

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 641 1987
~~T.A. No.~~

DATE OF DECISION 29/04/1988

Shri Nautamlal L. Trivedi Petitioner

Shri M.M. Xavier Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri 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 ? *No*
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*

Nautamlal Laljibhai Trivedi,
Plot No. 330, Bordi Gate,
Bhavnagar

.. Applicant

Versus

1. Union of India, through
General Manager, W.Rly.,
Churchgate,
Bombay - 400 020.
2. Divisional Railway Manager,
W.Rly., Bhavnagar Division,
Bhavnagar Para.

.. Respondents.

O.A./641/87

O R A L O R D E R

29/04/1988

Per : Hon'ble Mr. P.M. Joshi

.. Judicial Member

In this application, the petitioner Shri Nautamlal L. Trivedi of Bhavnagar, who was serving as Boiler Maker in the Western Railway, has challenged the validity of the order dt. 17.9.1987 passed by the D.R.M. (E), Bhavnagar/para which reads as under :

"To

LF BVP

Sub: Alteration in date of birth - NO Staff-Mech. Deptt. class III staff case of Shri Nautamlal L. B/maker HSR (1) Bvp.

Ref: his application dt. 22.1.1987 addressed to CM(E) CCC.

.....

In this connection, it is stated that in accordance with the Ministry of Rly. (Rly.Bd'-) letter No.E(NG)II-70/BR/1 dt. 4.3.72, those employees who were already in employment on 3.12.71 were given an opportunity to represent against recorded date of birth upto 31.7.73.

Shri Nautamlal L Boiler maker BER(I) BVP has failed to represent his case, in view of the above request of Shri Nautamlal L. cannot be accepted to and the date of birth as recorded in service sheet as 5.12.1929 should stand.

Advise party concerned accordingly.

For D.R.M. (E) BVP"

2. According to the case set up by the petitioner

5

his correct date of birth on the basis of his School Leaving Certificate, is 22.11.1930. It is alleged that his date of birth i.e. 5.12.1929 has been wrongly recorded in the service sheet and even though he made representation vide his letter dt. 22.1.1987 (A-2), the competent authority has not adverted to it and decided ^{the} claim made by him. It is stated that he was made to retire on 31.12.1987, illegally and unauthorisedly. He has therefore prayed that he is entitled to get the rectification in respect of his date of birth and the action of the respondent - railway administration in retiring him to earlier to 30.11.1988, is bad in law and he is entitled to continue in service till the said date i.e. the date of superannuation.

3. The respondent - railway administration has resisted the petitioner's claim on the ground that the petitioner himself has signed the service sheet wherein the date of birth i.e. 5.12.1929 has been recorded on the basis of his representation and he has also not made any representation when such opportunity was given to him in the year 1971 i.e. before the rule 145 was likely to be amended.

4. When the matter came up for hearing, we have heard Mr. M.M. Xavier and Mr. R.M. Vin learned counsel for the petitioner and respondents respectively and also perused the documents placed on record. At the outset it may be stated that in the matter of date of birth of Govt. servant, the one which is originally recorded in service sheet is very material. Moreover, two important positions ^{emerge} in such matters, namely (i) that there must be finality with regard to the date of birth given by the employee concerned and (ii) assumption is that a reasonable opportunity must

(6)

be given to the employee to have the date of birth corrected under the relevant rules. The rules regulating the requirement of recording the date of birth and the question of its alteration are covered under rule 145 of the Railway Establishment Code, which is reproduced as under :-

145. " 145. Date of birth - (1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior class III railway servant and witnessed by another railway servant.

(2) (a) When the year or year and month of birth are known but not the exact date, the 1st July, or 16th of that month, respectively, shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 1st January, 1938, and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1920.

(c) Where the person concerned is unable to state his age, it should be assessed by a Railway Medical Officer and the age so assessed entered in his record of service in the manner prescribed above, the railway servant being informed of the age so recorded and his confirmation obtained thereto.

(3) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a gazetted railway servant, and a General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered.

(i) Where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or

(ii) Where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(iii) Where a satisfactory explanation* which should

(X)

should ordinarily be submitted within a reasonable time after joining service of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the records amended.**

* which should not be entertained after completion of the probation period or three years' service whichever is earlier

** Under correction slip 303 RI after 1973.

5. The object of the aforesaid rule is aimed to see that there must be finality with regard to the date of birth and at the same time a reasonable opportunity is available to the employee concerned to have the date of birth corrected. In this regard, it is contended by Mr. Vin learned counsel for the respondent that the School Leaving Certificate Annexure A-1 was very much in possession of the petitioner since the year 1960, as it was obtained by him from the school authority on 26.2.1960. However, he has preferred to make a representation as late as in the year 1987 i.e. few months prior to his date of retirement. It is borne out from the impugned order that the representation made by the petitioner has been decided by the D.R.M. It is obvious from the said order that he has not adverted to the School Leaving Certificate relied upon by the petitioner in his representation. According to Mr. Xavier, learned counsel for the petitioner, the amendment which has been made in rule 145 referred to above, applies to the persons who are inducted after the year 1973. It is true, by virtue of the amendment, the period of raising such objection is limited to 3 years after the completion of the probation period. It was further submitted that the petitioner had made representation to the General Manager and he, being the competent authority to decide the same, the decision rendered by the Divisional Railway Manager is illegal and without jurisdiction.

④


6. Now, it is well settled that the authority competent to alter the date of birth is the Railway Board in the case of Gazetted Officer and the General Manager or his delegate C.P.O. in the case of non-gazetted railway servant. In *Magan Lagra Arjan v. Union of India & Ors.* (T.A. No. 41 of 86) (S.C.A. No. 504 of 80) while interpreting the aforesaid provisions (Rule 145), it has been held that the amendment namely "which should not be entertained after completion of the probation period or three years's service whichever is earlier" made in clause III of the said rule correction slip No. 303 RI after 1973, will not be applicable to the staff who was inducted prior to the said date. In the present case, the petitioner was appointed on 1.5.1950 as class IV as Khalasi and he is retired as Boiler maker with effect from 31.12.1987. Admittedly, the representation has been decided by the D.R.M. and he has not advert to the School Leaving Certificate relied upon by the petitioner. The impugned order therefore cannot be sustained as the competent authority in this regard is the General Manager or his delegate C.P.O.

7. In the result, the impugned order dt. 17.9.1987 is hereby quashed and set aside. It is further directed that the General Manager should take up for consideration the representation dt. 22.1.1987 on his file and advert to the documents relied upon by him, viz., School Leaving Certificate and other materials and decide the same within 4 months from the date of this order by a speaking order. The petitioner is permitted to make further representation, if any, in this regard within 2 weeks from the date of this order and on receipt thereof the aforesaid authority will decide the same in accordance with rule. It is further ordered that in case of the petitioner's plea for correction of birth date is

9

established, the competent authority will give effect to such corrected birth date of the petitioner by giving all consequential benefits on the basis thereof.

With these directions and observations, the application is disposed of. There will be however, no order as to costs. Registry to send a copy of this judgment to the General Manager, Western Railway, Bombay and retain the acknowledgement on the file.


(P M Joshi)
Judicial Member

*Mogera