

Retirement - (Jud)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~

O.A. No. 446 OF 1987 ~~xxxx~~
~~xxxxxxx~~

DATE OF DECISION 18-4-1991

Karshandas Purshottam Joshi, Petitioner

Mr. D.R. Chaudhary. Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents.

Mr. B.R. Kyada, Advocate for the Respondent(s)

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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*

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Karshandas Purshottam Joshi,
Hindu, Adult, Occ: Service,
Near Sindhi Dharmashala,
Shastrinagar,
Rajkot.

..... Applicant.

(Advocate: Mr.D.R.Chaudhary)

Versus.

1. Union of India,
owning and representing
Western Railway,
Churchgate, Bombay.

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

..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.NO. 446 OF 1987

Date: 18-4-1991

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

The issue for our consideration in this original application filed under section 19 of the Administrative Tribunals Act, 1985 is whether the date of birth of an employee authenticated by him in his service book by affixing his signature be or be not upheld for his superannuation when another later date appearing in school certificate obtained years after is pressed as correct shortly before superannuation in accordance with the date of birth in the service book.

2. The applicant joined the Western Railway service on 27.9.1955 in Bhavnagar division. His say is that when Rajkot Railway Division was carved out, service records of employees in Bhavnagar Division who came to be placed in the new division

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were transferred to Rajkot from Bhavnagar. However, the applicant's service record was lost in transshipment. Therefore his fresh service book came to be prepared in 1962. In this book his date of birth was erroneously shown as 30.9.1928 instead of 30.9.1930, the date in the original service book. He being illiterate, nevertheless authenticated it by affixing his signature. He ascribes the mistake to clerical error.

3. It seems clerical errors in mentioning date of birth continued to dog the applicant even in this application before us. In para 6.3 of the application appears: "against his actual date of birth 28.9.1983 they entered as 30.9.1928". Besides, the application contains diverse information on one and the same point on more than one point. In para 6.5 averment is to the effect that the applicant came to know about the mistake in 1970 and sent representation supported by copy of School Leaving Certificate of Mota Sarda Prathamik Shala (Kutch district) the school where he studied. ^{with the} This averment is at odds / applicant's averment that he being illiterate signed to authenticate the wrong date of birth. The respondents' reply on this point is that the applicant has passed second standard of English and can sign both in Gujarati and English. There is no doubt that the applicant is not illiterate. Again when the applicant claims that he came

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to know of incorrect date of birth in his service book in 1970 and immediately represented enclosing copy of the School Leaving Certificate, the latter shows 7.6.72 as the date of its issue. Of course, this certificate shows 28.9.1930 as date of his birth both in words and numerals and applicant studying in third standard. Though in para 6.5 as above shown representation against wrong date of birth is stated to have been made in 1970, in para 6(6)(d) his averment is to the effect that he applied for correction in 1979-80 as soon as the mistake came to his knowledge. However, copy of any such representation has not been annexed with the application. On ^{the} contrary, respondents have averred in their reply that the applicant represented only in 1985. The respondents have also averred that the applicant stated before the Welfare Inspector on 8.8.1985 that he studied at Jilla Shikshan Samiti Morbi (in Rajkot district). But the certificate of Kutch Jilla Shikshan Samiti is produced by the applicant. The respondents have also averred that in the inquiry the Welfare Inspector conducted, the applicant could not prove that he had, when initially appointed, produced the certificate of Mota Sarda Panchayat Pratimik Shala. The respondents also deny that the applicant's service record was lost in transit as alleged and that ^a fresh service book was prepared.

4. Applicant's application was received in this Tribunal on 9.9.1987 only few days short of one year after

his retirement on 30.9.1986.

5. The above dubious state in the record is compounded by excessive delay in filing the application, be it counted from, 1970, the year the applicant claims at one place in his application to have come to know about the error in the date of birth or 1979-80 the year of his such knowledge if the information furnished at another place of the application is to be believed. The delay has bearing for delay should more strongly defeat equity when the applicant's case is dubious as here.

6. It is to be noted that the date of birth appearing in the service record from much earlier than the School Leaving Certificate ^{which} is dated 7.6.1972 is sought to be cancelled for the date of birth in the latter. Neither of these records may really furnish conclusive evidence of the date of birth of the applicant and may contain dates as informed at the relevant time. Entry in the register of birth which alone could ^{be} almost conclusive evidence in such a dispute is not produced. The two evidences thus merely throw doubt about either being true just because both exist. But neither satisfactorily proves the true date of birth of the applicant evidence of which has not been produced by the applicant. At this stage we may also take guidance from the provisions in the Indian Evidence Act on the subject of admission. Entry of date of birth

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in the service record authenticated by the applicant in effect becomes his admission of such date. Service book is an official book. So would be the school record containing another date of birth of the applicant. Between the two irreconcilable evidence about the same issue figuring in such record, the one which is of the nature of admission of the applicant by virtue of his authentication of it should obviously merit higher evidentiary value in this case than the school record of date of birth which record is not authenticated by the applicant nor date of birth recorded in it apparently given by him.

7. That brings us to the other leg of the applicant's argument in the application, namely that the date appearing in seniority list and identity card should be taken as authentic and not different date figuring in the service book. Between service book record on the one hand and the entry in the seniority list and in identity card on the other hand, the former authenticated merits higher evidentiary value than seniority list entry and identity card entry made later and not authenticated by the applicant. The probability of 30.9.28 recorded in the service book erroneously changing into 30.9.30 in seniority list and identity card is much higher than of the reverse the probability of which happening has to be rated as zero as service book is not copied from seniority list and identity card.

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But the latter two should be from the service book.

8. Thus viewed, strong weakness in the applicant's evidence on support of allegation of the date of birth recorded in the service book strike the eye rendering the application devoid of merit and therefore liable to be dismissed. We hereby do so without any order as to costs.

S. Santhana Krishnan
(S. Santhana Krishnan)
Judicial Member

H. M. Singh
(M.M. Singh)
Administrative Member