashed by the courts of law. It is no defence to say that the order made is an exercise of administrative power. The High Court of Himachal Pradesh in Nanak Chand Vs. State of Himachal Pradesh, 1976(1) SLR 402, held that the legal right to correct the date of birth cannot be taken away by executive instructions.

4. In the instant case we examined the service book and found that the date of birth was not recorded by the applicant in his own hand but had been recorded by some other official. In accordance with para. 145(1) of Indian Railway Establishment Code (Vol.I), "In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own hand-writing. In the case of illiterate staff, declaration of date of birth shall be recorded by a senior Class III railway servant and witnessed by another railway servant." It is thus clear that the procedure adopted in the case of the applicant was that prescribed for illiterate staff and, therefore, the applicant cannot be irrevocably pinned down to the recorded date of birth even though he had signed the first page at the time of entry. It is admitted by the respondents that contrary to the circular No.5198, dated 2.1.1971, the first page of the service-book should be shown and got signed by the railway employee every five years, no such five-yearly verification was done in the applicant's case.

5. It also goes against the respondents that in the seniority list published in 1972, the applicant's date of birth was shown as 11.6.1934 and not 1.7.1929 as recorded in the service-book. Though the respondents



have denied having received any representation in 1972, but have accepted the representation, a copy of which has been enclosed as Annexure 'D' to the petition. Though this representation, according to the applicant, is dated 16.7.1984, the respondents claim that it is dated 5.1.1985. Be that as it may, the respondents have tried to take advantage of this representation to say that the applicant has not mentioned anything about his previous representations in this letter. However, this letter states that "I once again dare to approach your goodself to look into this and enquire from my school where I had been studying.....". This shows that the applicant had made a representation prior to 1984 also.

6. The General Manager, vide his letter dated 28.1.86 (Annexure R-2 to the counter affidavit), rejected the representation on the sole ground that the representation was time-barred having been later than 31.7.1973. We have considerable reservation about the ground of rejection. In accordance with the Railway Board's letter No.E.(NG)I-86-BR-7 dated 18.10.1986, from the Railway Board to the General Manager, representations of Group 'D' staff were not to suffer from the deadline of 31.7.1973 in accordance with the Railway Board's letter of 25.10.1978 and that the representations of Group 'C' staff for alteration of the recorded date of birth "should be examined on merits in the light of the extant rule". Thus, both in accordance with the Railway Board's own orders as also the rulings of the courts, it was incumbent upon the General Manager to decide the case on merits and not to reject the representation as time-barred. It is admitted by the respondents that they called upon the

applicant as far back as 20.2.1985 to submit a school leaving certificate about his date of birth and admitted the receipt of the applicant's reply. Thus the respondents themselves had taken up the examination of applicant's representation on merits and, therefore, it is intriguing that the same should have been wrongly rejected as being time-barred when there was no time-limit for such representations.

7. The respondents have enclosed a copy of their letter dated 16.8.1986 at Annexure R-3 to the counter affidavit, addressed to the Headmaster of Nadia School with reference to Headmaster's letter No. MGHS/29/86, dated 15/17.7.1986 in which it was stated that the Headmaster in the letter under reference, did not give the date on which he left the school and a photostat copy of the school leaving certificate issued in his favour. A copy of the same letter of the Headmaster under reference has been enclosed at Annexure R-1 to the petition in which his date of birth has been clearly shown as 30.11.1934 and it has been certified that the school leaving certificate had been issued to him. In another certificate, dated 11.8.1980 issued by the Headmaster of the same school and enclosed as Annexure K-1, he also clearly states that "his date of birth is recorded as 30.11.1934".

8. In the face of the prima-facie evidence about the genuineness of the claimed date of birth as 30.11.1934, we feel that the summary rejection of the petitioner's claimed date of birth as being time-barred, is illegal and void.

9. In effect, we set aside the impugned order of the General Manager, dated 28.1.1986 as also the non-speaking

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communication dated 5/6.2.1986 and direct that the representation of the applicant at Annexure 'D' to the petition read with the grounds indicated in the petition before us, should be thoroughly enquired into by the respondents after giving an opportunity to the applicant for a personal hearing by the General Manager and a final decision on the correction of his date of birth taken within three months of the communication of this judgement. It will be necessary to get the original record of the Nadia School examined and photostat copies taken through a responsible officer. The applicant will be retained in service till a final decision on his representation is taken or till the date of his superannuation, in accordance with the date of birth finally accepted by the respondents, whichever is later. The applicant will be at liberty to approach the Tribunal in accordance with law, if he feels aggrieved by the final decision taken by the respondents. There will be no order as to costs. As the applicant is retiring tomorrow, a copy begins to him or his counsel today.

Enthambed

(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
Administrative Member

29.6.87