

Birth date (Jud)

25

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXX~~

O.A. No. 7 OF 1988 ~~XXXX~~
~~XXXXXX~~

DATE OF DECISION 18-4-1991

J.M. Pandya, Petitioner

Mr. N.R. Shahani, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. M.R. Raval for Mr. P.M. Raval, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. S. Santhana Krishnan, 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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

26

J.M. Pandya,
9, Bhaktinagar Society,
Vejalpur,
Opp: Vastrapur Station,
Ahmedabad - 380 051.

.... Applicant.

(Advocate: Mr.N.R. Shahani)

Versus.

1. Union of India,
(Notice to be served through
the Secretary, Ministry of
Labour), Shram Shakti Bhavan,
New Delhi.

2. Shri B.K. Bhattacharya, and/or
his successor-in-office,
Central Provident Fund Commissioner,
9th Floor, Mayur Bhavan,
Cannaught Circus,
New Delhi - 1.

.... Respondents.

(Advocate: Mr.M.R.Raval for
Mr. P.M. Raval)

J U D G M E N T

O.A.No. 7 OF 1988

Date: 18-4-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

In this original application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the relief of alteration of his date of birth 19.2.1930 appearing in his service record to 19.12.1930 appearing in his horoscope and record in some schools he went to and superannuation on the basis of the latter date. The applicant was made to superannuate on 29.2.1988 from the post of Regional Provident Fund Commissioner, Grade-I, Ahmedabad on the basis of the date of birth appearing in his service record. This date of birth figures in his matriculation certificate also. He

H N J

27

registered his application with this Tribunal on 4.1.1988, less than two months before due to superannuate. However, though he superannuated, no move to amend the application and reliefs accordingly was made. The three material reliefs have, with the applicant past the superannuation date even on the basis of 19.12.1930 as the date of his birth, become infructuous. We nevertheless heard counsel for both parties.

2. The applicant's propositions are that when his father, a school teacher, died, he came across his horoscope in his late father's papers in 1983. The horoscope contained 19-12-1930 as his date of birth. He therefore started inquiring with the authorities of the school he attended as a student to know how 19.12.1930 came to be mentioned as 19.2.1930 in the school records and certificates. He claims to have found that 19.2.1930 had figured in the first two schools he attended, one of them twice. After that, by clerical error 19.12.1930 came to be mentioned as 19.2.1930 in the records of other schools he studied in. Armed with the discovery, he made representations to authorities to persuade them to alter the date of his birth to 19.12.1930. However, order to superannuate him on the basis of 19.2.1930 as date of his birth came to be issued. The applicant's further proposition is that no rules or instructions come in the way of the alteration of the date of his birth after over 30 years of his entry into Government service when he made the first representation dated 15.10.1984 addressed to the Central Provident Fund Commissioner. The commissioner advised the applicant that the

n. n. 2

98

proper course for him would be to get the Matriculation/School Leaving Certificate amended which the applicant tried but failed. It is also the applicant's proposition that a Vigilance Officer had inquired into his representation for alteration of his date of birth and made a report which purported to support the applicant's representation.

3. The respondents have disputed the propositions above. To them, 19.2.1930 is the correct date of birth and 19.12.30 a mistake. Applicants School teacher father could not be presumed to commit a mistake about the applicant's date of birth which entered in service record from educational certificates. Their further contention is that the Vigilance report does not support the applicant's case and some school authorities now supporting 19.12.1930 as the date of birth do not say on what evidence they do so and evidence from register of births not produced. They further contend that if not 1979 rules about alteration of date of birth, the 1962 rules definitely apply to the applicant and the date of birth cannot be sought to be altered 30 years after the applicant's entry in service.

4. Though saying the obvious, the date of birth of a person is the date on which he was born which may or may not be different from the date of birth appearing in the educational and service records. The date of birth in the latter will be different if instead of the correct date of birth incorrect went into ~~the~~ records due to any design or negligence of those who informed the school or official authorities or, may be, due to negligence of the authorities in recording as is alleged in

M. H. J

29

this case. When such information has been varying as the evidence shows, absence of birth register evidence assumes significance. Evidence of 19.2.30 as also 19.12.30 have been affirmed by the applicant as also educational authorities. In that view, presumption the evidence on one side raises in this case is sought to be rebutted, not by any superior evidence but by similar evidence to rebut whereas presumption an evidence gives rise to should be allowed to be successfully rebuted only by evidence which at least has higher evidentiary value though it should preferably be irrefutable. No such evidence has been produced by the applicant as would also be seen from what follows.

5. The chance-discovered horoscope is the mainplank of the applicant's propositions. But closely inspected, it contains overwriting on the numeral between 9 and 0 where year of birth appears. Counsel Mr. Shahani tried to explain the overwriting away as inconsequential by submitting that the date and month are clear and even the respondents do not dispute 1930 as the year of birth. But, as observed earlier, the applicant has to prove his actual date of birth instead of pressing for acceptance from the two seemingly incorrect dates the one that would get him longer span of service. The date of preparation of the horoscope appears as 27.2.44, after about 14 years of the birth. Despite this the applicant's name does not appear in the body of the horoscope. Presuming the applicant chance-saw this horoscope after the death of his father, it does not conclusively establish that the horoscope

H. H. L.

30

is of the applicant and that it conclusively evidences that 19.12.30 is the correct date of birth. Besides, with 27.2.44 as the date of preparation of the horoscope, a date of birth came to be reported for school use earlier than that. The applicant had commenced schooling in the thirties.


6. Coming to the precedent relied upon for the applicant, no precedent laying down the ratio that presumption about a date of birth can be rebutted even though the evidence about the claimed date of birth is equally weak or unreliable has been shown to us. (Case law cited: (1) B.K. Suthar V/s. State of Gujarat and another (1983 G.L.R. 428), (ii) M.S.R. Prabhakar Rao & another V/s. Union of India and two others (ATR 1987(2) CAT 399), (iii) Hira Lal V/s. Union of India, (ATR 1987(1) CAT 414), (iv) Radhey Shyam Shukla V/s. Union of India, (1987(1) ATJ 81), (v) R.R. Yadav V/s. Union of India, (ATR 1987(2) CAT 506), (vi) R.R. Yadav V/s. Union of India & Ors. (1987) 4 ATC 337), (vii) Charles Wilson V/s. Union of India & Anr. (ATR 1987(1) CAT 103), and 1985 (2) LLN 454). The nature of evidence for the rival dates is equipollent giving rise to state of equipoise of evidence. In this situation, 19.2.1930 entry in the service record on the basis of Matriculation certificate cannot be rejected for 19.12.1930 claimed on the basis of a horoscope the weakness of which evidence we discussed earlier and the earlier School record which is inconclusive and points both ways as already discussed.


7. With our above conclusions, it is no more necessary to discuss whether 1962 or 1979 rules on alteration of date of birth apply to the applicant or, may be, none at all. For the same reason, it is not

H. H. J.

necessary to examine the contents of the Vigilance report.

8. Thus the application has no merits. We hereby dismiss it. There are no orders as to costs.


(S. Santhana Krishnan)
Judicial Member


(M. M. Singh)
Administrative Member

No.
Review-
Birth-date

32

CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.No. 27/91

in

O.A. No. 7/88

~~Excluded~~

DATE OF DECISION 26-9-1991.

Shri J.M. Pandya, Petitioner

Mr. N.R. Shahani, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. P.M. Rayal, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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
No
No
No

33

Shri J.M. Pandya

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

R.A. No. 27/91

IN

O.A. No. 7/88

Date: 26-9-1991.

Decision by circulation.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

1. This review application filed by the applicant dated 27.5.91 seeks review of our decision dated 18.4.91 in O.A.7/88. An affidavit has also been filed by the applicant.
2. The first part of the application says that the O.A. was rejected by order dated 18.4.91. This is not correct. The application was dismissed on merits.
3. In para 2 of the application the applicant has averred that "Some of the most significant contentions advanced by the applicant's advocate are not recorded and the facts on which these arguments were based are also not referred to. Strangely, the most important document and a favourable one to the applicant viz. the report of the Vigilance Director in the office of the Central Provident Fund Commissioner has not been referred to and examined closely for whatever evidentiary arrived at only on the basis of horoscope which was submitted as a sort of corroborating document in support of applicant's case that

M. M. Singh

..3..

34

19.12.1930 is the actual date of birth and not 19.2.1930 as claimed by the respondents." and that "It is submitted that the findings of this report are clearly in favour of the main contention of the applicant that this is a case of clerical mistake where digit 12 (December) has become 2 (February) by omission which was resulted in increase by 10 months in the age of the applicant. If corrected, this Clerical mistake will have 10 months more service to the applicant". Thereafter the "findings" of the report of Director of Vigilance have been reproduced in para 3 and para 4 continues further discussion of the contents and implications thereof of the report of the Director Vigilance. Para 5 of the application refers to the judgment in Hirralal's case and after observing that "This judgment deserves a full and close reading and the import of this ruling is not referred or analysed anywhere in the judgment of this Tribunal"., ends with the averments "The learned Tribunal has committed an error apparent on face of the record by referring only to the facts which were supportive in nature and by not referring to the main contention of the applicant which was having force".

4. Para 6 refers to the decision making a mention of birth register and observes that "However, it was not the contention of other side that birth registration was compulsory during 1930 when the petitioner was born. The petitioner was born in a small village Raigadh, district Sabarkantha (erstwhile Idar State). The reference to this register is, therefore, totally irrelegant and in so far as the Tribunal has been guided by this, the order requires to be reviewed and/or modified". A further observation of the applicant is that "The Tribunal has committed a gross

n a L

error by omitting to refer to the report of Shri Batra and appreciating the full significance of this report, in light of the observations of the Chairman of this Hon'ble Tribunal in Hiralal case (Supra)".


5. In para 7 the applicant as alleged that "Tribunal has also committed several other factual errors while appreciating the present of set of facts".

6. In para 8 referring to contents of our decision in para 1, the applicant has observed "It is, therefore, unthinkable that this petition could be treated as infructuous by this Hon'ble Tribunal. It is submitted that this Hon'ble Bench had started with wrong appreciation of the scope of the petition and therefore, also the present erroneous order has been passed, which deserves to be reviewed and modified".

7. The above appearing in the review application leave no iota of doubt in our mind that the applicant has tried to file an appeal application disguised as a review application especially when we are asked to go into comparative merits of evidence relied upon against evidence not relied upon in our judgment of which review is sought. The applicant has virtually rearqued the matter once over again and no error of law apparent on the face of the record has been brought out.

8. The application is therefore rejected.


(S. Santhana Krishnan)
Judicial Member


(M. M. Singh)
Administrative Member