

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 96 1988.
~~20/4/88~~

DATE OF DECISION 29/04/1988.

Abdulhamidkhan Misrikhan Petitioner

Mr. M.A. Kadri Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde 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

(6)

Abdulhamidkhan Misrikhan,
Electric Mail Driver,
Traction Foreman,
Ahmedabad Electrical Shed,
Near Ahmedabad Station,
Ahmedabad - 380 002.

.. Petitioner

Versus

1. Union of India, through
General Manager, W. Rly.,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
W. Rly., Baroda Division,
Pratapnagar,
Vadodara - 390 004.

.. Respondents.

O R A L - O R D E R

O.A./96/88

29.04.1988.

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

The petitioner, Shri Abdulhamid Misrikhan of Ahmedabad in this application filed under section 19 of the Administrative Tribunals Act, 1985, on 29.1.'88 has challenged the validity of the order dt. 27/31-8-87 passed by the D.M.E. (E) BRC which reads as under :-

"To

ATFR/ADI

Sub : Regarding representation of
Shri M.A. Kadri, Advocate of
Shri A.M. Khan Spl. A Grade
Driver.

.....

In reference to your advocate's notice dt. 31.7.1987 it advised that the date of birth is recorded in service sheet is 18.4.1930 correct as the same is assessed by the medical authority and you have also agreed with the same and for that you have given a declaration in support of that. Further, it is stated that you are a literate staff and studied upto IInd standard in English, hence the question of alteration of the date of birth does not arise.

D.M.E. (E) BRC."

(4)

2. According to the case set up by the petitioner, his correct date of birth on the basis of the School Leaving Certificate is 22.7.1932. It is alleged that his date of birth i.e. 18.4.1930 has been wrongly recorded in the service sheet and even though he had made several efforts and representations since the year 1964 for the correction of his date of birth in the railway record, the same has not been considered by the competent authority. It is stated that the respondents are likely to retire him from the service from 30th April, 1988 which is unjust, improper and illegal. He has therefore, prayed that he is entitled to get rectification in respect of his date of birth and the action of the respondent - railway administration in retiring him earlier deserves to be quashed.

3. The respondent - railway administration has resisted the petitioner's claim on the ground that he himself has signed the service sheet wherein the date of birth i.e., 18.4.1930 has been recorded on the basis of his representation and he himself has signed the service sheet in token of his acceptance of the date of birth furnished by him. According to them, the petitioner has 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. It was therefore submitted that the petitioner is not entitled to the relief as prayed for.

4. When the matter came up for hearing, we have heard Mr. M.A. Kadri and Mr. N.S. Shevde, the learned counsel for the petitioner and respondents respectively. 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 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 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 exact date, the 1st July of 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 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

9

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 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 ^{at} and 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. N.S. Shevde, learned counsel for the respondent that the petitioner has not produced a copy of the School Leaving Certificate or Birth Certificate before 31.7.1987, although he was in possession of the same prior to 1987. According to him, the applicant's notice dt. 31.7.1987 has been replied by the respondent No.2 on 31.8.1987 and his claim has been rightly rejected. He has also denied the genuineness of the certificate relied upon by the petitioner. 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 made through his advocate under the said notice. According to Mr. Kadri, 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 amendment, the period of raising such objection is limited to 3 years after completion of 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 D.R.M. is illegal and without jurisdiction.


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 Officers and the General Manager or his delegate C.P.O., in the case of non-gazetted railway servant. In *Magan Lagra 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 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. In the present case, the petitioner was appointed on 19.4.1949 as Cleaner and he is made to retire as "Electrical Driver Special A Grade" under Traction Foreman at Ahmedabad with effect from 30th April, 1988. The representation has been decided by the D.R.M. and he has not adverted to the School Leaving Certificate relied upon by the petitioner the impugned order cannot be sustained as the competent authority in this regard is General Manager or his delegate C.P.O.

7. In the result, the impugned order dt. 31.8.1987 is hereby quashed and set aside. It is further directed that the General Manager should take up for consideration the representation dated 31.7.1987 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

11

this order and on receipt thereof the aforesaid authority will decide the same in accordance with rule. 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 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