

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
XxxxxxxXxxxxX

(7)

B. B. Gogia (P.W)
O.A. No. 453
XXXXXX No.

1987 1987

DATE OF DECISION

11/6/91

Shri Naran Magan

Petitioner

Mr. B. B. Gogia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. B. R. Kyada

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R. C. Bhatt : 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? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

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Shri Naran Magan,
Retd. Loco Shunter,
Punit Society,
Behind Radio Colony,
Jamnagar Road,
RAJKOT.

: Applicant

(Advocate : Mr. B.B. Gogia)

Versus

1. Union of India
Through

The General Manager,
Western Railway,
Churchgate,
BOMBAY.

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

: Respondents.

(Advocate: Mr. B.R. Kyada)

JUDGMENT

O.A./453/87

Date :

11/6/91

Per : Hon'ble Mr. R.C. Bhatt

: Judicial Member

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act 1985 for a declaration that action of the respondents in retiring the applicant from service as Loco Shunter on 31.3.1987 is illegal, invalid, ineffective and has further prayed that the applicant should be continued as Loco Shunter with all the consequential benefits of pay, salary, seniority etc. till the superannuation age on the basis of his birth date as 17.1.1933. It is alleged by the applicant in his application that he was appointed in railway service on 25.10.1949 as Cleaner on Ex.Saurashtra Railway and his date of birth at that time was recorded as 17.1.1933, that his birth date recorded was on the basis of school leaving certificate produced by him at the

time of his appointment and the service sheet was accordingly prepared. It is alleged by the applicant that on Ex. Saurashtra Railway there was no restriction in appointments of the persons below the age of 18 years and the only disadvantage was that Re.1.00/reduced for every year below the age of 21 years. The applicant in the application has quoted verbatim the Rule No.307 from Western Railway Establishment Manual which was subsequently ~~also~~ amended on 15.5.1989. According to the applicant his/salary was fixed at the reduced rate of pay at the time of appointment i.e. at Rs.27 per month in the scale of Rs.30 - $\frac{1}{2}$ - 35. The applicant had ~~been~~ worked lastly as a Shunter when according to him he was forcibly retired on 31.8.87 on the basis of his birth date 17.8.1929. It is alleged by the applicant that the said action of the respondents retiring him on 31.8.1987 is unconstitutional and against the principles of natural justice and is void. It is further alleged by the applicant that if the Railway Administration wanted to alter his birth date in service record, it has no jurisdiction to do so under the rules and in any case it could not have been altered without giving him show cause notice and holding necessary enquiry giving proper opportunity to the applicant to be heard. According to the applicant, the valuable right to the applicant to serve upto the superannuation age of 58 years which would be 31.1.192 is taken away and the premature retirement is in violation of article 311 of the Constitution of India in as much as it also offends Article 14 and 16 of the Constitution of India.

2. The applicant has alleged in the application that the Railway Administration itself had been uncertain in its mind as it had issued telegram dated 5.2.1987 by Divisional Office, Rajkot to Loco Foreman Western Railway mentioning therein "Date of birth of Naran M may be

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read as 17.1.1933 instead of 17.8.29 AAA ENSILE AAA
Memo will follow AAA". According to the applicant he was called by the Divisional Office, Rajkot on 4th September, 1987 to sign the duplicate service book which he had objected to do so. However, he was informed that it was necessary to prepare the duplicate service book to enable the department to prepare the pension papers and if the applicant failed to sign the said duplicate service book the same would not be prepared and therefore he signed the service book with objection, that the service book was new and subsequently prepared.

3. The respondents have filed written statement contending that the applicant had been appointed as Cleaner in Ex, Saurashtra Railway with effect from 24.10.1949 and as per the service sheet of the applicant the date of birth of the applicant was recorded as 17.8.29 but the original service book of the applicant has been lost and the new service book had been constructed on other subsidiary documents such as seniority list in which date of birth ~~1929~~ had been recorded as 17.8.1929, that the said documents were prepared on the basis of the original service sheet of the applicant and all documents from which the new service book was prepared showed the date of birth of the applicant 17.8.29 and not 17.1.1933. The respondents have denied the averments made by the applicant that he was below 18 years at the time of his appointment. The respondents have contended that Rule 307 of the Western Railway Establishment Manual reproduced in the application is not applicable, and the applicant is not entitled to get any benefits as the said rule clearly shows that the Class IV Railway Servants below the age of 18 years holding a post of scale of Rs.30-35 should be fixed at Rs.30 reduced by Re.1 for each year by which it falls short age below 18 years and should be increased only ^{by} Re.1 from next birth date onwards until he attained the age of 21 years when he would draw the minimum of the time scale viz. Rs.30/- .

It is contenddd that the documents produced by the applicant have been issued by the subordinate officer which are not binding to the railway administration and it is contended that the seniority list bearing date 30.3.1979 and other documents referred to in the application are not genuine and on the basis of those documents it could not be said that the date of birth of the applicant is 17.1.1933.

4. The respondents have denied that on the basis of birth date shown in the service sheet 17.8.1929 the petitioner could not be retired and the respondents further denied that at the time of superannuation a show cause notice was necessary or any inquiry was necessary giving opportunity to the applicant of being heard, because as per the rules, ~~fix the name~~ applicant was shown along with his date of birth during 1986-87 and it was mentioned in that list that the applicant was to retire w.e.f. 31st (August, 1987. It is contended that the applicant was aware of that position and was knowing that he was to retire from 31st August, 1987 and therefore it cannot be said that the respondents had violated provisions of article 311 of the Constitution of India or article 14 and 16 of the Constitution. The respondents have contended that the telegrame referred to by the applicant in his application has no bearing with present case because the authority or officer who issued the said telegram had no authority to direct change of birth date without following principles laid down by the establishment. It is contended that it was open for the applicant to make grievance against the date of birth before 1973 but he had not made any grievance for ~~any~~ long period challenging his date of birth. It is contended that the certificate produced by the applicant with the list dated 20.6.1960 in which the date of birth shown is 17.1.33 was issued by the authority in the year 1960 to the applicant but even after receiving the same, the applicant has not taken any action for correcting his date of birth even during 1973 when it was open for the applicant to apply ~~for~~

for correction of his date of birth. It is contended that the applicant has no case and it deserves to be dismissed.

5. The applicant has filed rejoinder controverting the contentions taken by the respondents in the reply. It is contended that the respondents had not made any attempts to properly verify the records such as seniority list, medical memo, etc. where the date of birth ~~as~~ ^{was} recorded as 17.1.1933. It is contended that the seniority list prepared in 1979 also bears the date of birth of the applicant as 17.1.1933. The applicant contended that though he was retired on 31st August, 1987, he had represented to the administration on 25th September, 1986 that his date of birth was 17.1.1933. The applicant has alleged in the application that he was appointed in Railway service on 25th October, 1949 as Cleaner on Ex. Saurashtra Railway. According to the respondents, the applicant was appointed in railway service on 24th October, 1949 as mentioned in the written statement. However, the main controversy is about the date of the birth of the applicant. According to the applicant, his date of birth at the time of his appointment was recorded as 17.1.1933 and the said birth date was recorded on the basis of school leaving certificate produced by him at the time of his appointment. The applicant has produced the copy of one certificate from Kishorsinhji Taluka Shala, Rajkot dated 28.6.1960 at Annexure A/6. This is not a certificate produced at the time of his appointment because the present certificate is of the year 1960. The applicant has not produced copy of school leaving certificate before us produced at the time he joined his service. Moreover, the copy of certificate which he has produced at Annexure A-6 in which his date of birth mentioned is 17.1.1933 is not also admissible in evidence because it is not a school leaving certificate nor is the extract from the register

of that school but this is the certificate which seems to have been made from the register maintained by the said school. This is not a primary evidence showing the entry of the birth date of the applicant in the register, and if the applicant had produced the entry from the register of the school showing his date of birth, it would have been admissible in evidence but the present certificate is given by the school on the basis of the register maintained by the school. Therefore, this is secondary evidence which is not admissible without proper proof. Therefore, Annexure A/6 does not help the applicant at all, and on that basis it cannot be said that the applicant's birth date is 17.1.1933. The applicant ^{copy of} ought to have produced the school leaving certificate which according to the averments made in the application he ~~had~~ produced at the time of his appointment.

6. The applicant has further averred in the application that the service sheet was prepared according to the birth date mentioned in the school leaving certificate produced by him at the time of his appointment which showed the date as 17.1.1933. The respondents have contended in the written statement that the original service book of the applicant has been lost and therefore it is not possible to produce the original service sheet. Therefore, the question now arises is as what is the date of birth of the applicant.

7. The applicant has averred in the application that at the time of his appointment on Ex. Saurashtra Railway, there was no restriction in appointment of the persons below the age of 18 years and the only disadvantage was that Re.1 was reduced for every year below the age of 21 years. The applicant has reproduced Rule No.307 from Western Railway Establishment Manual in para 6(b) of his application but that rule speaks about the age on appointment ~~to be~~ from 18 years and above but below 40 years. The applicant has also reproduced the amended Rule 307 which was corrected on 15.5.1969 in which also the age on appointment is mentioned

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as 18 years and above but below 40 years and in the amended rule there is a reference about the age of class IV railway servant below the age of 18 years. The respondents have contended in the written statement that Rule 307 is not applicable to the applicant and the respondents have also denied that the applicant was below the age of 18 years at the time of his appointment. Rule 307 as it stood before 15.5.59 does not show or refer to the appointment of Class IV servant below the age of 18 years but it is only the amended rule 307 dated 15.5.1959 which refers to the pay of a class IV railway servant below the age of 18 years. The applicant was appointed in 1949, therefore at that time there was no question of appointment of class IV railway servant below the age of 18 years. Therefore rule 307 does not help the applicant.

8. The learned advocate for the applicant submitted that the documents produced by the applicant shows that the birth date of the applicant was not 17.8.1929 but was 17.1.1933. The original service sheet is lost or not traceable and therefore it is necessary to consider the documents which have been produced by the parties in this case to know as to what is the correct date of birth of the applicant. The applicant at the time of filing his application has produced seven documents. The first one Annexure A/1 is the settlement certificate issued by the ^{Rajkot} Loco Foreman, Western Railway on 8th September, 1987. Now apart from the fact that the certificate issued in September, 1987 showing the pay and allowances of the applicant, date of the retirement, etc. would not help the applicant because that is not an evidence about the date of birth, however, even if it is considered, it shows the date of appointment of the applicant as 25th October, 1959, which date is wrong because it is not in dispute that the applicant was not appointed in 1959 but was appointed in 1949. Moreover, the date of birth

mentioned in it is 17th August, 1929 and below it there is date 17.1.1933 and at the bottom of the certificate there are two lines written in ink mentioning the date 17.1.1933 which is neither signed nor initialled by any one. In this view of the matter, the settlement certificate Annexure A/1 which does not show correct the date of the appointment and in which there are two dates of birth mentioned cannot be relied at all to hold that the date of the birth of the applicant was 17.1.1933. The other document on which the applicant has put reliance is the letter Annexure A/2, dated 31st August, 1987 i.e. the date of his retirement. In this letter dated 31.8.1987, the applicant has mentioned that he was filling the settlement form under protest because according to him the date of retirement fixed as 31st August, 1987 was incorrect because the correct date of birth was 17.1.1933 as advised by the respondents office No.EL/N/164 dated 5.2.1987. He has mentioned in it that he was submitting a representation regarding his date of birth with necessary documentary evidence separately. The applicant has not produced the copy of the representation and any documentary evidence submitted by him. The third document produced at the time of filing the application was Annexure A/3 dated 25.2.1987 a letter from Loco Foreman to DRM (E) in which it is mentioned that in the office record there is birth date 17.1.1933 instead of 17.8.1929. Learned advocate for the respondents submitted that this was an inter departmental correspondence and the question of custody of this letter with the applicant would first arise and also about its genuineness. He submitted that the applicant has not mentioned in his application as to how he got this copy of the letter dated 25.2.1987 which purports to be an inter departmental correspondence. He, further, submitted that apart from the fact that this document does not come from proper custody and its correctness being challenged, the same could not be considered to form the basis to show that the birth date of

the applicant is 17.1.1933. According to the learned advocate for the respondents, the correspondence between one subordinate officer to another cannot form the basis about the contents of service record and certainly not about the date of birth which was contrary to the service sheet and other documents with the department. Thus, this document also cannot help the applicant. Next document is Annexure A/4 which is a form used when an employee is granted authority to present himself for medical examination during service. It bears the signatures of the applicant as well as the officer of the Loco Foreman and at the top of this certificate there is a hand written words "DCB 17.1.33". This medical memo dated 15.12.85 hardly can be said as evidence about birth date. It may be that the date in ink might have been written by applicant as he has also signed this memo. The next document Annexure A/5 is the loan application dated 19.3.1984 filled in by applicant showing the date of birth of 17.1.1933 and the date of appointment 25.10.1959. Date of appointment filled in by him is an incorrect date because even according to the applicant he was appointed in 1949 and not in 1959. No reliance could be put on a document which is filled in by the applicant and that too showing incorrect date of appointment. So far certificate Annexure A/6 is concerned, it's evidentiary value is discussed earlier that this is not primary evidence. The last document is Annexure A/7 dated 31st August, 1987 which shows the retirement date of the applicant on 31st August, 1987. Thus, none of the documents produced by the applicant to come with his application is such which can be relied upon to the conclusion that the date of the birth of the applicant was 17.1.1933.

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9. In this case the allegation of the applicant is that he was forcibly retired on 31st August, 1987 by respondents telling him that his date of birth was 17th August, 1929. The allegation of the applicant is that if the railway administration wants to alter his birth date in service record, it has no jurisdiction to do so under the rules and also without following the principles of natural justice and without giving him opportunity to be heard. Therefore, the main contention of the applicant is that the action of the railway administration in retiring him on 31st August, 1987 was contrary to the principles of natural justice and he was entitled to serve upto 31st January, 1992 on the basis of the date of his birth being 17.1.1933.

10. The respondents in the written statement have contended that the date of birth of the applicant was not 17.1.1933 but was 17.8.1929. It is also specifically contended in the written statement that as per the rules, the name of the applicant was shown along with his date of birth during year 1986-87 that the petitioner was to retire w.e.f. 31.8.1987.

11. The applicant filed rejoinder contending that his date of birth was 17.1.1933 and not 17.8.1929 and he has referred to the seniority list issued in the year 1979 produced by him along with rejoinder in which his name is shown at Sr.No.224 and the date of birth shown as 17.1.1933 and date of his appointment as 24.10.1949. Now this seniority list is challenged by the respondents by producing the seniority list of Ex.Saurashtra Railway dated on 4th November, 1951. This seniority list was produced by the learned advocate for the respondents at the time of hearing of this application to falsify the document of seniority list produced by the applicant with his rejoinder. The seniority list produced by the respondents shows the position as on

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4.11.1951 in which the name of the applicant appears at Sr.No.57 and it shows the birth date of the applicant as 17.8.1929 and the date of appointment as 24.10.1949. Another document produced by the respondents is a letter from the Divisional Office, Western Railway, Rajkot dated 23rd April, 1986 "Sub-Retirement - NG staff Mechanical and Electrical Deptts" along with the statement showing names of staff retiring in the year 1987 and in this statement applicant's date of birth as 17.8.1929 and the date of his retirement as 31st August, 1987 are mentioned and it also shows copies having been sent to various departments. Learned advocate for the respondents submitted that the vigilance proceeding is going on for inquiry in to the case of the service record of the applicant but we are not concerned with that inquiry.

11. Looking to the documents produced by the applicant in the application, there is no reliable document to impress us that his correct date of birth was 17.1.1933. It was only at the time of filing rejoinder that he produced the copy of the seniority list of 1979 showing his date of birth 17.1.1933. The respondents in the written statement ~~had~~ categorically mentioned that as per the rules, the name of the applicant was shown along with his date of birth during year 1986-87 also showing that the applicant was to retire w.e.f. 31st August, 1987. The learned advocate for the respondents challenged the seniority list of 1979 produced by the applicant with rejoinder and the respondents have produced the seniority list as existed in 1951 and also the documents showing the statement of the names of staff of Mechanical and Electrical Department who were to retire in the year 1987 showing date of birth and date of retirement which shows the applicant's date of birth as 17.8.1929 and date of retirement as 31.8.1987.

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12. The learned advocate for the applicant submitted that the respondent ought to have given an opportunity to the applicant to be heard before the change of date of birth was made by the respondents. In our opinion, this is not a case where the respondents have changed the date of birth. According to respondents, the date of birth of applicant was 17.8.1929 and accordingly he to retire on 31st August, 1987. The burden was on the applicant to establish by reliable evidence that his date of birth was 17.1.1933. The applicant in letter Annexure A/2 dated 31st August, 1987 has stated that he was submitting a representation regarding his date of birth along with documentary evidence separately. The applicant has not produced either a copy of that representation alongwith the documentary evidence of his date of birth submitted at that time nor he has produced the school leaving certificate or extract from birth and death Register maintained by local authority evidencing his date of birth. In the instant case, when the applicant himself had submitted a representation according to him regarding his date of birth there was no question of giving further opportunity to him showing his birth date. It cannot be said that no opportunity was given to the applicant to show his correct date of birth. The applicant even could have produced before us the copy of representation along with documentary evidence of the birth date which he says that he had produced. No reason is forthcoming to know why has he not produced it before us. Thus applicant has failed to show and estalish that his birth date was 17.1.1933 and the respondents have altered it.

13. The learned advocate for the applicant has relied on the decision in Sarjoo Prasad v. General Manager and another AIR 1981 SC page 1481 in which it is held that the date of birth without notice and without giving an opportunity to the concerned employee cannot be altered

to the disadvantage and prejudice of an employee because an administrative order which involves civil consequences must be made in conformity with the rule of natural justice which at its lowest minimum requires notice and opportunity to the person affected thereby. In the instant case, the applicant has failed to establish that respondents have altered his date of birth. At the cost of repetition we observe that if the applicant's birth date was on 17.1.1933 as pleaded by him and if he had produced the school leaving certificate showing the date of birth at the time of his appointment, he could have obtained the copy of the same from the school authorities which he has not done nor has he produced it before us. The certificate which the applicant has produced in this case is a certificate dated 28.6.1960 but as observed earlier, the same is not admissible in evidence because the said certificate is not the copy of entry from the Register maintained by the school. Moreover, the seniority list of 1979 produced by applicant cannot be relied on in view of the respondents having produced the seniority list as existed in 1951 and also the statement of the names of the staff retiring in the year 1987 which show the date of birth of the applicant being 17.8.1929 and there is no reason not to rely on these documents produced by respondents. In absence of reliable evidence produced by the applicant about his birth date, we are not able to accept plea of the applicant that his date of birth was 17.1.1933.

14. The age of Govt. servant as of any one else has to be counted with reference to the date on which the person was born. Any error in the service record as regards the date of birth cannot alter the date of birth and entry in any public or other official book, register or record stating a fact in issue or relevant fact made by a public servant in discharging of his official duty in a relevant fact in view of ~~Section~~ 35 of Indian

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Evidence Act. The learned advocate for the applicant put much reliance on the certificate of the school produced at Annexure A/6 but as observed earlier it is not a primary evidence and even the entry regarding the date of birth of the pupil is entry in the school register at the time of admission of the pupil on the basis of information furnished by the person who ^{that} accompanies the pupil. It may not be in all cases it is one of the parents who does so. Even this school certificate Annexure A/6 does not stand on par with the admission register as such and the entry made therein. Moreover, as averred by the applicant in his application if there was a school leaving certificate with him which he has produced at the time of his appointment there was no reason why he could not have produced the said school leaving certificate or copy of it before us to show his date of birth and what was the reason to produce the certificate at Annexure A/6 which is of the year 1960. Thus from the record, we are not satisfied that the applicant's date of birth is 17.1.1933 and we are not satisfied that his retirement on 31.8.1987 was contrary to the principles of natural justice or that it was illegal, invalid and inoperative or violative or Article 311 of the Constitution.

15. The result is that the application shall fail. The application is dismissed with no orders as to costs.

R.C.Bhatt

(R.C.Bhatt)
Judicial Member

M.M.Singh

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(M.M.Singh)
Administrative Member