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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 150 OF 1987

DATE OF DECISION 11.3.1988

SHRI ANANTRAI PRANSHANKER PUNJANI Petitioner

V.H. DIXIT

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent s

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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal. N

Shri Anantrai Pranshanker Punjani
Adult, Hindu, Govt. Service
residing at Khetadi Fali,
Kadia Wad, Jamnagar.

... Applicant

Versus

(1) Union of India
Notice to be served through
General Manager, Churchgate
Bombay.

(2) Divisional Railway Manager (E)
Divisional Office,
Western Railway,
Rajkot.

... Respondents.

J U D G M E N T

O.A. NO. 150/87

Date: 11.3.1988

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

In this application filed under Section 19 of the Administrative Tribunals Act 1985, on March 30, 1986 the petitioner Shri Anantrai Pranshankar Punjani of Jmanagar has challenged the validity of the order dated 28.11.1986 passed by the respondent No.2, Divisional Railway Manager, whereby he refused the petitioner's representation. According to the petitioner, his correct date of birth dated 31.7.1986 for alteration in the date of birth, on the basis of the school leaving certificate, is 23.11.1931 and not 4.4.1929 recorded in the service sheet. It is alleged that the authorities have rejected his request only on the ground of so called delay and without applying its mind and hence the same is illegal and bad in law. He therefore, prayed that the decision dated 28.11.1986, refusing the request of the petitioner dated 31.7.1986 for the correction of birth date be declared illegal and inoperative and the respondents - railway administration be directed to correct the birth date of the applicant as 23.11.1931 instead of 4.4.1929 and he should be allowed to continue in the service upto the date of superannuation on the basis of his correct date of birth.

2. The respondents-railway administration in their counter contended inter alia that the petitioner had not availed of the opportunity of exercising the option for

change of date of birth in terms of the Railway Board's letter dated 4.8.1972, which was kept open upto 31.7.1973. According to them the representation, made by the petitioner was rightly not entertained by the authority as it was made at the fag end of his retirement whereby he wanted to continue in the service even after the age of superannuation.

3. When the matter came up for hearing, Mr.V.H.Dixit and Mr.B.R.Kyada the learned counsel for the petitioner and the respondents respectively, were heard, and the materials placed on record are considered. The short point for consideration is whether the impugned order dated 28th November, 1986 is illegal and bad in law, as contended. My answer is in the affirmative.

4. The impugned order as contained in the letter dated 28.11.1986 addressed to the petitioner by the Divisional Railway Manager reads as under:

Western Railway
" No.EH.949/5/1/Vol.II (Temp)

Divisional Office,
Rajkot
Date: 28.11.1986.

To:
Shri Anantrai P.Punjani,
Welder HSK Gr.I under
WFO-NPOH-Hapa.

Sub: Alteration in date of birth - case of
Shri Anantrai P Punjani Welder-I T No.37.
Ref: Your representation dt. 31.7.1986.

Your above representation has been examined. It is found, that the date of birth recorded in your service sheet has been entered in your own hand-writing, signed by you accepting the same as correct.

As per Railway Board's letter No.E(NG)II-70/BR/1 dt. 4.8.72 in the case of literate staff the time limit for representations or alteration in date of birth was upto 31.7.73, after which the representation cannot be entertained.

Hence your request for alteration in date of birth cannot be considered at this stage.

FOR DRM (E) RJT."

5. The fact that the date of birth of the petitioner is recorded as 4.4.1929 in the Service Book, is not in dispute. It is the case of the petitioner that he came to know about the wrong birth date recorded in the service

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sheet for the first time, in the month of April, 1986 when the list of persons who were to retire was published. It is his say that he made his request for rectification in respect of his correct date of birth by addressing the letter to the General Manager on 31.7.1986 and in testimony whereof he enclosed the school certificate obtained by him. He also cited the example of his elder brother, whose birth date is 31.5.30. It is pertinent to note that the respondents however has not produced the original or the certified true copy of the service record. However, according to them, the petitioner was working as Welder HS Gr.I under NPOH at Hapa and he had studied upto standard 4th English and 7th Gujarati as per his service sheet which has been duly signed by him.

6. In the matter of date of birth, in the case of a Government servant, the one which is originally recorded in the service record is very material. Moreover, two important position emerge in such matters namely, 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 the 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 covered under rule 145 of the Railway Establishment Code, which is reproduced as under:-

✓ " 145. Date of birth- (1) Every person, on entering railway 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 railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior Class III railway servant and witnessed by another railway servant.

(2) (a) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 1st January, 1938, and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1920.

(c) Where the person concerned is unable to state his age, it should be assessed by a Railway Medical Officer and the age so assessed entered in his record of service in the manner prescribed above, the railway servant being informed of the age so recorded and his confirmation obtained thereto.

(3) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case a gazetted railway servant, and a General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered-

(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 object of the aforesaid rule 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 have the date of birth corrected. The date of birth as recorded in accordance with the aforesaid rule is held to be binding. However, the competent authority to alter the date of birth to the Railway Board in the case of Gazetted officers and the General Manager in the case of non-gazetted railway servant. In Magan Lagra Arjan v/s. Union of India & Ors. (T.A.No. 41 of 86) (S.C.A.No.504 of 80) while interpreting the aforesaid provisions (Rule 145), it

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has been held that the amendment namely "which should not be entertained after completion of the probation period or three years service whichever is earlier" made in clause III of the said rule under correction slip 303 R.I. after 1973 will not be applicable to the staff who was inducted prior to the said date. It was therefore submitted that delay, if any, should not be construed as a bar in consideration of the petitioner's request for alteration in the date of birth, which was made by him under his letter dated 31.7.1986.

8. In absence of the service record, it is not possible to express any opinion as to whether the birth date and other particulars were properly recorded therein. Even apart from it, it is significant to note that the representation which the petitioner made to the General Manager vide letter dated 31.7.1986 has not been decided by the competent authority. The decision, however, as contained in letter dated 28.11.86 seems to have been taken by the Divisional Railway Manager. Admittedly, the representation has been addressed to the General Manager. But it is not explained by the respondent - railway administration as to why the General Manager has not ^{decided} ~~the~~ the said representation. It is thus obvious that the General Manager so far has not taken any decision in the matter. The Divisional Railway Manager has not entertained the representation, on the sole ground that the time limit for representation for alteration in the date of birth was upto 31.7.1973. The respondents have not produced any documents showing that the petitioner's representation dated 31.7.86 was examined and decided by the General Manager or his delegate C.P.O., who is the competent authority in this matter. Obviously, the Divisional Railway Manager is not empowered to take a decision in the matter and therefore, the decision contained in his letter dated 28.11.1986 is without jurisdiction and cannot be sustained and the same therefore, deserves to be quashed. It is therefore found expedient in the

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ends of justice that the petitioner's representations are decided by the competent authority. It is expected of such authority, to consider the request objectively and on merits.

9. In light of the aforesaid discussions, it is held that the decision taken by the Divisional Railway Manager as contained in the letter dated 28.11.86 addressed to the petitioner is bad in law and the same is accordingly quashed and set aside. It is further directed that either General Manager or C.P.O. of the Respondents- Railway Administration shall consider the petitioner's representation dated 31.7.86 (Annexure A addressed to the General Manager) alongwith the school leaving certificate pertaining to his elder brother namely Punjan Krishnalal Pran Shankar and other the relevant service record which may be adduced by the petitioner in support of his claim and decide the same afresh within 6 months from the date of this order by a speaking order after giving the petitioner a personal hearing in light of the observations made hereinabove and in accordance with law. It is further ordered that in case, the petitioner's plea for correction of birth date is established, the competent authority will give effect to such corrected birth date of the petitioner by giving all consequential benefits on the basis thereof.

With these directions and observations, the application is disposed of. There will be however, no order as to costs. Registry to send a copy of this judgment to the General Manager, Western Railway, Bombay and retain the acknowledgment on the file.


(P.M.JOSHI)
JUDICIAL MEMBER