

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

~~NEW DELHI~~

O.A. No.

193 of 1987

~~XXXXXX~~DATE OF DECISION 27-6-1990Govindbhai Mithabhai

Petitioner

Shri C.S. Badkas

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri N.S. Shevde

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.K.Jain; Judicial Member

The Hon'ble Mr. M.M.Singh; Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Govindbhai Mithabhai
Retired Driver
C/o. C.S. Badkas, Advocate
Parishram Building,
Shanker Wadi, Kokan Falia,
Baroda - 390 017.

..... Petitioner.

(Advocate: Mr. C.S. Badkas)

Versus

1. Union of India,
Represented by Chief Secretary,
Ministry of Railways,
Government of India,
New Delhi.

2. General Manager,
Western Railway,
Churchgate, Bombay.

3. Divisional Railway Manager
Western Railway,
Baroda Division,
Pratapnagar, Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 193 OF 1987

Date: 27-6-1990.

Per: Hon'ble Mr. S.K. Jain, Judicial Member.

Shri Govindbhai Mithabhai, the applicant,
joined the Loco Department in Baroda Division of
Railways Department as Box Boy with effect from
1.6.1945. At the time of entry into the service his
date of birth was entered in the service records as
1.5.1919. Claiming that his date of birth is
15.12.1923, the applicant filed a Civil Suit in the
Court of Civil Judge Baroda for the change of his
date of birth from 1.5.1919 to 15.12.1923 in the
service record and also got a interim injunction on
30.4.1977 from the Civil Court restraining the
respondents from retiring him on the basis of his

date of birth as disclosed in the service record. The suit was decreed by the Civil Court on 16.8.1980 accepting the claim of applicant that his date of birth was 15.12.1923 and not 1.5.1919. Accordingly the applicant was to retire on 31.12.1981 on superannuation on attaining the age of 58 years. The respondents, feeling aggrieved, filed an appeal (Civil Appeal No. 361/1980) in the District Court. The appeal was partly accepted on 31.7.1982 and the date of birth of the applicant was held to be 7.7.1923 instead of 15.12.1923 as declared by the Trial Judge. Evidently the applicant was to retire on 31.7.1981 on the basis of the date of birth being 7.7.1923, but he had already continued in service till 31.12.81 because of the judgment of the Trial Court. The applicant has claimed all the service benefits on the plea that his date of retirement should be taken as 31.12.1981 whereas the case of the respondents is that as per the judgment of the District Court the applicant was to continue in service only upto 31.7.1981 and that for the remaining 5 months he is to be taken to have been re-employed and paid salary etc. on that basis and further that the period of five months beyond July, 1981 was not to be taken into account for any other purpose like pension gratuity etc.

2. The learned counsel for the parties agree that the applicant is to be taken to have been continued in service for all intents and purposes upto 31.7.1981 and that he is entitled to all the service benefits including pension, gratuity etc. till that date. Regarding the remaining period of five months from August, 1981 to December, 1981, it

is submitted by the learned counsel for the respondents that the applicant should be taken to have been re-employed and is to be paid salary etc. accordingly. This submission of the learned counsel is without merit because the applicant continued in service till 31.12.1981, under the judgment and decree of the Civil Court accepting the date of birth to be 15.12.1923. It was only in appeal, decided on 31.7.1982, that the date of birth was modified to 7.7.1923 and by that time the applicant had already continued in service till 31.12.1981. In the circumstances we hold that the applicant is entitled to full salary and allowances for the period August, 1981 to December, 1981 at the same rates at which he was being paid till 31.7.1981.

3. In view of the above, we direct the respondents to pay salary, allowances, pension, gratuity and other service benefits on the basis of his retirement on 31.7.1981 on superannuation. We further direct the respondents to pay to the applicant salary and other allowances for the period 1.8.1981 to 31.12.81 at the same rate at which he was being paid in July, 1981. The applicant will, however, be not entitled to any retiral benefits on the basis of the service rendered beyond 31.7.1981. The learned counsel for the applicant prays that the applicant be allowed to make a self-contained representation regarding the deductions and recoveries made by the respondents from his salary and other dues. The learned counsel for the respondents also states at the bar that such a representation will be duly considered and disposed of on merits by the respondents. Accordingly we permit the applicant to make

such a representation which will be disposed of by the respondents within two months of its having been made, by recording a speaking order. No other relief has been claimed on behalf of the applicant. The O.A. is disposed of accordingly.

M. M. Singh
(M.M. SINGH)
Administrative Member

27/6/90
(M.S.K. JAIN)
Judicial Member