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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 185 of 1986
~~P.A. No.~~

DATE OF DECISION 20/11/1987

Shri Narendra Chimanlal Vora Petitioner

Shri B. B. Gogia Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri 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*

Shri Narendrarai Chimanlal Vora,
'Asthosh',
10, Junction Plot,
R A J K O T.

(Adv. : Shri B. B. Gogia)

.....

..... Applicant

Versus

The Union of India,
Owing & Representing,
Western Railway,
Through : General Manager,
Western Railway,
Church Gate,
B O M B A Y : 400 020.

(Adv. : Shri B. R. Kyada)

.....

..... Respondents

J U D G M E N T

OA/185/86

20th November, 1987

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

In this application under Section 19 of the Administrative Tribunals Act, 1985 filed by the petitioner Shri Narendrarai

Chimanlal Vora, on 21-1-1986, he claims that his correct date but through mistake or otherwise it has been recorded as 2-6-1927 of birth is 2-6-1928 in the service record. According to him, having come to know about this error he made representations to the

Divisional Accounts Officer, Western Railway, Rajkot on 9-6-1968 stating the circumstances under which the same was brought to light and requested the authorities to make rectification on the basis of the original School Leaving Certificate produced by him.

It is further submitted that even thereafter he made several representations but the competent authority has failed to consider the same. He has challenged the orders dated 17/18-8-1984 and 28/29-3-1985 passed by the Financial Advisor and Chief Accounts Officer, Western Railway, Churchgate, Bombay. The order Annexure

'G' dated 17-8-1984 reads as under :-

Shri Vora had made the application in 1968 for change in his recorded date of birth. Thereafter there has been no communication whatsoever from him till now. It has not been explained suitably why he waited for 15 years to pursue his representation. Now at this distant dt. it will not be possible to consider his request in view of clear instructions contained in Bd's letter no.E(NG)II-70/BR/1 dated 4-8-1972 not to

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consider the request of employees for change in the recorded date of birth after 31-7-1973. Shri Vora had sufficient time to represent his case then.

It is also seen from the service record that Shri Vora has attested the entries made in his service sheet and the dt. of birth is the basic entry recorded in the service sheet at the time of appointment and the same could not have been made after 16-11-1951 i.e. the dt. on which Shri Vora had attested service record as claimed by Shri Vora.

In view of the above, Shri Vora has no case for alteration in his recorded date of birth."

2. It is alleged inter-alia by the petitioner that the General Manager is the competent authority to take such decision in the matter but his representations are rejected by incompetent authority. He has therefore prayed that the aforesaid orders be quashed and set aside and the action of the respondents to retire the petitioner from service with effect from 30-6-1985 on the basis of the recorded birth date as 2-6-1927, be declared illegal and inoperative and he should be continued in service with all the benefits of pay, salary allowances and retirement benefits on the basis of his birth date as 2-6-1928, a necessary direction to alter the service sheet be issued to the respondents.

3. The Respondents-Railway Administration have contested the application vide their counter dated 5-3-1986; wherein they have denied the averments and the allegations made by the petitioner. According to them, on the basis of the applicant's old service sheet of Ex-Jamnagar & Dwarka Railway (J&D Railway), his date of birth viz; 2-6-1927 was recorded in the service sheet prepared by the Respondents Railway in the year 1951 and in token of his acceptance, the applicant has signed the same at the relevant time. It is further submitted that F.A. & C.A.O. under his letter dated 25-1-1969, rejected the applicant's representation dated 9-8-1968 and after a lapse of nearly 14 years, he re-agitated the same question under his application dated 22-4-1983 in order to gain undue benefit of retaining in service. It was contended that the Railway Employees including the applicant were informed under the Railway Board letter dated 4-8-1972 that their representation for alteration of

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the recorded date of birth in the service will be considered till 31-9-1973 and the said target date will not be extended. Accordingly, the representations of the applicant being be-lated were rejected.

4. When the matter came up for hearing Mr.B.B.Gogia and Mr.B.R.Kyada, the learned counsel for the petitioner and the respondents respectively, were heard. The documents and the materials brought on record are closely examined and considered. The short question for our consideration is whether the representations made by the petitioner regarding alteration in the date of birth are considered by the competent authority as contended. The answer in this regard is in the negative.

5. The fact that the petitioner was inducted and appointed as a clerk by the J & D Railway on 5-2-1946 is not in dispute. Thereafter the petitioner has been absorbed in the services of the Western Railway. The procedure for entering the date of birth was provided in Rule 145 of the Indian Railway Establishment Code. The date of birth, as recorded in accordance with the said rule is held to be binding. However, it was competent for the President in the case of gazetted Railway servant, and a General Manager in the case of non-gazetted Railway servant to cause the date of birth to be altered within a reasonable time after joining the service. Now as per the provisions contained under para 145 as it stood before 1971 it is clear that when the petitioner joined service in the year 1946 and absorbed thereafter by the Western Railway, alteration in the recorded date of birth even near the date of retirement was permissible. After 1971, para 145 was amended so that Clause (IV) of sub-para 3 was deleted and Clause III was changed to indicate that alteration of date of birth should not be allowed later than completion of the probation period of three years service. As held in Shri Sikenderbeg S.Mirza V/s. Union of India & Ors.(A.T.R. 1987 (2) C.A.T.(Short Note) page 212), this Bench has taken the view that this amendment should apply only to those whose date

of birth was recorded on or after the amendment came into force and not to those like the petitioner, whose date of birth is alleged to have been recorded in the year 1950.

6. The fact of the matter in the instant case is that the petitioner did make representations much prior to 1972 and even thereafter in the year 1983 before he was made to retire.

7. Mr.Gogia, the learned counsel for the petitioner, in the course of his arguments submitted that there was no requirement to produce School Leaving Certificate or other testimonials before the authority when the petitioner was inducted by J & D Railway where he had indicated his date of birth 2-6-1928, but through some error it has been recorded as 2-6-1927 in the record of J & D Railway, which admittedly does not bear the signature of the petitioner. It is stated by the respondents that the service sheet in respect of the petitioner was prepared by the authorities of the Western Railway in the year 1950. The Xerox copy of the service sheet produced by the respondents was challenged by the petitioner on the ground that it bears no date and some of the contents are written in different ink and therefore no sanctity should be attached to the same. Mr.B.R.Kyada had produced the original service sheet and on perusal thereof the position noticed therein has been recorded in the proceeding of 13-11-1987. Admittedly, the column indicating the date of preparation of the service sheet is found blank and some of the entries of the column seems to have been written with different ink. Even otherwise the date of birth i.e. 2-6-1927 which is recorded in the service sheet has not been taken on the basis of the declaration made by the petitioner at the relevant time, but it has been done so on the basis of the old service sheet of Ex. J&D Railway. This is clearly stated in column No.9 of the service sheet.

8. Now, when the petitioner made representation in the year 1968 (Annexure 'B' dated 9th August,1968) the decision was not

taken by the General Manager, but the Financial Advisor and Chief Accounts Officer of the Western Railway under his letter dated 25-1-1969 raised certain questions and asked Divisional Accounts Officer to re-examine the request of Shri Vora who in turn apprised to Shri Vora under his letter dated 30-1-1969. According to the petitioner, he was ben-ridden and on long leave during the said period and later on, he was awaiting the decision by the competent authority when he had already made the representations regarding the alteration in the date of birth recorded in the service sheet. It is also borne out that the petitioner made a detailed representation to the General Manager under his letter dated 22-4-1983(Annexure'C'). It is undisputed that the decision has not been taken by the General Manager or his delegate C.P.O., who is the only competent authority to take decision in this regard. Admittedly, the decision taken in this regard vide impugned orders dated 17/18-8-1984 & 28/29-3-1985 are passed by the Financial Advisor and Chief Accounts Officer, Western Railway, who is not the competent authority to decide the matter. Accordingly, the said orders cannot be sustained and deserve to be quashed.

9. In this view of the matter, the petitioner's contention merits consideration. The application is, therefore, partly allowed. It is directed that either General Manager or the Chief Personnel Officer shall determine the petitioner's representation dated 22-4-1983 (Annexure 'C' addressed to General Manager) and decide the same within a period of six months from the date of this order after giving the petitioner a personal hearing, in the light of the observations made hereinabove and in accordance with law.


10. Application (O.A.No.185/86) stands disposed of with the

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aforesaid direction. Parties are therefore left to bear their own costs of this application.

Registry is directed to send a copy of this judgment to the General Manager, Western Railway, Bombay immediately and its acknowledgement should be retained on record.


(P M JOSHI)
JUDICIAL MEMBER

ghs/-