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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~O.A. No.~~

~~198~~

T.A. No. 614 OF 1986

(R.C.S.No. 1334 OF 1985)

WITH

O.A.No. 172 OF 1986.

DATE OF DECISION 29.4.1988

SHRI TALAKSHI MADHAVJI PUJARA Petitioner

MR. B.B. COGIA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

MR. B.R. KYADA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

(14)

Shri Talakshi Madhavji Pujara,
Adult, Aged Running 56 years,
Occupation : Retired,
Address : 'Pujara Nivas',
1, Junction Plot,
Rajkot.

..... Petitioner.

(Advocate : B.B. Gogia)

Versus.

1. The Union of India,
Owing & representing
Western Railway,
through: General Manager,
Western Railway,
Churchgate,
Bombay.

2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

..... Respondents.

(Advocate : B.R. Kyada)

J U D G M E N T

T.A.No. 614 OF 1986

(R.C.S.No. 1334/85)

WITH

O.A. NO. 172 OF 1986.

Date: 29.4.1988

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri Talakshi Madhavji Pujara of Rajkot, originally moved the Court of Civil Judge (S.D.) Rajkot by filing Regular Civil Suit No. 1334/85 on 25.10.1985 for the redressal of his grievance against the action of the Respondents-Railway Administration; whereby he was ordered to be retired from Railway service with effect from 30.11.85. According to the plaintiff-petitioner, his correct date of birth is 12.12.1929 and not 26.11.1927 as recorded in the service sheet prepared by the Respondents Railway Administration. It is alleged that even though he made several representations to the

competent authority since the year 1973 to rectify his correct date of birth and produced reliable evidence in support of his claim, the Respondents Railway Administration has rejected the same on mis-conceived grounds. He has challenged the validity of the last order No. E(HQ)283/17 dated 26.8.85 passed by the General Manager which reads as under :

DRM(E) RJT.

Sub : Alteration in date of birth - Case of Shri T.M.Pujara, CC, Estt. Branch RJT Divn.

Ref : Your letter No. ED/T/7(T) dt.21.8.85.

.....

CPO had interviewed Shri T.M. Pujara, CC, Estt. Branch of your division at 14.30 hrs. on 22.8.1985. The plea of Shri Pujara for changing his date of birth in the office record on the basis of the Birth Certificate produced by him is not acceptable to the Administration. As per rule, the date of birth acceptable to the Administration is the one which has been recorded in the Matriculation Certificate. Since in the S/Sheet of Shri Pujara his date of birth has been correctly recorded on the basis of the Matriculation Certificate produced by him, there is no reason to alter the same. If Shri Pujara has any case for alteration of date of birth, he should get the date of birth corrected in the Matriculation Certificate by the Bombay University before representing the case again to the Railway.

2. His S/Sheet and P/File received along with your letter quoted above are already sent with Shri T.M.Pujara.

2. The petitioner therefore prayed for declaration to the effect that his correct date of birth is 12.12.1929 and the same be recorded instead of 26.11.27 and the respondents be directed to continue the plaintiff in service with all consequential benefits of pay, salary, allowances, seniority etc. He also prayed that the action of the respondents in retiring him with effect from 30.11.1985, be quashed and set aside.

3. The respondents-railway administration resisted the plaintiff's suit vide their written statement Exh.10

They also denied the plaintiffs' assertions and the allegations made against them. According to them the date of birth viz; 26.11.1927 has been recorded in the service sheet in accordance with the provisions contained in para 145 of the Indian Railway Establishment Code and the same is binding to him. It was further submitted that the plaintiffs' representation dated 26.7.73 was correctly rejected by the competent authority and thereafter the railway administration was not bound to entertain any representation of the plaintiff. However in order to give more opportunity to the plaintiff for alteration of his date of birth, his representations were entertained from time to time and he has been given suitable replies. The stand of the respondents is that the plaintiff has filed this suit to gain unintended benefit of service and hence not entitled to the relief as prayed for.

4. The petitioner-plaintiff alongwith institution of the suit had filed application Exh.5 seeking temporary injunction 'pendente lite' which was opposed by the respondents. The said application was heard on 30th October, 1985. However, before the said application could be decided, the Administrative Tribunals Act, 1985 came into force and consequently, the said suit has been received by the Tribunal, on transfer, under section 29 of the Administrative Tribunals Act, 1985 for decision. But in the meantime, the petitioner moved the Tribunal seeking similar reliefs including interim relief by filing an application on 6.1.1986 which was numbered as Application No. 2/86 and the same was renumbered as O.A.No. 172/86. After the receipt of the R & P of RGS, No. 1334/85, it is conceded that no orders are required to be passed in O.A.No. 172/86.

5. Mr. B.B.Gogia, the learned counsel for the petitioner contended inter-alia that the competent

authority has manifestly erred in not considering documentary evidence including the entry made by the petitioner's father in the Book of Account in his own handwriting at the relevant time and the extract from the birth register of Ex-Dhangadhra State adduced by the petitioner in support of his claim. According to him, the petitioner has been discriminated as the authority has rectified the date of birth in the case of other members of the staff similarly situated. In his submission the action of the respondents-railway administration deserves to be quashed and set aside. Mr. B.R. Kyada, the learned counsel for the respondents however supports the respondents' action on the basis of the stand taken by them in the written statement.

6. Before examining the ~~the~~ contentions canvassed by the learned counsel for the petitioner, it may be stated that in the matter of date of birth, in case of Government Servant, the one which is originally recorded in the service record is very material. Moreover two important position emerge in such matters viz; one is that there must be finality with regard to the date of birth given by the employee concerned and second assumption is that a reasonable opportunity must be given to the employee to have his date of birth corrected under the relevant rules. The rules regulating the requirement of recording the date of birth and the question of its alteration are governed by the Rule 145 of the Railway Establishment Code. The object of the said rules is aimed to see that there must be finality with regard to the date of birth and at the same time a reasonable opportunity is available to the employee concerned to rectify the error committed in recording the date of birth. The date of birth as recorded in accordance with the said rule is held to be binding. However the said rule prescribes that it

will be open to the President in the case of gazetted railway servants and the General Manager in the case of non-gazetted railway servants to cause the date of birth to be altered under the following circumstances :

- (i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or
 - (ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or
 - (iii) where a satisfactory explanation * which should ordinarily be submitted within a reasonable time after joining service 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 attempts made to have the records amended. **
- * which should not be entertained after completion of the probation period or three years' service whichever is earlier
- ** Under correction slip 303 RI after 1973.

7. The fact that the date of birth of the petitioner was recorded as 26.11.1927 in the service sheet maintained by the respondents-railway administration is not in dispute. Moreover the fact that the said date of birth was declared on the basis of confirmatory document like school certificate is not controverted. The petitioner being a matriculate, he was appointed on 11.6.1952 as a Clerk and he himself had furnished the particulars including the date of birth and in token thereof he had signed the service sheet (paper book page 127). It transpires that even before he was inducted as a clerk in the services of the Western Railway, the petitioner had made an attempt to correct his date of birth stated in the matriculation certificate by approaching the authorities of the University of Bombay. The registrar of the University under its letter dated 2.11.1951 informed the petitioner that his request can be granted only if his case comes within the purview of para-3 of

the University Circular No. L33/1944 (Annexure F-2, P.B. p.34). The said circular prescribed that the application for correction of birth date recorded in the University can be granted on submission of a declaration in the following form by the Head of the School for which the candidates passed.

FORM OF DECLARATION TO BE MADE BY THE HEAD
OF THE SCHOOL

I, _____ Head Master of the _____
_____ do hereby declare and say
as follows :-

1. That I have been Head Master of the _____
School since 19 _____
2. That I have examined the School Register
and have found that the original entry
of the date of birth of _____
as recorded therein is the _____
day of _____ of the year _____
3. That the said entry has not to the best of
my knowledge and belief, been erased,
altered or corrected, since it was
originally made.
4. That the date of birth recorded in the
application of the said candidate for
admission to the Matriculation Examination
of the University of Bombay is not correct.

Place _____
Date _____

Signature _____
Head Master
School, _____

8. The petitioner does not seem to have taken any action whatsoever as advised by the Registrar under its letter dated 2.11.1951. Perhaps, he rest contented with the date of birth shown in his Matriculation Certificate. It is significant to note that nearly 20 years after he joined the service, for the first time, he made representation and requested the authorities to alter his date of birth from 26.11.1927 to 11.12.1929. In support of his request he made sole reliance on the copy of the extract (P.B. p.37) of the ledger maintained in the Vikram Samvat year 1986 at page 108 by his father who was a merchant in the village showing that he was born on the 10th day of the month of Magsar (Sudi) of the Vikram Samvant 1986 i.e. 11.12.1929. The General Manager considered the

petitioners' representation and rejected the same vide its order contained in letter dated 22.10.1973 (Annexure F-5, P.B. p.38) which reads as under :-

Subject : Alteration in date of birth of Shri Talakshi M. Pujara, Sr.Clerk Personnel Branch DS office RJT.

Reference: Your letter No.ED/T/7 dt. 11-10-73.

With reference to your letter quoted above it is stated that in terms of Rule 145 RI, the date of birth recorded in accordance with this rule shall be held to be binding and no alteration of such date shall accordingly be permitted subsequently. Every person on entering Railway service shall have to declare his date of birth which shall not differ from any previous declaration expressed or implied for any public service before entering Railway Service. In the case of literate staff, date of birth should be entered in the service records on the basis of school certificate and it cannot be changed subsequently.

Extract of page 108 of the Gujarathi ledger for year 1985 Vikram Samvat in support of Shri Pujara's date of birth as 11-12-1929 cannot be accepted and his date of birth cannot be changed from 26-11-27 to 11-12-29 as requested by him.

He may be advised accordingly.

9. The petitioner instead of challenging the aforesaid order seems to have continued his efforts to seek alteration in the date of his birth by making representation to the authorities. In the year 1977 the petitioner under his letter dated 21.2.1977 again made similar request relying on the certified true copy of the extract of the register maintained by the former princely State. The said entry shows that one male child was born on 12.12.29 in the family of one Madhavji Bhagwanji at village Charadwa. Obviously, the name of the petitioner was not appearing in the said extract relied upon by him. The petitioner was asked to produce a certificate of the Taluka Panchayat testifying that no male child was born on 26.11.1927 to Shri Madhavji Bhagwanji Pujara, the father of the petitioner. The petitioner, however, does not seem to have furnished the said certificate. But, instead of it, he submitted the birth date of his two younger brothers as recorded on Railway record. Thereafter the petitioner seems to have addressed letters to the

authorities to reconsider his request for rectification. The General Manager in its letter dated 16/17-1-85 addressed to D.R.M. had asked him that the petitioner be advised that his request for change in the date of birth has been examined and the same can not be accepted. Even thereafter, the petitioner seems to have made several representations and consequently the authorities has passed the final order dated 26.8.85 which is under challenge.

10. The main grievance of the petitioner is that he has been discriminated by the authorities as the rectification has been done in the case of the members of the staff similarly situated. In this regard a reference has been made to the list of instances of the cases wherein the alteration in date of birth is permitted (found at Annexure F-13, P.B.p.82). Now it is borne out from the impugned order that the petitioner was interviewed on 22.8.85 in respect of his representations and his plea seems to have been considered by the competent authority. Hence on the face of it, it can not be said that the impugned order suffers from any infirmity. The decision taken by the authority in respect of other members of the staff in respect of rectification of the date of birth, naturally vary from case to case and will depend upon special facts pertaining to each of them. The respondents in para 17 of their written statement have explained this position and more particularly, it has been stated that in the case of Miss. Tarapurwala she had submitted Municipal birth certificate showing her date of birth which she wanted to alter, while in the case of the plaintiff he was asked to get the date of birth from Bombay University which he had failed to do so. The entry from the ledger relied upon is a record of standing account and does not seem to have been maintained in ordinary course of business.

Admittedly, the entry purported to have been made by the father of the petitioner does not pertain to his dealings in the business and therefore no evidentiary value can be attached to it under the law. It is now well settled that the horoscope has a very little significance. The decision therefore taken by the competent authority and conveyed under the impugned order does not suffer any infirmity or illegality. The materials relied upon by the petitioner have been carefully considered by the authorities and even on reappraisal thereof it is not possible for me to interfere in conclusions reached by them. Bearing in mind all the circumstances of this case, it can not be said that the competent authority has committed an error in refusing the petitioners' request to alter the date of birth as contended.

11. In this view of the matter, the impugned action i.e., decision rejecting the petitioners' request to alter the date of birth is held quite valid. The application merits no consideration and the same is accordingly dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER.

ttc.