

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~NEWWDXDX~~O.A. No. 511
~~Case No.~~

1988

DATE OF DECISION 27.9.1991Shri Ibrahim N. Shaikh PetitionerPetitioner in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentShri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohammed : Member (A)

The Hon'ble Mr. S. Santhana Krishnan : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal? N

Shri Ibrahim N. Shaikh,
C/O. M.A. Kadri, Advocate,
Kochrab,
Kagdiwad,
Masjid House,
AHMEDABAD -380 006.

: APPLICANT

(Petitioner in Person)

VS.

1. The Union of India, through
The General Manager,
Head Quarter Office,
Western Railway,
Churchgate,
BOMBAY.
2. The Divisional Railway Manager,
Vadodara Division,
Western Railway,
Pratapnagar,
VADODARA-390 004
3. The Senior Accounts Officer,
Vadodara Division,
Western Railway,
Pratapnagar,
VADODARA-390 004.
4. Traction Foreman,
Electric Shed,
Ahmedabad ~~Shed~~, Station,
AHMEDABAD-380 002.

: RESPONDENTS

(Advocate : Shri N.S. Shevde)

J U D G E M E N T

O.A. No.511 of 1988

Date : 27-9-81

Per : Hon'ble Shri S. Santhana Krishnan : Member (J)

The applicant has come forward with this application under Section 19 of the Administrative Tribunals Act, 1985, requiring the court to order retirement benefits as per his assumed date of retirement as on 30.6.1987.

2. In the application it is alleged that the applicant worked under the respondents upto 30.6.1987 in view of the interim order granted in his favour by the City Civil Court. According to him his pensionary benefits will have to be

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worked out taking into consideration his service upto 30.6.1987.

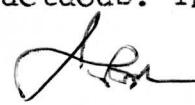
3. The respondents filed their reply refuting the allegations made by the applicant in this application. The applicant has not chosen to file any rejoinder.

4. We heard the applicant in person and Shri N.S. Shevde, counsel for the respondents. Records are also perused.

5. The facts that are necessary to decide the matter in this dispute are, that the applicant was working under the respondents and that as per his service record, his date of birth is 14.2.1926. Hence his retirement date is 29.2.1984. The applicant filed ^aCivil Suit No.250/84 before the City Civil Court, Ahmedabad, for change of his date of birth. He got an interim injunction in his favour. Annexure A-1 is the copy of the order. It states as follows :-

"The defendant is restrained from retiring the plaintiff from service till the disposal of the suit or till the end of June 1987, which occurs earlier. The suit if ordered to be expedited."

Therefore, after formation of the Central Administrative Tribunal, the above suit was transferred before this Tribunal. When the application came before this Tribunal on 4.9.1987, an order was passed to the effect that the suit becomes infructuous as his alleged date of retirement viz., 30.6.1987 had passed by this time. Annexure A-2 of the order shows that the plaintiff claimed relief of declaration to the effect that the date of birth shown in the Railway Record is wrong and sought further declaration that his correct date of birth is 29.6.1929 instead of 14.2.1926. When the matter came before the Tribunal for final disposal, the applicant did not press for his relief but allowed the suit to be dismissed as infructuous. This order has become final.



6. The applicant now claims that he had worked upto 30.6.1987 in persuance to the interim order of stay ^{and} ~~the~~ period upto 30.6.1987 should be counted for his pensionary benefits.

7. On the other hand the respondents contend in their reply that the date of birth of the applicant in his service register still stands as 14.2.1926. They have also produced the applicant's service sheet and personal file in view of the Tribunals order dated 3.7.1991. They further contend that when the applicant was in service an opportunity was given to him for making representation regarding his date of birth. The applicant made such representation in the year 1971., but he ^{to state} was asked ~~the~~ circumstances under which he had given his date of birth as 14.2.1926 in his service sheet. He has not chosen to give the information. Though the applicant claims that he had applied on 28.7.1973 through his superiors and submitted his School Leaving Certificate alongwith the application, the same is specifically denied by the respondents in their counter. The applicant neither produced the copy of the application nor any other record to show that it was served on the respondents. Hence no reliance can be placed on the same. According to the respondents the applicant's service from 1.3.1984 to 30.6.1987 cannot be treated ^{for} ~~as~~ qualifying service ^{this} ~~and~~ cannot be counted for the purpose of retirement benefits. The other contention that they have paid all the benefits to the applicant treating his retirement date as 29.2.1984, is not disputed by the applicant by filing any rejoinder.

8. Hence the only question that will have to be considered is whether the applicant's service from 1.3.1984 ~~for~~ to 30.6.1987 to be treated as qualifying in service for the purpose of retirement benefits? On this aspect, the applicant places reliance on the judgement of this Tribunal in T.A. No. 1274 of 1986 on 20.7.1987. Perusal of the facts of this case shows that the applicant was ordered to be retired from service with

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effect from 30.4.1980 and the same was challenged. There is nothing to show that the applicant wanted to correct his date of birth. When the application was pending it was urged before the Tribunal that as he had worked upto 31.3.1983, This should be taken into consideration for his retirement benefit and the Tribunal considered the same. and allowed the application. As already stated when T.A. 149 of 1987 came before this Tribunal for consideration, the present applicant ought to have urged the same and he failed to do so. He allowed his suit to be dismissed as it becomes infructuous. Hence this decision is not of any help to him. Reliance was also placed on the decision in SCA 1336 of 1975 dated 12.10.1986. In this case the question is not regarding date of birth, but the dispute is whether the applicant is entitled to serve upto the age of 58 years or 60 years. So also the decision relied on by the applicant and reported in 1982 GIR p. 1336 (Bachu Laxman Vs. Union of India & Ors.) is also of not any help to him as the question in this case was whether the applicant is entitled to serve upto 60 years or 58 years. Again the decision relied upon by the applicant in O.A. No. 70 of 1990, of this Tribunal dated 14.2.1991, is also not of any help, as the Tribunal only considered the fact of the certificate issued about the validity by the Labour Court.

9. On the other hand the learned counsel for the respondents placed reliance on the judgement of this Tribunal in O.A. No. 269 of 1988 dated 8.4.1991, which directly applies to the facts of this case. In this case the applicant moved the court for alteration of his date of birth and the court stayed the applicant's retirement from 1.7.1985 . Even before the case could be decided, the applicant reached his super-annuation on 1.7.1987 and therefore the Tribunal dismissed the application as infructuous, as the applicant had reached the age of 1.7.1987 in service. The applicant thereafter prayed

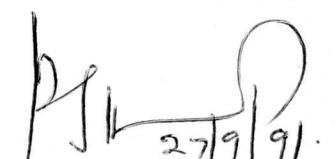


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through this petition that the respondents should be directed to give retirement benefits according to the retirement age as on 1.7.1987. The Tribunal pointed out that "as the application came to be dismissed, that the service between the two dates of retirement cannot be construed as valid for computing his qualifying service for retirement. The extra period of two years became fortuitous for calculation of retiral benefits." This directly applies to the facts of our case.

10. As per the ~~dates of birth~~ in service record the date of birth of the applicant is 14.2.1926. This has remained unaltered. Hence his date of retirement is 29.2.1984. The applicant worked upto 30.6.1987 in view of the interim injunction granted by the City Civil Court. This cannot be construed as valid for computing his qualifying service for retirement. In view of the above ~~decision~~ the application is without any merit and as such it is dismissed. We however make no orders as to costs.


(S. SANTHANA KRISHNAN)
Member (J)


27/9/91
(P.S. HABEEB MOHAMMED)
Member (J)

*Ani.