

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

~~O.A. No.~~ ~~198x~~

T.A. No. 1390 OF 1986.

(R.C.S.No. 237 OF 1985)

&
O.A.No. 204 OF 1986.

DATE OF DECISION 9.10.1987.

SHRI JATASHANKER ANOPRAM BHATT Petitioner

B.B. GOGIA Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS (W.RLY) Respondent s.

D.K. VYAS 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. *Yes*

Shri Jatashanker Anopram Bhatt,
Adult, Occu: Service,
Address: Block No. 216,
Railway Quarter, Railway Colony,
JETALSAR JUNCTION.

..... 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,
Bhavnagar Para.

..... Respondents.

(Advocate : D.K. Vyas)

J U D G M E N T

T.A.No. 1390 OF 1986.
(R.C.S.No. 237 OF 1985)

&

O.A.No. 204 OF 1986.

Date : 9.10.1987.

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

Regular Civil Suit No. 237/85, filed by the plaintiff-petitioner Shri Jatashankar Anopram Bhatt of Jetalsar Junction, on 26.8.1985, in the Court of Civil Judge (S.D) Gondal, is received on transfer by virtue of the provisions contained under section 29 of the Administrative Tribunals Act, 1985 and the same is registered as T.A.No.1390/86. Before the aforesaid suit was transferred here the plaintiff had moved this Tribunal to call for R&P of R.C.S.No. 237/85 by filing Misc.Application No.30/86 which was subsequently re-numbered as O.A.No. 204/86. Now when the R&P of R.C.S.No. 237/85 has been received by the Tribunal it was conceded by the learned counsel for the parties that, no orders are now required to be passed therein and therefore it should be treated as disposed of. Accordingly vide order dated 25.9.87 O.A.No.204/86 stands disposed of.

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2. The petitioner-plaintiff claims that his date of birth (DOB) is 29.9.1933 but due to some clerical error it has been shown as 21.9.1928 in his service sheet. According to him, he was initially appointed as a Cleaner at Jamnagar and gradually he was promoted as Driver Grade 'A'. It is alleged that his date of birth in the service sheet is not recorded in accordance with the Rule 145 of the Indian Railway Establishment Code and even though he has been requesting alteration in his birth date vide his representation dated 12.8.1963, he has been neither heard nor any enquiry has been held in the matter. It is further stated that he had studied in Bhavsinhji High School, Porbandar upto 10th Standard and then in Sangramji High School, Gondal and in the school record his date of birth has been recorded as 29.9.1933 and consequently there are no reason for the Railway Administration to reject the School record. As the plaintiff was made to retire on 30th September, 1986, he prayed that 29th September, 1933 which is his actual date of birth should be declared as such and he should be continued in service on the basis of the said **date of birth** with all benefits and pay. He also prayed that the Defendants-Railway Administration should be directed to alter his date of birth in the service record and they may be restrained from retiring from service on the basis of birth date of 21.9.1928 as recorded in the service sheet.

3. The Defendants-Respondents Railway Administration have resisted the plaintiff's suit vide written statement Exh.12 wherein they have denied the averments and the allegations made against them. It was contended inter-alia that the plaintiff's suit was barred by limitation. According to them, the plaintiff himself had declared his date of birth of 21.9.1929 which was entered in the service sheet under his own signature. It was further submitted that the date of birth recorded in accordance with Rule 145 of the Indian Railway Establishment Code, Vol.I is binding and no alteration can be permitted subsequently and when the plaintiff had made representation dated 12.8.1963 to alter the date of birth to 23.9.1933 it was replied vide letter No. E/L/1187 dated 14/16th August, 1963.

4. When the matter came up for regular hearing Mr. B.B. Gogia and Mr. D.K. Vyas, the learned counsel for the petitioner and the Respondents

respectively are heard at a considerable length. Mr. Gogia, contended inter-alia that no binding effect can be given to the date of birth recorded in the service sheet as he had not done so in his own handwriting as required under Rule 145 and when his representation dated 12.8.63 was not decided by the General Manager, the decision taken by the Railway Officer in their letter dated 16.8.1963 can have no legal efficacy. In his submission the Railway Authorities are required to correct the date of birth on the basis of the school testimonials and grant further service benefits including salary and pension benefits. Mr. Vyas, the learned counsel for the Respondents, however strenuously urged that the plaintiff had not made another representation after the decision rejecting his claim was conveyed to him vide letter dated 16.8.1963 and therefore he had acquiesced in the same. According to him, Railway servant who were in the employment on 3.12.71 were given an opportunity to ask for rectification of any mistake in their recorded date of birth upto 31.7.1973 after which date, request for alteration of date of birth were to be disposed of as per rules vide Railway Board's letter No. E(NG)II 70 DR/1 dated 4.8.1972, but the plaintiff did not make any request in response to the same or thereafter till he retired and hence his claim was not tenable at law and the suit is also barred by limitation.

5. Before advertng to the rival contentions raised by the learned counsel for the parties it may be stated that ordinarily, in the matter of date of birth in the case of Government servant, one which is originally entered in the service record is very material. On reading the provisions contained under Rule 145 of I.R.E.Code, it may be taken that once the date of birth is recorded in the service record it becomes final for all official purposes. No alteration may be permitted in the date of birth except :

- (i) Where it is proved that a genuine clerical error has been made in recording it (in case of illiterate staff only), or
- (ii) When a satisfactory explanation of circumstances in which the wrong date came to be entered is furnished by the employee within the probation period or three years service whichever is earlier.
- (iii) Where it is ascertained that 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.

6. The fact that the Railway Administration had issued Notification pointing out the Railway servant who were in employment on 3.12.1971, to ask for rectification of any mistake in their recorded date of birth before 31.7.1973 is not in dispute. They were also informed that all request for alteration of date of birth thereafter should be disposed of strictly in accordance with the amended rules. However it has been subsequently clarified that the last date fixed for making representation does not apply to the representation/illiterate staff and as such, the representations for alteration of date of birth from illiterate Class IV staff can be entertained without any time limit being stipulated for submitting such claims.

7. Admittedly, the present petitioner-plaintiff is a literate person. As per the service sheet dated 29.6.1956 brought on record, shows that he had studied upto English 6th Standard, his date of birth has been recorded as 21.9.1928. In order to seek alteration, it is alleged that the date of birth has not been entered in the record of service in the employees own handwriting. In Column 9 against the Item "authority" it has been stated "as per staff register P/48". It is pertinent to note that the plaintiff himself seems to have signed over the writing of the date of birth against Column No.9. The Respondents' stand, therefore, is that since the petitioner had placed his own signature, it was done so to express his declaration and in token of his admission. The stand taken by the Respondents in this regard seems to be quite sound. The plaintiff has also placed his signature in English against Column No.15 of the service sheet. There is, therefore substantial compliance of the relevant rule in recording the service sheet of the plaintiff.

8. It is borne out from the true copy of the application dated 12.8.63 addressed to BOS(E) DME(E) BVP by the plaintiff, he had registered his grievance against his date of birth recorded as 21.9.1928 in the service sheet. It is significant to note that in his said application he asserted that his actual date of birth is 23.7.1933 and for which he can produce school leaving certificate as a proof. However no School Leaving Certificate

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or any other testimonial was adduced in evidence in support of his request for a change in the birth date. Now when he filed the suit in the Court he has come out with a version that his date of birth is 29.9.1933.

9. The plaintiff filed his Affidavit dated 4.10.1986 on 25.9.1987 and alongwith it, tendered the documents including one birth certificate issued by the Headmaster, Sangramji High School, Gondal (Annexure 'F') dated 4.12.1984 and one copy of the School Leaving Certificate (Annexure 'G'); wherein his date of birth is shown as 29.9.1933. It is not borne out when the said certificate was issued. The name of one A.U. Sheikh appears over the printed designation of the Headmaster of the School. It does not bear the signature. But only letter "Sd/-" is written to its left side. Below the said printed portion there is one rubber stamp of the said designation over which signature of one H.C. Godecha appears, which is purported to have been executed on 25.7.1987. Original entry of the admission register indicating the date of birth of the student concerned has not been produced. Even otherwise such entries can not be regarded as a conclusive proof of the date of birth. I have carefully examined the averments and the contentions of both the side, as also the documentary evidence and other materials placed before me in this case. On the basis thereof it is not possible to hold that plaintiff's actual date of birth is 29.9.1933 and that his date of birth has been incorrectly recorded in the service sheet.

10. It was next contended by Mr. Vyas, the learned counsel for the Respondents that plaintiff's suit was barred by limitation as the plaintiff's request for change in the date of birth was rejected under DME's letter dated 14/16th August, 1963. In this regard, the reliance is sought on the said letter (Annexure 'H') which is reproduced in extenso as under:

From
DME(E) BVP.

To:
Shri Jatashanker A offg. Shunter 'B' JLR
in safety camp at RJT.

Sub: Request of change in date of birth.

Ref: Your representation dated 12.8.63.

Reference your request for changing your date of Birth from 21.9.1928

contd..... 7/-

to 23.7.1933. You are informed that you are appointed as cleaner from 10.7.51 and wherein transferred from EX Jam. Dist. to Ex BVP Dist. from 1.11.54. On your service sheet received from Ex.DME. JAM. Your date of Birth has been recorded as 21.9.1928 and the S/sheet is also signed by you.

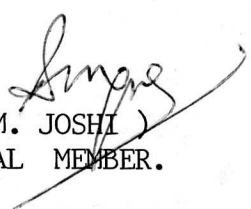
You are literate person and have accepted your date of Birth viz, 21.9.28 all along these year.

In view of the above your request of changing your date of Birth 23.7.33 is not tenable and can not be considered.

11. In this context, it was strenuously urged by Mr. Gogia that the competent authority to alter the date of birth is Railway Board in case of Gazetted Officers and General Manager in the case of non-gazetted staff and therefore the decision taken by the Divisional Mechanical Engineer (DME)(E) BVP has no legal efficacy.

12. The fact that the plaintiff accepted the decision contained in the aforesaid letter Annexure 'H' dated 16.8.63 without any demur, is not in dispute. He renewed his grievance to alter his date of birth only three months prior to the date of his retirement in the notice under section 80 of C.P.C. before filing the present suit. Since the decision rejecting his request conveyed in the aforesaid letter was not challenged by the plaintiff till the institution of the suit i.e., for a period of more than two decades, it is quite possible to presume that he had acquiesced in the said decision. "As observed by the Supreme Court in the case of Mohammed Maqbool Butt V/s. State of Jammu & Kashmir, that it is mockery of justice to seek a stay, a day before the execution. Those who are not vigilant about their rights for years and take them leisurely can not be allowed to abuse the process of Courts." When the plaintiff's claim to change the date of birth was rejected in the year 1963, his request or prayer made in the suit instituted by him in the year 1985 would be clearly barred by limitation in view of the provisions contained under Article 58 or 113 of the Limitation Act, 1963.

13. In this view of the matter, the plaintiff's suit, therefore fails on merits as well as on the ground of limitation. Application, therefore, stands dismissed with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER.