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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~XXXXXXXXXX~~

O.A. No. 639 OF 1987
~~XXXXXXXXXX~~

DATE OF DECISION 22.6.1989.

SHRI J.C. PANDYA

Petitioner

MR. J.J. YAGNIK

Advocate for the Petitioner(✓)

Versus

UNION OF INDIA & ORS.

Respondent s

MR. J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, 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? *-*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Shri J.C. Pandya,
14, Gayatri Colony,
Jawahar Chowk,
Maninagar,
Ahmedabad - 8.

..... Petitioner.

(Advocate: Mr. J.J.Yagnik)

Versus.

1. Union of India
(Notice of the petition to be
served through the Secretary,
Ministry of Communication,
New Delhi).

2. Shri D.S. Sakalkale,
Postmaster General,
Gujarat Circle,
Ahmedabad.

..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 639 OF 1987

Date: 22.6.1989

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

The petitioner, Shri J.C. Pandya (a retired employee), being aggrieved by the decision of the Post Master General, Gujarat Circle, Ahmedabad (dated 4.12.1987) has filed this application under section 19 of the Central Administrative Tribunals Act, 1985, on 10.12.1987. According to him, the respondent No.2 (P.M.G) has committed an error in rejecting his representation on the ground of it being belated and time barred, as it is absolutely contrary to the directions of the Tribunal in its decision (18.9.1987) in T.A.No. 213/87 (S.C.A.No. 2071/85). He has prayed for declaration to the effect that he is entitled to revision of his

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birth date from 31.7.1929 to 10.5.1930 with all consequential benefits accruing therefrom. He has also prayed that the order dated 4.2.1987 be quashed and set aside and the respondent No.2 be directed to confer upon him all the benefit on the basis of his birth date being 10.5.1930.

2. The respondents, in their counter, have denied the assertions and the allegations made by the petitioner. According to them, the petitioner has not produced any documentary evidence to show that his date of birth recorded in service book was incorrect or there was any clerical mistake or bonafide mistake. It was submitted that the certificate issued by the Mamlatdar, Visnagar dated 4.12.1974 and the School Leaving Certificate issued by the Headmaster of Lachhadi primary school can not be believed in view of the fact that the applicant's date of birth was entered into the service book at the time of entering into service and his representation in the year 1974 was rejected by the department on 9.1.1975 and thereafter he kept quite and accepted the said decision and thus the representation of the petitioner has been decided as per the rules on the subject prior to 15.12.1979.

3. When the matter came up for hearing Mr. J.J.Yagnik, the learned counsel for the petitioner was heard, however Mr. J.D. Ajmera, the learned counsel appearing for the respondents was permitted to file his written submission which he has filed on 3.4.1989 after serving a copy thereof to Mr. Yagnik.

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4. The main grievance of the petitioner is that the respondent No.2 has not considered his representation in terms of the direction given by the Tribunal. According to him, his claim has been rejected on technical ground of limitation and it has not been decided on merits.

5. Before adverting to the rival contentions raised by the parties, it will be pertinent to note that while remitting the matter to the respondent No.2, it was observed that in absence of either original or a copy of the order passed by the Post Master General containing the final decision taken by him, it will be reasonable ^{to} infer that the petitioner's request for correction of the date of birth is rejected on the ground of the Bar contained in Note-5 to F.R.56. Now, on perusal of the decision Annexure A-2 dated 4.12.87 of the respondent No.2, it is amply clear that he has not based his conclusion on the basis of Note-5 below F.R.56 as substituted by Notification No.19017/7/79-ESTT-A dated 30.11.79 published as S.O. 3997 in the Government of India gazette. Mr.J.C.Pandya had entered into service prior to 15.12.79. The respondent No.2 has carefully adverted to all the relevant provisions including the orders contained in D.G's circular No.4 dated 20th May, 1963, which applied in the case of the petitioner. The Respondent No.2 while rejecting the representation of the petitioner dated 12.3.1983, as time barred and held that as regard the merits of the case it does not deserve consideration in relaxation of time limit. In this regard, he has made the factual reference pertaining to the petitioner in para 3 of his

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decision, which is reproduced as under :-

Shri Pandya had entered service on 1.6.46 when he was first appointed as a Village Postman, Vadnagar. Later on he was confirmed as Peon to Superintendent of Post Offices, Ahmedabad on 1.3.1947. As per the entries on the first page of the Service Book of the official, his date of birth was recorded on 2.4.1949 by the then Superintendent of Post Offices, Ahmedabad, who filled in the first page of the Service Book as 31st July, 1929. The thumb and finger impressions of Shri Pandya were obtained on the first page of the Service Book on the same date i.e. 2.4.49. This entry was reattested on 28.8.54 and Shri Pandya has signed the first page of the Service Book on that date in token of having accepted the entry. In all subsequent service records of Shri Pandya like leave applications, seniority list and all other documents as and when occasion arose, he has given his date of birth as 31.7.29 only. His first recorded representation for the change in date of birth is dated 27th November, 1974 only on the eve of his reversion from the post of Wireless Licence Inspector, Navrangpura. This representation appears to have been made solely for avoiding reversion from the post of Wireless Licence Inspector, in which post he could not have continued beyond 31.7.74, as per the departmental rules, after attaining the age of 45 years. With this representation and his subsequent representation dated 15.12.74, he had produced the very same documents which he subsequently produced with his representation dated 12th March 1983. The official appears to have kept quiet from 1946 to 1947 and all along accepted his date of birth as 31.7.29 as recorded on the first page of Service Book. It is only when he was faced with reversion from the post of Wireless Licence Inspector that he appears to have represented for the change in date of birth in 1974 after 28 long years. His representations dated 27.11.74 and 10.12.1974 were also rejected earlier and the official had been informed of the decision vide letter No. Staff A/13-4/Misc dated 9.1.75. On the receipt of this decision also, the petitioner appears to have kept quiet till 12th March 1983 and then again represented when he was on the verge of superannuation.

6. It is borne out from the relevant provisions pertaining to the powers to be exercised in respect of the request from the Government servant for the alteration of the date of birth that it can be made only if it is established that a bonafide clerical mistake had been committed in recording the date of

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birth in the service book. The entry regarding the date of birth in the service book becomes final and is almost inviolate except in the special circumstances ^{wherein} ~~whether~~ it can be established that a bonafide clerical mistake had been committed.

7. In the case of the petitioner, his date of birth was recorded as 31st July, 1929 in his service book which was signed by him. Admittedly no objection was raised by him till 1974 when he was on the eve of his reversion from the post of Wireless Licence Inspector and perhaps in order to avoid reversion, after 28 long years in his services, he made representation on 27th November, 1974 wherein he claimed that his date of birth is 31.7.1929, relying on the certificate issued by the Mamlatdar, Visnagar and the School Leaving Certificate. It is significant to note that his representation made in this regard, was rejected and the decision taken was conveyed to him under letter dated 9.1.1975. Thereafter the petitioner acquiesced in the said decision and the entry of date of birth in service book which was recorded and signed by him was allowed to stand till the eve of his retirement and when the petitioner was on the verge of superannuation he again represented on 12th March 1983 claiming correction of the entry of date of birth in service record. The Respondent No.2, has recorded its finding that the circumstances in which the petitioner's date of birth was recorded as 31st July, 1929, do not indicate that it was a case of clerical mistake. Moreover the question of its being bonafide does not arise.

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8. The Respondent No.2 has passed a speaking order (Annexure A-2 dated 4.12.1987) in respect of the representation of the petitioner in compliance with the direction issued in the judgment in T.A.No. 213/87. Bearing in mind the facts discussed above and having regard to the rules governing the issue, it can not be said that the decision of the respondent No.2 suffers from any infirmity.(see Rasiklal Kishanlal Parekh V/s.Union of India & Ors. 1987(3)S.L.J. 174 C.A.T. and also D. Thiruvengadam V/s. Union of India & Ors.,1986(4) S.L.R. 371 C.A.T. Madras). Thus, the respondent No.2 does not seem to have committed any error in rejecting the petitioner's claim for alteration in the date of birth.

9. In the net result, the application fails and the same is accordingly dismissed. However, in the circumstances of the case there is no order as to cost of this litigation.



(P.M. JOSHI)
JUDICIAL MEMBER



(P.H. TRIVEDI)
VICE CHAIRMAN