

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 224 of 1986 ~~100~~
~~XXXXXX~~

DATE OF DECISION 16/04/1987.

Hiralal M. Shah Petitioner

B. I. Mehta Advocate for the Petitioner(s)

Versus

The General Manager Western Respondent
Railway & Others.

R. M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukherji : Administrative Member

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

22

J U D G M E N TOA/224/8616/04/1987

Per : Hon'ble Mr S P Mukherji : Administrative Member

1. The applicant Shri Hiralal M Shah a Senior Clerk in the Western Railway has moved this application dated 22/7/1986 under section 19 of the Administrative Tribunals Act praying that his ~~recorded~~^{recorded} date of birth as 10-7-1928 should be corrected as 17-9-1929 and the applicant allowed to continue in service till 30-9-1987 and that the action of the respondents to retire the applicant with effect from 31-7-1986 should be quashed. The brief facts of the case can be narrated as follows.

2. The applicant was appointed in the Class IV grade of Khalasi on 1-12-1949 in the Saurashtra Railways and later absorbed in the Western Railways. He was promoted through various grades and ultimately as Senior Clerk in 1981. According to him at the time of entry in service as Khalasi on 1-12-1949 his date of birth was wrongly recorded without any declaration on his part as 10-7-1928. On the basis of a School Leaving Certificate for the first time, he moved the authorities to correct the date of birth to 17-9-1929. According to the applicant he knew nothing about his recorded date of birth till 1985 when on the basis of the recorded date of birth as 10-7-1928 his impending retirement was notified on 12-12-1985 vide Annexure 'C' to the petition. According to the applicant in 1965 he was asked to sign the Service Sheet but even though he had no knowledge about his ^{correct} date of birth he gave his date of birth as 28-10-1928 from memory. On 21-4-1981 he procured a certificate of date of birth from Swami Vivekanand Vinay Mandir, Junagadh where he had studied upto fifth standard. In this certificate (Annexure-A) his date of birth was shown as 17-9-1929. According to him, he lost this certificate between 1981 ^{and} & 1985 and on being notified

.....2/-

about his impending retirement he got the transfer certificate from the aforesaid school (copy at Annexure-'B') where ^{also} his date of birth was shown as 19-7-1929. On 1-1-1986 he represented for correction of his date of birth enclosing copies of the certificate from the school. On 12-2-1986 the Divisional Railway Manager called upon him to explain how he had accepted the date of birth as 10-7-1928 on the front page of the Service Sheet, later indicated another date of birth as 28-10-1928 at the time of executing option for pension and now in 1986 claiming 17-9-1929 when he had got the certificate to this effect from the school five years ago on 5-7-1981. He was also asked to explain why he did not move before 31-7-1973 when a general opportunity was given for alteration of date of birth. The applicant replied to the communication explaining that he never gave ^{at the} date of birth as 10-7-1928 which was recorded on the Service Sheet, that he had given another date of birth as 28-10-1928 from his bonafide general impression and that he got the date of birth certificate from the school giving the correct date of birth as 17-9-1929 which was mislaid between 1981 ^{and} & 1985. The respondents did not ^{reply} ~~rely~~ to his representation and the applicant stood retired on the basis of his recorded date of birth. According to the respondents the applicant had signed the Service Sheet with full knowledge that his date of birth was recorded as 10-7-1928 and that if he had any doubt he should have represented against the recorded date of birth before 31-7-1973 in accordance with the general circular of 4-8-1972. The respondents have questioned the bonafides of the applicant on the score that whereas he got the certificate of date of birth in 1981 he represented for change of date of birth only in 1986.

.....3/-

3. We have heard the arguments of the learned counsel^s of both the parties and gone through the documents carefully. It is ^{an} established law that date of birth recorded in the service book has a special sanctity and cannot be changed unless there are exceptional circumstances. It is also an established law that a government servant has the statutory right to be in service till he attains the age of super^{annuation} on the basis of his date of birth and if there is strong evidence to show that the date of birth recorded in the service book is wrong and the government servants either had no hand in getting the wrong date recorded and had not derived ^{any} ~~in~~ ⁱⁿ personal benefit from the same, his representation for correcting the date of birth at any time of his career and even after retirement has to be considered on merits.

4. In all such cases the circumstances in which the date of birth was originally entered in the service record are very material. The courts have given a liberal treatment and if we may say so, benefit of doubt to those who are illiterate or were recruited in Class IV grade when the first entry of date of birth was made. In case of ~~the~~ ^{the} Railway Servants the procedure for entering the date of birth is given in rule 144 of the Establishment Code and rule 2602 of the Establishment Manual as quoted below:-

"Rule 144 - Date of birth

(1) Every person entering Rly. Service shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering Railway Service. In the case of literate staff, the date of birth shall be entered in the record of service in the employees' own hand writing. In the case of illiterate staff, the declared date of birth, shall be recorded by a Senior subordinate and witnesses by another railway servant."

"Rule 2602 (i) The date of birth should be verified from the original documents, i.e. Birth Certificate, Baptismal Certificate, School or University Certificate. The certified copy/copies of the document/documents should be placed on the personal of the employees."

Rule 2602(iv) - In the case of literate staff, the entry of date of birth against Item 9 in the Service Sheet should be made in the Employee's own handwriting (repeated in words under neath Item 9) and attested by him. The staff not knowing English may enter the date of birth in the script they know; in such case, however, the date of birth should be translated and rewritten in English by the Officer-in-charge, who should attest the entry." (emphasis supplied)

5. It will be clear from the above that in case of literate staff the date of birth has to be entered in the employees' own handwriting either in English or in the script they know while in case of illiterate staff ~~the declared~~ a date of birth could be recorded by a senior subordinate and witnessed by another railway servant. The respondents who have relied their entire case against the applicant on the front page of the Service Sheet has appended a photostat copy of the same as Annexure-1 to the counter-affidavit. Their entire case is that, since the Service Sheet had been signed in English by the applicant the applicant is estopped from challenging the impugned date of birth of 10-7-1928 recorded thereon.

6. We have closely examined the photostat copy of the Service Sheet. It is the king-pin of the whole case. We find that contrary to the prescribed procedure for literate staff, the date of birth has not been recorded on the service sheet by the petitioner in his own hand. On the other hand the date of birth ^{was} recorded by the clerical staff and attested by witnesses. Thus it is clear that

that the respondents did not consider the applicant as literate and entered the date of birth by following the procedure which is valid for illiterate staff. Further, against column 9 while indicating the 'authority' for recording the impugned date of birth the respondents have not indicated any declaration given by the petitioner but merely stated that the date of birth is "as per staff register". The respondents have not produced any evidence of the staff register to support their averment that the impugned date of birth was based on applicant's own declaration.

7. From the above it is clear to us that the applicant had no hand in getting the impugned date of birth recorded on the Service Sheet and that he was treated by the respondents as illiterate grade IV recruit for filling-up the Service Sheet at the time of his recruitment on 1-12-1949.

8. We are rather intrigued by the fact that whereas the Service Sheet was filled-up and dated on 1-9-1952 it was vetted by the officer-in-charge more than a year later only on 19-11-1953. This also casts doubt on the weightiness of the service sheet in defence of the impugned date of birth.

9. The applicant not being a party to the recording of the impugned date of birth and having been ^{treated} by the respondents themselves as an illiterate Class IV staff, he cannot be pinned down to the deadline of 31-7-1973 for making a representation to get the date of birth altered. It is an admitted fact that illiterate Class IV staff had been exempted from the deadline of 31-7-1973 by the Railway Ministry's letter No. E(NG)II/78/BR/12 of 25-10-1978.

10. It is also evident from the facts of the case that the applicant did not have any personal gain at the time of recruitment by the impugned date of birth. He would have been eligible for being recruited as Khalasi even by the date of birth now claimed by him.

11. The respondents have not given any evidence to prove that the applicant was cognisant of the recorded date of birth before 1986. On the other hand, the applicant has clearly shown that he had been giving at the time of exercising option for pension etc. his date of birth as 28-10-1928 and the respondents did not ever bring the discrepancy between this date and the recorded date of birth to his notice. We are convinced about the bonafides of the petitioner that he was giving 28-10-1928 as his date of birth from memory without any ulterior motive. If he had any ulterior motive he could as well have given the date of birth as 17-9-1929 now being claimed by him, earlier also. It is thus clear that he did not really know his claimed date of birth ^{or that} as recorded in the School register till 1981. Neither did he have any indication of the recorded date of birth till 1986.

12. The applicant has categorically stated that the respondents ^{after his representation} had made an inquiry about his date of birth from the Vivekanand Vinay Mandir, Junagadh from where he had got the certificates, and that the school authorities had supported the date of birth as 17-9-1929 as claimed by him. The respondents in their counter affidavit have not specifically ^{rebutted} this. It is thus clear that the respondents had made some inquiries behind the back of the applicant and in spite of the supporting evidence from the school authorities did not consider his representation judiciously for correction of the date of birth. It had been held by the Allahabad High Court in Surendersingh V/s.Divisional Engineer, Telegraphs, 1979 SLJ 660 that where a government servant makes a request for a change in his date of birth and adduces evidence for the purpose, the Government are bound to consider the request objectively and on ^{its} merits. The Supreme Court also in State of Orissa V/s.Dr.(Miss) Binapani Dei,AIR 1967 SC 1269 and Sarjoo Prasad V/s.General Manager,AIR 1981 SC 1481, has observed that

in an inquiry concerning date of birth the employee should be given adequate opportunity to set up his defence and to correct or controvert the evidence which is being relied upon against him. and that if a unilateral determination of date of birth of the employees is made to the prejudice of the employees such an order is not tenable.

13. In the conspectus of the facts and circumstances of the case we feel that in the interest of justice a full blooded inquiry with opportunity given to the applicant should have been held on the question of the correction of the applicant's date of birth. Accordingly we allow the petition to the extent of (a) directing the applicant to submit a detailed representation to the respondents for the correction of his date of birth within a month of the receipt of this order and (b) directing the respondents to consider the representation on merits after giving full opportunity to the applicant and dispose of the representation within two months of its receipt. The applicant's continuance or otherwise in service beyond 31/7/1986 with consequential benefits will depend upon the decision taken by the respondents on his representation. The applicant will be at liberty to move the appropriate legal forum if he feels aggrieved by the decision taken on his representation. The application is disposed of on these lines.

In the circumstances there will be no order as to costs.



(P M JOSH)
JUDICIAL MEMBER



(S P MUKHERJI)
ADMINISTRATIVE MEMBER