

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 315 OF 1987
~~Ex No.~~

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DATE OF DECISION 29.7.1991

Ismail Mohmad Sidi, Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

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

CORAM :

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

The Hon'ble Mr. S. Santhana Krishnan, 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*

Ismail Mohmad Sidi
T/69 Railway Staff Quarters
Near Railway Station,
Porbandar 360 575.

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..... Applicant.

(Advocate: Mr.P.H. Pathak)

Versus.

1. Union of India
Notice to be served through the
Divisional Railway Manager,
Bhavnagar Division,
Bhavnagar Para.

2. Station Superintendent,
Railway Station,
Porbandar.

..... Respondents.

(Advocate: Mr. R.M. Vin)

J U D G M E N T

O.A.No. 315 OF 1987

Date: 29.7.1991

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant alleges that his date of birth according to the School Leaving Certificate which he had produced to the Department is 1.7.1930 whereas he came to be retired from service on the basis of a birth date 1.7.1928. He therefore, in this original application filed under section 19 of the Administrative Tribunals Act, 1985, challenges the order of retirement.

2. The applicant had joined railway service in 1948. He has produced an unattested copy of his School Leaving Certificate bearing date 19.6.1944 from Vivavdar Camps School showing his date of birth 19.12.1930. The certificate produced bears no signature of Headmaster of the School. We should observe here that though the applicant's claim/ is

M M Singh that his date of birth is 1.7.1930, this certificate

mentions his date of birth as 19.12.1930. The applicant has alleged malafides on the part of the respondents because of the applicant's participation in trade union activities due to which the respondents are alleged to have initiated disciplinary action against the applicant in the past.

3. The respondents' reply is to the effect that the respondents had not acted vindictively; that no representation of the applicant was pending with the respondents and the applicant was ordered to be retired; that the applicant has come forward after one year of his actual retirement claiming for alteration of date of birth; that the School Certificate attached to application mentions 19.12.1930 as the date of birth; and that the applicant claims 1.7.1930 instead of 1.7.1928 as the date of birth which is not supported by the birth date mentioned in the school certificate.

4. The rejoinder of the applicant is to the effect that he had made representation when his name appeared for the first time in the list of employees to be retired; that his victimisation is because of his union activities; and that the difference between date 1.7.1930 claimed by the applicant in the application and his date of birth 19.12.1930 mentioned in the School Leaving Certificate is typographical error. He asserts that his date of birth is 19.12.30.

5. We have heard counsel for both the parties and perused the record.

6. The respondents have produced a xerox copy of the service sheet of the applicant which shows 1.7.28 as the date of his birth. The entry is furnished with

M. M. S. - initials and is authenticated. The sheet bears

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signature of the applicant.

7. The applicant's clarification in rejoinder that 19.12.30 is the date of his birth as mentioned and date 1.7.30 mentioned in the application is in the School Leaving Certificate / typographical error cannot be accepted. The original certificate has not been produced before us and the copy produced has not been attested as true copy, an endorsement the advocates are noticed to make^{on} such copies and which endorsement figures on other copies of record produced with the application, for example on Annexure A dated 7.1.84, Annexure B dated 14.1.87 and Annexure C. We are also astounded to note that the school leaving certificate does not appear in the list of annexures to the original application. The list of annexures includes only annexures A, B and C. Annexure A is copy of representation, Annexure B is copy of notice and Annexure C is certificate issued by the respondent. Against the contents of such a school certificate, para 2 of the application contains the assertion that "Actually as per the school leaving certificate of the applicant which is produced before the authority the date of birth is 1.7.1930." As the application annexures did not include the school leaving certificate, there should be no scope for the devil of typographical error to play role in the mention of 1.7.1930 as the date of birth in the application. On the contrary this furnishes circumstances to reasonably wonder whether more than one school certificate came to be pressed into use which will be questionable.

8. Mr. Pathak, learned counsel for the applicant has relied on *Thaneswar Baruah V/s. Union of India & Ors.*, (1990) 12 A.T.C. 804, *Hiralal V/s. Union of India*, ATR 1987(1) CAT 414. But none of these

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precedents are of any avail to the applicant the key characteristic of whose case is found to consist of a school certificate of doubtful authenticity and not certified as true copy and the certificate not figuring in the list of annexures of the application the date of birth in which is different from the date asserted in the application which difference being both in the figures of date and month and therefore the explanation of typographical error not acceptable. The date of birth in the service record cannot be changed on the basis of such enormously doubtful evidence as pressed into use in the case before us.

9. In the circumstances, the application is liable to be dismissed with costs against the applicant. We hereby do so but, looking to the circumstances of the applicant who has retired from service, remit the costs.


(S. Santhana Krishnan)
Judicial Member

M. M. Singh
29/7/91
(M.M. Singh)
Admn. Member