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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 210 OF 1986.
~~XXX No.~~

DATE OF DECISION 1-12-1986

BHIMJI CHAGAN VALA Petitioner

B.B. GOGIA & S.J. VYAS Advocates for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

M.N. UDANI. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

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

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 ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal. No.

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JUDGMENT

O.A.No. 210 OF 1986.

Date: 1-12-1986.

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

The petitioner, Shri Bhimji Chagan Vala, (retired since 30.6.1986) while he was in service as Electric Fitter, filed this application for declaration of his date of birth as 6.8.1930 instead of 3.6.1928 as recorded in his service record. He also sought the direction to restrain the respondents from retiring him from service on the basis of the birth date shown in the School Leaving Certificate by correcting the same in the service record. According to him, he had studied upto third standard in the School of Gondal State and later on, he was appointed as a helper in the electrical department on or about 1.9.1946 in Ex-Gondal State Railway, which had not prescribed any age limit for recruitment and no seriousness was attached to it. It is alleged that when he was received an intimation in July 1985 regarding his retirement, he submitted an application to the Railway Administration informing about his correct birth date, that is, 6.8.1930 alongwith the School Leaving Certificate and requested to correct the same accordingly, but as the authorities have not yet replied to his representation, he has been constrained to file the application.

2. During the pendency of the application after hearing the learned counsel for the parties, the Tribunal directed the respondent to make an inquiry about the exact birth date on the basis of the record that might be produced by the applicant and also on the basis of the independent inquiry as deemed fit. It was further directed that the result of such an inquiry should be intimated to the Tribunal on 12.6.1986. In terms of the

said directions, the Chief Personnel Officer, Western Railway, Churchgate, Bombay, after affording a personal hearing to the petitioner on 11.6.1986, passed an order on the same date, that is, on 11.6.1986 and held that there are no valid reasons to alter the date of birth. The respondents, while opposing the application have denied the averments and the allegations made by the petitioner, it is inter-alia contended that the petitioner was appointed as a Power House Cleaner on 1.9.1947 and as per the service sheet his educational qualification is Std. IV Vernacular. According to them, the service sheet of the petitioner prepared in the year 1956 wherein his birth date has been recorded as 3.6.1928 and he having accepted the details recorded therein, he has duly signed the same. It is further contended that all the literate staff including the petitioner were given options to make representation for alteration of date of birth and time limit for such representation was extended upto 31.7.1973, but no such representation was made by the petitioner within the prescribed time limit. However, the application dated 20.8.1985 has been considered by the Competent Authority in terms of the direction issued by the Tribunal.

3. Mr. M.N. Udani, the learned counsel for the respondents, while taking us through the original service sheet of the petitioner (produced alongwith his application dated 13.10.1986) has strenuously urged that the date of birth recorded in service sheet in terms of Rule 145(3) is binding on the employee. According to him, the Chief Personnel Officer, while taking into account the application, statements made by the petitioner during the hearing and the documents brought on record including the birth date certificate, has properly adverted to the circumstances required for consideration

and when a valid order has been passed by him the same can not be challenged. In support of his submission, he has relied on the case of State of Assam and Ors. Vs. Dakshaprasad Deka (A.I.R. 1971 S.C. 173), whereas Mr. B.B. Gogia, the learned counsel for the petitioner, has cited the case of Baba Vishram (1983 G.L.H. 60) and also relied on the decision dated 5.8.75 by the Gujarat High Court in Special Civil Application No. 961/74 (U.R.J.) filed by Chandrakant Maganlal Yagnik.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents and other record produced before us during the course of arguments. Now as per the requirement of the Rule, the date of birth recorded in service sheet can be altered by the Competent Authority only for the following circumstances :-

- i) where it is proved that a genuine clerical error has been made in recording it, or
- ii) where a satisfactory explanation of circumstances in which the wrong date came to be entered is furnished by the employee within the probationary period of 3 years of service whichever is earlier, or
- iii) where it is ascertained that it has 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 service longer than if the alteration had not been made.

5. The competent authority while advertizing to the aforesaid circumstances has assigned detailed reasons for rejecting the petitioners request for correcting his birth date. As observed by Mr. Justice D.A. Desai (as he then was) in the case of Chandrakant "where an employee approaches a competent authority for correction of birth date, the authority should first call upon the employee to furnish whatever evidence he relies upon.

It is not necessary to hear him personally but after giving him an opportunity to produce whatever evidence he wants to produce, it is for the authority, to come to its own conclusion by applying its mind. The value of the evidence furnished in the background of the value of the entry already made and which stayed for some years has to be weighted and then record a finding".

6. Admittedly this procedure has been followed in the present case. According to Mr. Gogia, the conclusion arrived at by the competent authority is done mechanically and without application of mind. We do not find any merits in the contention canvassed by Mr. Gogia in this regard. It is pertinent to note that the date of birth recorded by the Saurashtra Railway, since its inception on the basis of the petitioner's own declaration, is admittedly signed by him. In Column No.10 of the service sheet, it is recorded that he was 19 years old at the time of his appointment. The petitioner himself has affirmed during his personal hearing before the competent authority that he was 20 years old when he was joined the service. It is also undisputed that the petitioner has not challenged the date of birth recorded in the service sheet till he was intimated about his retirement. The averment of the petitioner that he came to know about the wrong date of birth only after he received the retirement order in July '85 is found patently untrue and after thought. The conduct of the petitioner right from 1.9.47 i.e., when he entered in the service and later on, signed the service sheet declaring 3.6.28 as the date of his birth, gives one an unrevertable impression that he fully knew

the date of birth entered in the service record. For the reasons best known to him, he has not made any representation during his service of more than 35 years to correct his date of birth. At the fag end of his career, he seems to have made an attempt to get it altered to get advantage of postponing his date of superannuation by two years more.

7. In the instant case the petitioner has failed to establish his case for altering the date of his birth as none of the conditions above referred are fulfilled in his case and there is a reasonable doubt about the conduct of the petitioner regarding his date of birth being above board.
8. In the facts and circumstances of the case we see no merit in the petition and dismiss the same with no order as to costs.

Patel
(P.H. TRIVEDI)
VICE CHAIRMAN

Joshi
(P.M. JOSHI)
JUDICIAL MEMBER.