

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(B)

O.A. No. 51 OF 1988.
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DATE OF DECISION 5.2.1988.

SHRI GUNVANTRAI JAYASHANKAR RAJYAGOR. Petitioner

M.M. X'AVIER Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

R.M. VIN 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. *Yes*

(6)

Shri Gunvantrai Jayashankar Rajyagor,
Manekwadi,
Bhavnagar.

(Advocate : M.M. X'avier)

..... Petitioner.

Versus.

1. The Union of India, through
The General Manager,
Western Railway, Churchgate,
Bombay.
2. Divisional Railway Manager,
Western Railway,
Bhavnagar Para.

..... Respondents.

(Advocate : R.M. Vin)

J U D G M E N T

O.A. NO. 51 OF 1987.

Date : 5.2.1988.

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

The petitioner Shri Gunvantrai Jayashankar Rajyagor of Bhavnagar, being aggrieved by the letter No. EB/949/VOL.III dated 28.10.86 (Annexure 'J') issued by the Respondent No.2 wherein his date of retirement was notified as 30.11.87, filed this application on 29.1.1987 under section 19 of the Administrative Tribunals Act, 1985. According to the petitioner, he was appointed as a Pharmacist on 1.3.1950 by erstwhile Saurashtra Railway and he was gradually promoted to the post of Senior Pharmacist in the grade in the pay scale of Rs. 550-750(R) since 1.1.84. It is alleged by the petitioner that his date of birth recorded as 8.11.29 in the Railway Record, is incorrect and he is therefore entitled to get the same rectified on the basis of the school leaving certificate which shows his date of birth as 7.12.1930 and hence he is entitled to continue in service until 31.12.1988. The petitioner has therefore prayed a relief of declaration to the effect that he is entitled to get his date of birth

rectified on the basis of the school leaving certificate and that the impugned order dated 28.10.86 showing the applicants' date of retirement as 30.11.1987 is illegal and that he is entitled to continue in service until he attains the age of 58 years on 31.12.1988. He has also prayed that the Respondents be directed to carry out necessary correction in his service record.

2. The Respondents-Railway Administration, have resisted the plaintiff's claim vide their reply dated 17.7.1987. According to them, the entry in the service sheet of the petitioner, the date of birth is recorded as 8.11.1929 at the time of his appointment in Ex-Saurashtra Railway and he had duly signed the service sheet in token of acceptance of his date of birth (X'erox copy of the service sheet is appended with the reply as Annexure 'A'). It was further submitted that the x'erox copy of the school leaving certificate dated 16.10.1972 with his application dated 10.5.1973, was considered by the competent authority and his claim was rejected, as he had signed the service sheet as a token of his acceptance of correctness and hence the notification has been correctly issued showing his date of retirement as 30.11.1987.

3. When the matter came up for hearing Mr. X'avier and Mr.R.M.Vin, the learned counsel for the petitioner and the Respondents respectively were heard. The documents referred to and relied upon by the parties and the written arguments of the petitioner are perused and considered.

4. The main grievance of the petitioner is that even though his correct date of birth is 7.12.1930, he is made to retire from the service from 30.11.1987. The sole reliance, in this regard, is placed on the school leaving certificate dated 16.10.72 (Annexure 'A') issued by the Principal, Alfred High School, Bhavnagar, managed by Bhavnagar Education Society; wherein his date of birth has been shown as 7.12.30. As against this, the Respondents have relied on the service sheet duly signed by the petitioner wherein his date of birth is shown as 8.11.29.

5. It is true, it is the fundamental right of a party to continue in service until he attains the age of superannuation. In case of a

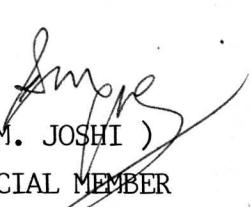
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Railway servant the procedure for entering the date of birth and the action for its correction, is provided in Rule 145 of the Indian Railway Establishment Code. In the matter of date of birth in the case of a Government servant, the one which is originally entered in the service record is very material. In the instant case, admittedly, the date of birth of the petitioner is recorded as 8.11.1929 which is duly signed by him in English and the same is duly attested by the Chief Medical Officer. The said service sheet has been prepared by the Saurashtra Railway when the petitioner was inducted as a Compounder. In the said service sheet, 21 is shown as age on his appointment. It seems, the petitioner for the first time made representation vide his letter dated 5.5.73 (Annexure 'C') and enclosed a true copy of the School Leaving Certificate indicating his date of birth as 7.12.30. It is stated in the application that on perusal of his service sheet he has found that his date of birth has been recorded as 8.11.1929. It is not stated in the application that it was recorded incorrectly or against his declaration. His representation was considered by the competent authority in the Headquarters and the decision taken in this regard was duly conveyed to the petitioner (see Annexure 'E' dated 30.11.73). It is further borne out from Annexure 'H' dated 2.8.77 and Annexure 'I' dated 18.8.79, that the petitioner continued to make his representation and the same were rejected in the year 1979. It is not understood, when an adverse decision was already communicated to the petitioner as back as in 1973, he preferred to file this application at the fag end of his retirement under the pretext that a letter dated 28.10.1986 Annexure 'J' has been issued by the Respondent No.2 showing the date of retirement of the applicant as 30.11.1987. In Nagarnath Lalla V/s. Union of India & Ors. (1987(3) S.L.R.681, C.A.T. Calcutta) it is held that when the application was filed for correcting the date of birth after receiving notice for retirement, the relief sought was too late and accordingly the relief was refused. Even apart from the fact that the application is belated, the School Leaving Certificate 'Annexure-A' relied upon by the petitioner was obtained by him in the year 1972, i.e., nearly 25 years after he had left the School which is managed by an Education

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Society. In M.Ashokan v/s. General & Ors. (1986(2) S.L.R. 532, C.A.T. Madras) it was held that date of birth, shown in the certificate is issued by a private school, can not be taken to be substantive evidence. Ordinarily, the date of birth entered in the service record on the basis of the declaration of the Government servant at the time of entry into service, it can not be changed unless it is shown that either it was falsely stated by the Railway Servant or that there was any clerical error which occurred in this regard (see Sami Ahmed V/s. Union of India & Ors. 1987(2) S.L.R. 160 C.A.T. Patna). Bearing in mind all the circumstances of this case it can not be said that decision taken by the competent authority as back as in 1973 suffers from any infirmity or illegality. The petitioner has failed to establish his claim and he is therefore not entitled to the reliefs as prayed for.

6. In the result, the application fails as it is devoid of merits whatsoever and the same is dismissed accordingly, with no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER

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