

(B)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 6 OF 1987.
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DATE OF DECISION 29.7.1988.

SHRI SHAMJI JIWA Petitioner

MR. B.B. GOGIA Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

MR. B.R. KYADA 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 ?
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

(W)

Shri Shamji Jiwa,
Adult, Aged about 57 years,
Occupation: Retired,
Residing at Rajkot.

..... Petitioner.

(Advocate: Mr. B.B.Gogia)

Versus.

The Union of India,
Owning & Representing
Western Railway,
Through: General Manager,
Western Railway,
Churchgate, Bombay-20.

..... Respondents.

(Advocate: Mr.B.R.Kyada)

J U D G M E N T

O.A. No. 6 OF 1987.

Date: 29.7.1988.

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

In this application filed under section 19 of the Administrative Tribunals Act, 1985 on 6.1.1987, the petitioner Shri Shamji Jiwa of Rajkot has questioned the validity of the order passed by the C.P.O. and communicated by the Divisional Railway Manager under its letter dated 19.9.1985 (Annexure 'A') whereby his request for alteration of date of birth was rejected. The petitioner claims that his correct date of birth is 1.4.1929 and not 12.9.1927 wrongly recorded in his service sheet. It is alleged that the competent authority has failed to consider his School testimonial and as per the memo No. D/DHTL/HJ/26 of 26.11.1971 wherein his correct date of birth has been recorded. According to him, when there are two dates of birth of the employee in service record, one beneficial date of birth has to be accepted. He therefore prayed that the respondents-railway administration be directed to reinstate the petitioner to his original post with all consequential benefits of pay, salary etc. by correcting his date of birth.

2. The respondents-railway administration has resisted the petitioners' claim and denied the assertions and allegations made by the petitioner. According to them, the petitioners' date of birth was shown as 1.4.1929 in the Transfer Memo and in that regard Divisional Office under its letter dated 15.1.72 had advised the station master Bhaktinagar by pointing out that the date of birth as shown in the transfer memo was not correct and his correct date of birth was 12.9.27 and he has been accordingly rightly retired with effect from 30.9.85 on the basis of the service record. It was submitted that the petitioner was not entitled to the reliefs as prayed for.

3. When the matter came up for hearing Mr. B.B.Gogia and Mr. B.R.Kyada, the learned counsel appearing for the petitioner and the respondents respectively were heard. The rejoinder filed by the petitioner and the materials placed on record are perused and considered.

4. Relying on the cases viz; (1) T.P.Sukumaran V/s. District Superintendent of Police, Kozhikode (1971 L.L.J.(1) High Court of Kerala, p.345) & (2) R.Venkatachalam V/s. Personnel Officer, Southern Railway, (1970 L.L.J.(2) Madras High Court, p.625), it was contended inter-alia by Mr. B.B.Gogia that the impugned order, is not a speaking order and the points raised and the documents relied upon by the petitioner are not at all referred to or discussed by the competent authority while rejecting the petitioners request for rectification in the matter of his correct date of birth. Mr. B.R.Kyada reiterated the contentions raised by the respondents in their written statement and submitted that the petitioner was given every opportunity in the year 1972-73 to make representation to alter the date of birth and as such, his request at the fag end of his retirement can not be considered.

5. Before examining the points raised by the learned counsel for the parties, at the outset it may be stated that at the request of the petitioner, the respondents were directed to produce

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the service sheet pertaining to the petitioner within 2 weeks vide order dated 11.3.1988 passed in M.A.No. 201/88. In this regard, it was contended that the service sheet is not prepared or maintained as per the requirement of the rule. Mr.B.R.Kyada, the learned counsel appearing for the respondents was given adequate opportunities to produce the service sheet, however, he has failed to do so, with the result the directions issued by the Tribunal has not been carried out. Consequently, the Tribunal is constrained to draw adverse inference against the respondents.

6. Now the competent authority seems to have examined only the service sheet and rejected the petitioners' request and assigned the following reasons :-

- i) The recorded date of birth i.e. 12.9.1927 is very clear and eligible. There is no erasure or over-writing.
- ii) Shri Shamji Jiva has himself signed in the service sheet in token of having accepted the date of birth recorded therein.
- iii) The employee being literate did not represent for correction in date of birth recorded, in time i.e., upto 31.7.1973 as per the special exemption given by the Board.

7. It is now well established that when a Government servant makes a request for a change in his date of birth and adduces evidence for the purpose, the authorities are required to consider the request objectively and on merits. Admittedly, the competent authorities are free to consider such evidence in the light of the service record and other record in their possession. However, in the matter of such enquiry the authorities are required to advert to the point by raising the issue as to whether there are valid reasons to alter the date of birth recorded in the service sheet in light of the evidence adduced by the employee in support of his request.

8. On perusal of the Annexure 'A' dated 19.9.1985 it is borne out that the competent authority (C.P.O.) seems to have rejected the petitioners' request relying on the contents of the service sheet and on the main ground that the employee being literate did

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not represent for correction upto 31.7.73 as per the special exemption given by the Board. The competent authority has neither referred to the school testimonials and the transfer memo relied upon by the petitioner. It is rather surprising that the respondents railway administration in para 4 of the written statement made an attempt to explain the certificate relied upon by the petitioner stating that he does not show the name of the petitioner as the name referred therein is Shamjibhai Becharbhai. Now if this was the reason for rejecting the petitioners' request it was required of the competent authority to assign such reason but having not done so it can not be said that the competent authority has applied its mind and decided the petitioners' request by a speaking order.

9. It is now well settled that the determination of the question relating to the date of birth of an officer is not to be done arbitrarily, but only in a manner consonant with the basic concept of justice, one of the basic requirement of natural justice is that the order, although administrative in character, must be a speaking order and should state the reason in support of the conclusion mentioned therein. It is also necessary that the authority charged with the duty of taking a decision on the matter should give due consideration to the evidence brought before it. (see State of Orissa v/s. Dr. (Miss) Binapani Dei (A.I.R. 1967 S.C. 1269) and State of Assam v/s. Daksha Prasad Deka (1970) II S.C. W.R. 845.).

10. In Magan Lahra Arjan v/s. Union of India & Ors. (T.A.No.41/86) while interpreting the provisions contained in Rule 145 of the Railway Establishment Code, it has been held by this Tribunal that the amendment namely "which should not be entertained after completion of the probation period or three years service whichever is earlier" made in Clause III of the said rule (correction slip No. 303 R.I. after 1973) will not be applicable to the staff, who was inducted prior to the said date. Similar view was also taken by the Bench of this Tribunal in Shri Sikenderbeg S.Mirza v/s. Union of India (A.T.R.1987(2) C.A.T. (Short Note) page 212).

(S)

11. In light of the aforesaid discussion the impugned order rejecting the petitioner on the main ground that he had not represented for correction in time i.e., upto 31.7.1973, can not be sustained. Moreover the said order is equally defective inasmuch as the competent authority has not disposed of on the merits after due investigation of the truth or otherwise of the claim put forward by the petitioner.

12. In the result, the impugned order of C.P.O. communicated under Divisional Office letter dated 19.9.85, Annexure 'A' is hereby quashed and set aside. It is further directed that the General Manager or his delegate C.P.O. should re-examine and reconsider the petitioners' representation dated 15.5.85 addressed to the Divisional Railway Manager and advert to the documents relied upon by him namely the birth date certificate, transfer memo of S.M.Bhatel produced alongwith it and other materials and decide the same within 6 months from the date of this order by a speaking order. The petitioner, however with abundant caution, is permitted to file supplementary representation, in this regard within three weeks from the date of this order and on receipt thereof the aforesaid authority will decide the same in accordance with the rule and the regulation. It is further ordered that in case the petitioner's plea for correction of birth date is established the competent authority will give effect to such corrected birth date of the petitioner by giving all the consequential benefits on the basis thereof.

With these directions and observations the application is partly allowed and the same is disposed of to the extent stated above. 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