

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 176 OF 1987.
~~XXXXXX~~

DATE OF DECISION 29.7.1988.

SHRI PITAMBER MEPABHAI PITRODA Petitioner

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

Versus

THE UNION OF INDIA & ORS. Respondents.

MR. R.M. VIN 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 Pitamber Mepabhai Pitroda,
Adult, Aged about: 53 years,
Occupation: Service (Railway)
Address: C/o. Shop Supdt.(W),
Western Railway,
Morbi.

(12)

..... Petitioner.

(Advocate: Mr.B.B.Gogia)

Versus.

1. Union of India,
Owning & Representing
Western Railway,
Through: General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Works Manager,
Western Railway,
Churchgate, Bombay.
3. The Works Manager,
Western Railway,
Bhavnagar Para.

..... Respondents.

(Advocate: Mr. R.M.Vin)

J U D G M E N T

O.A.No. 176 OF 1987.

Date: 29.7.1988.

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

In this application, filed on 8.4.1987 by the petitioner Shri Pitamber Mepabhai Pitroda of Morbi under section 19 of the Administrative Tribunals Act, 1985, he claims that his correct date of birth is 9.5.1934. According to him, his date of birth has been wrongly recorded as 2.5.1929 in the service sheet maintained by the Railway Administration and accordingly, he has been made to retire illegally in the year 1987. It is alleged that when he came to know about the birth date in the service sheet, he continued to make representations since till 1986. But the year 1972/the same were not responded and recently, he has been informed by letter dated 16.2.1987 that his request of change in the date of birth is not considered by

the Works Manager.



2. The petitioner has challenged the decision contained in the Works Manager's letter No. WM/E.283/2 dated 16.2.1987 which reads as under :-

Sub:- Change in date of birth - NG staff -
Ref:- Your letter No.E.283/2 of 5.1.87.

With reference to above, Shri Pitamber Mepa, HSK II Carpenter - MVI shop has already been replied vide this office letter No. even dtd. 19.4.78 as advised by CWE(E) CCG vide his letter No.EM.283/8/5 dtd.10.4.78 as under :-

"As the above named employee has written his date of birth 2.5.1929 in his own hand writing against S.No.9 of page 15 of Service Sheet putting his Signature as a token of his acceptance thereof and he has also signed as well as put his L.H.T.I. against S.No.15 of page 15 his request to alter his date of birth to 9.5.1934 can not be agreed."

In light of the above, request for alteration of date of birth in favour of above named employee can not be entertained. Apprise party accordingly.

Sd/-
WM BVP.

3. The petitioner prayed that the impugned order be quashed and set aside and the Respondents-railway administration be directed to alter the service record of the petitioner and the date of birth of the petitioner be recorded as 9.5.1934 instead of 2.5.1929. The respondents-railway administration has resisted the petitioners' application and denied the assertions and the allegations made by him. According to them, the petitioner has written his date of birth 2.5.1929 in his own handwriting against the S.NO. 9 of the page 15 of his service sheet putting his signature as a token of his acceptance thereof and he has also signed as well as put his L.H.T.I. against the S.No.15 of the page 15 of his service sheet. It was further submitted that the petitioner's retirement is done on the basis of the birth date as recorded in service sheet which does not amount to removal from service or any violation of



10

Article 311 of the Constitution of India, as contended.

4. When the matter came up for hearing Mr. B.B.Gogia and Mr. R.M. Vin appeared for the petitioner and the respondents respectively. They were heard at considerable length. The materials placed on record are perused and considered.

5. While referring to Rule 145 of the Indian Railway Establishment Code, it was contended inter-alia that even though the petitioner made several attempt to represent the authorities to rectify his correct date of birth by making the representation since the year 1972 on the basis of School Leaving Certificate, the same has not been decided as per the requirement of the said rule. According to Mr. Gogia, Works Manager who has taken the impugned decision is not the competent authority to decide the petitioners' representation and therefore it is liable to be set aside. It was further submitted that the railway authorities have ignored the date of birth recorded in the School Register and hence the impugned order deserves to be set aside. The short point for consideration is whether the impugned order dated 16.2.1987 passed by the Works Manager, Bhavanagar Para is illegal and bad in law, as contended. The answer is in the affirmative.

6. The fact that the date of birth of the petitioner is recorded as 2.5.1929 in the service sheet duly maintained by the railway is not in dispute. It is the case of the petitioner that when he came to know about the wrong date of birth recorded in the service sheet for the first time in the year 1972, he made representation to the Works Manager vide his application dated 7.10.72 (Annexure 'B') alongwith the original School Certificates issued by the School Authority (copy whereof found at Annexure 'A'). It is his version that thereafter he continued to make representation as found at Annexure 'C' to 'I'. But he had not received any response from the authorities till 16.2.1987, when he received communication from the Works Manager informing him that



his request for change in the date of birth can not be considered. It is pertinent to note that the respondents have not preferred to place any materials on record to show that any decision has been taken by the competent authority i.e., General Manager or his delegate C.P.O.

7. Admittedly, the rules relating to the requirement of recording the date of birth and question of its alteration are covered under the Rule 145 of the Railway Establishment Code. The object of the said 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. It is true, the date of birth as recorded in service sheet is held to be binding. However it is the version of the petitioner that even though he had studied upto 1st or second standard for all practical purpose, he is illiterate. According to him, even though his correct date of birth as per the school certificate issued on 12.8.50, is 9.5.1934, but somehow, wrong birth date has been crept into the service record which has been shown as 2.5.1929. According to him he had never declared his birth date as 2.5.1929.

8. The only order rejecting the petitioners' representation on record is the order dated 16.2.1987 passed by the Works Manager. Now, the competent authority to alter the date of birth of the Railway employees in the case of gazetted officer ^{is the Railway Board} and the General Manager or his delegates C.P.O. in the case of non-gazetted railway servant. Obviously, ~~the~~ Works Manager is not empowered to take decision in such matter and therefore the decision contained in his letter dated 16.2.1987 can not be regarded ^{as} legal and valid. The impugned order is without jurisdiction and therefore can not be sustained.

9. In the light of the aforesaid discussion, it is held that the impugned order dated 16.2.87 passed by the Works Manager rejecting the petitioners' claim for rectification of his date of

(16)

birth is bad in law and the same is accordingly quashed and set aside. It is directed that the competent authority i.e., General Manager or its delegates C.P.O. of the respondents-railway administration shall consider the petitioners' representation dated 29.12.86, and earlier representation if any alongwith the documents relied upon by him in support of his claim and decide the same within 6 months from the date of this judgment by a speaking order without being influenced by any order passed earlier. At the same time, the petitioner is at liberty to file his supplementary representation to the General Manager, if any, within 3 weeks from the date of this order. It is further ordered that in case the petitioners 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 the consequential benefits on the basis thereof.

The application is partly allowed and the same is disposed of with the direction stated above. There will be however no order as to costs. The Registry to send a copy of this judgment to the General Manager, Western Railway, Bombay and retain the acknowledgement on the file.


(P.M. JOSHI)
JUDICIAL MEMBER.

ttc.