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 (Bisht Date)
 Dated Petitioned

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH

O.A. No. 552 OF 1988.
 TAxXXX

DATE OF DECISION 27-9-1991.

Shri Hiralal Manilal Shah, Petitioner

Mr. B.K. Damani, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. R.M. Vin, 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? JL

2. To be referred to the Reporter or not? JK

3. Whether their Lordships wish to see the fair copy of the Judgement? MJ

4. Whether it needs to be circulated to other Benches of the Tribunal? NB

Shri Hiralal Manilal Shah,
Senior Clerk,
Railway Hospital
Bhavnagar Para.
(Advocate: Mr. B.K.Damani)

..... Applicant.

Versus.

1. The General Manager,
Western Railway,
Headquarter Office
Churchgate, Bombay.

2. Shri Venkataraman and/or his
successor-in-office,
Divisional Railway Manager,
Western Railway, Bhavnagar Para.

3. Shri K.L. Chawdhary, and/or his
Successor-in-office,
Divisional Medical Officer-
in-charge, Western Railway,
Bhavnagar Para.

..... Respondents.

(Advocate : Mr. R.M. Vin)

J U D G M E N T

O.A.No. 552 OF 1986

Date: 27-9-1991.

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

Ahmedabad Bench O.A.No. 224/86 was a precursor to the present O.A. That OA was disposed of by a decision on merits on 16.4.87. In the judgment of OA 224/86, three dates of birth of the applicant were before the Tribunal for decision, namely, a date 10.7.28 figuring in the service record, a date 17.9.29 figuring in School certificate which the applicant pressed into use after his date of retirement on the basis of date of birth 10.7.28 was announced though the certificate is dated 21.4.81 and date 28.10.1928 which the applicant himself came to mention in his retirement papers and other financial entitlement papers. After hearing the parties, at the end of a reasoned judgment, the Tribunal ordered :

H. M. [Signature]

"13. Accordingly we allow the petition to the extent of (a) directing the applicant to submit a detailed representation to the respondents for the correction of his date of birth within a month of the receipt of this order and (b) directing the respondents to consider the representation on merits after giving full opportunity to the applicant and dispose of the representation within two months of its receipt. The applicant's continuance or otherwise in service beyond 31/7/1986 with consequential benefits will depend upon the decision taken by the respondents on his representation. The applicant will be at liberty to move the appropriate legal forum if he feels aggrieved by the decision taken on his representation. The application is disposed of on these lines."

Accordingly the applicant submitted his representation which was disposed of decision dated 11.7.88 of DRM's office which is reproduced below :

"Your representation for alteration of your date of birth has been examined and you are advised that change of Date of birth can not be accepted in view of Railways Board's instruction conveyed vide letter No.E(MG)II 70/BR/7 of 4/8/1972, circulated under this office letter No.EP/283/0 dt. 6/9/72.

Moreover, as per record there are 3 different dates of births claimed by you. Thus the one available in S/Sheet and reflected in staff register treated as final."

In the present petition new aspects that did not come up for consideration for the order above consist of the decision above and another school certificate of the applicant which shows 19.10.27 as his date of birth. This certificate is dated 10.6.87 issued by A.G. Prathamic Shala, Junagadh in the printed form prescribed in Rule 17 of the Grants-in-Aid Code. The school certificate the applicant relies upon for relief is dated 21.4.81 issued by Principal, Swamy H. H. *[Signature]*

Vivekanand Vinay Mandir, Junagadh.

2. Thus the authorities have before them now four dates of birth of the applicant. The first in point of time of its birth counted from the knowledge to authorities is 10.7.28 figuring in the service record since nineteenfifties. The service record is attested by the applicant by his signature, he being educated having studied upto VIIth English Standard as seen from A.G. Primary School Certificate. The second is date of birth 28.10.28 which the applicant had himself been mentioning in his papers. The third is 17.9.29 figuring in the Swamy Vivekanand Vinay Mandir Junagadh certificate dated 28.1.81 produced by the applicant for change of date of birth after his retirement date was announced in 1986. The fourth is 19.10.27 figuring in School certificate of A.G. Primary School, Junagadh, certificate dated 10.6.1987. The former school certificate is of date of birth only and give no other details. The latter is in the prescribed form under the rules and gives details of applicant's education and reason for leaving the school, namely that the applicant passed 7th standard and there being no VIIIth standard in the school, the applicant left.

3. There is no clinching evidence of certificate from birth and death register. In the above four dates of birth, the one mentioned in the A.G. Primary School certificate is the most reliable firstly because the secondly because certificate is in the prescribed form and details of examination passed and reason for leaving the school also shown in it.

4. Applicant's contention in his rejoinder against the A.G. Primary School Certificate is :

"The applicant states that in relation to the birth

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date of the applicant the respondent No.3 had also made necessary inquiries from Swami Vivekanand Vinay Mandir, Junagadh regarding the correct birth date of the applicant to be 17.09.1929, after the application of the applicant. Once the inquiry relating to the birth date is made by the department and when there is a satisfactory report by the headmaster, there is no reason to inquiry into the same in the primary school. The same entry in the Primary School, cannot be taken as conclusive evidence of the age of the applicant, without given him any opportunity to explanation."

5. We have heard the learned counsel for both parties and perused the record.

6. The contention of the applicant in the rejoinder is most unworthy of acceptance. On the contrary, on the record, he becomes liable to explain why, as a public servant, he concealed the fact of the study in the A.G. Primary Teachers School upto VIIth standard all along and when the respondents found that out, the applicant blames the respondents. This should be highly exceptionable conduct for a public servant. With appreciation of material on record as we have done here, no precedent is of help to the applicant. We find the respondents' reply to the applicant's representation reasonable, unexceptionable and correct in the background of the record.

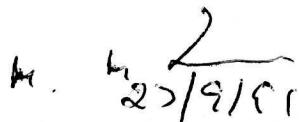
7. Calculated from the date of birth 19.10.27 recorded in A.G. Primary School Certificate, the applicant became due for superannuation at the age of 58 years at the end of October 1985. By his date of birth 10.7.28 recorded in the service book, he retired at the end of July 1986 and got the unfair advantage of longer service.

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8. With the above crystal clear picture in the record the application deserves to be dismissed with order of costs against the applicant. However, as the applicant has already retired from service, we dismiss the application without ordering costs against him.



(S. Santhana Krishnan)
Judicial Member



M. M. Singh
Administrative Member

25/9/81