

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 283 OF 1987.
~~P.A. No.~~

13

DATE OF DECISION 26.8.1988

SHRI KANTILAL HEMATRAM PANDYA Petitioner

MR. V.S. MEHTA Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondent s.

MR. 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 ? *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*

(W)

Kantilal Hematram Pandya,
Senior Khalasi,
Western Railway,
Wankaner Junction,
Wankaner (Rajkot District).
(Advocate: Mr.V.S.Mehta)

..... Petitioner.

Versus.

1. Union of India owning
Western Railway through
General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

3. Additional Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

4. Loco Foreman,
Loco Shed,
Western Railway,
Wankaner, Rajkot.

..... Respondents.

(Advocate: Mr.B.R. Kyada)

J U D G M E N T

O.A.NO. 283 OF 1987.

Date : 26.8.88.

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

In this application, under section 19 of the Administrative Tribunals Act, 1985, filed on 15.6.1987 by the petitioner, Shri Kantilal Hematram Pandya, has questioned the validity of the order dated 26.3.1987 (Encl. 1) issued by D.R.M.; whereby he is sought to be retired from 30.9.1988, on the basis that he attained his age of 58 years on 6.9.1988. According to the petitioner, his correct date of birth as per the School Leaving Certificate is 4.9.1934 and not 26.3.1937, as alleged to have been recorded in his service sheet. It



is alleged that when he was transferred to Wankaner Loco Shed from Hapa in the year 1959, his date of birth was shown as 4.9.1934. But when he learnt that his date of birth has been wrongly recorded, He made representation in the year 1973 and since, there was no query from the Railway Administration, he took it for granted that his application was granted and the correction was carried out in his personal file, but when in the year 1985 when his loan from the Railway Co-operative Bank was rejected for the reason that his date of birth was recorded as 6.9.1930, he again moved D.R.M. under his application dated 25.12.85 requesting him to rectify his date of birth. But it is averred that instead of rectifying his date of birth, he has been now sought to be retired without deciding his representation. He has therefore prayed that his date of birth be corrected as 4.9.1934 and the respondents-railway administration be restrained from superannuating him before 30.9.1992.

2. Mr. B.R. Kyada, the learned counsel appearing for the respondents filed the written statement of the respondents on 20.11.1987 which is unsigned and not verified by any personnel of the respondents. Suffice it to say, that such unsigned written statement can hardly be construed as pleadings according to law. The reasons for such lapses, if any, is a subject matter for the administration. However, under the said unsigned written statement, the respondents have denied the assertions made by the petitioner. According to them, the notice showing the names of the staff including the petitioner retiring in the year 1988, is quite legal and valid as the service record produced by the applicant at the initial appointment has continued till to-day, which shows that his date of birth is 6.9.30 and not 4.9.34 as contended. According

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to them, the petitioner made representation for the first time on 25.12.85 and subsequently on 12.3.1987 and the same have not been decided, so far, and hence the application is not maintainable.

3. During the pendency of the proceedings of this application, the competent authority seems to have taken the decision on 5.2.88 which has been communicated to the petitioner by the D.R.M., Rajkot under his letter dated 8.3.1988 (Annexure R-2). The same is placed on record by Shri B.R. Kyada, the learned counsel for the respondents under his application dated 4.8.1988. During the course of his arguments, while referring to the said orders it was contended by Mr. V.S.Mehta, the learned counsel appearing for the petitioner, that admittedly, no service records have been prepared in the case of the petitioner, as required under Rule 145 of I.R.E.C. and the petitioner is sought to be retired on the basis of the extraneous records like, old seniority list and the option forms prescribed for scales of pay as well as for pension, purported to have been signed by the petitioner on 16.9.1960 and 20.2.1980 and Provident Fund withdrawal forms. ^{therefore} The action is illegal. According to him, the decision taken by the authority is vitiated, as the petitioner has not been afforded any opportunity to counter them. According to Mr. Mehta, impugned decision is bad in law, inasmuch as, the School Leaving Certificate relied upon by the petitioner has not been considered at all and no reasons are assigned for discarding the same. Mr. B.R.Kyada, however, contended, inter-alia that the School Certificate relied upon by the petitioner is unreliable, as he has not produced the relevant testimonials of the school, where he was initially admitted. According to Mr. Kyada, the application has been filed with an ulterior motive to get

an undue advantage in getting an extension of 4 years in service.

4. Before dealing with the points raised in this application, it may be stated at the outset that the instant case is distinct with its unusual antecedents. Mr. B.R.Kyada, the learned counsel for the respondents has produced three files consisting of (i) personal file (ii) pension file and (iii) the one dealing with his representations which are found at marked Annexure R-1 in response to the orders passed by the Tribunal.

5. On perusal of the said record it is found that it does not contain the service sheet referred to by the competent authority in its decision dated 5.2.88. It is stated that in said service sheet, the date of birth has been recorded as 6.9.1930. It is conceded that the authority for recording the date of birth is not indicated. It is also admitted that it does not bear the signature or the left hand thumb impression of the petitioner. It is strange that even in the face of such record, the competent authority has placed reliance on the service sheet on the ground that it has been attested by A.P.O.

6. Admittedly, the rules relating to the requirement of recording the date of birth and the 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. It is true, the date of birth as recorded in the service sheet is ordinarily held to be binding and even though it may not be regarded as conclusive but it can be only be changed on sufficient evidence which can lead to the conclusion that the

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change of birth date is warranted. At the same time, before any inference of authenticity and sanctity is drawn from such document, it is necessary to establish that the requirement of the rule in preparing such service sheet has been complied with. The very foundation and the essential requirement of obtaining the signature of the employee concerned in the present case, has not been complied with. It is stated that the petitioner was appointed as Box-Bearer on 1.7.55. It is not understood who is responsible for not preparing the record in strict compliance with the rules. It is rather astounding, how the authorities have allowed the service sheet of the petitioner, incomplete till his retirement. Thus, the fact of the matter is that such service sheet referred to can carry very little evidential value.

7. It is the case of the petitioner that when he was called for interview for the initial appointment under letter dated 21.5.1955 (Encl.No.7) issued by the District Mechanical Engineer, he was required to bring original School Certificate and accordingly, he had furnished the original S.L.C. showing his birth date as 4.9.34 to the railway authorities. Now, when the competent authority proceeded to rely on documents other than the service sheet in rejecting the petitioner's request for rectification of his date of birth, a duty was enjoined upon him to inform the petitioner about it and afforded him an opportunity to represent his say in the matter. But without affording such an opportunity the decision taken by the competent authority is clearly vitiated and consequently it can not be sustained.

8. In light of the aforesaid discussion, the

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application is partly allowed. The decision dated 5.2.88 of the competent authority communicated to the petitioner under letter dated 8.3.1988, is hereby quashed and set aside. It is directed that either the General Manager or his delegate C.P.O. of the respondents-railway administration shall inform the petitioner at the earliest about the documents with a copy thereof, on which the reliance is sought by the Railway Administration for arriving at a correct decision for his date of birth and permit the petitioner to produce relevant documents in support of his claim and decide the same within six months from the date of this order by a speaking order, after giving the petitioner a personal hearing, in light of the observations made herein above and in accordance with law. I have no doubt the competent authority shall decide the matter afresh, without being influenced by the orders passed earlier. It is further ordered that in case, the petitioner's claim for correction of birth date, is established the competent authority will give effect to such corrected birth date by giving all consequential benefits on the basis thereof.

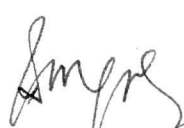
9. Before parting with, it is noted that the petitioner is due to retire on 30.9.1988. But in the meantime, the matter is remitted for the decision of the competent authority. Thus, the petitioner will have to retire on 30.9.1988 as intimated by the authorities and there will be no direction to continue the petitioner in service. While passing this order, reliance is sought on the decision of the Supreme Court in the State of Assam V/s. Daksha Prasad (A.I.R.1971 S.C. 173) and Rasul Adam Vatra V/s. O.N.G.C. (28 G.L.R. p.493) wherein it has been held that whatever right that accrues subsequent to the investigation and the

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decision by the authorities concerned, that can always be given to the parties concerned. By issuing directions as referred to in para (8) of this judgment, sufficient care has been taken to protect the interest of the petitioner, in case, he succeeds in establishing his claim.

10. The application therefore stands disposed of with the direction indicated above. There will be however no order as to costs.

Registry is directed to send a copy of this judgment to the General Manager, Western Railway, Bombay immediately and its acknowledgement should be retained on record.


(P.M. JOSHI)
JUDICIAL MEMBER.

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