

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

2

O.A. No. /453/89
T.A. No.

DATE OF DECISION 22nd July, 1993

Kishanlal Kunjbihari Machi Petitioner

Mr. B. B. Shah Advocate for the Petitioner(s)

Versus

Union of India & others. Respondent

Mr. B. R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R. C. Bhatt, : Judicial Member

The Hon'ble Mr. M. R. Kolhatkar : Administrative 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 ? ✗

Kishanlal Kunjbihari Machi,
H-S-2, Mechinist, Locasteamset,
Sabarmati,
Ahmedabad

.....APPLICANT

Advocate Mr.B.B.Shah

versus

Union of India through

1. General Manager,
Western Railway,
Churchgate,
Bombay.
2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Rajkot.

...RESPONDENTS

Advocate Mr.B.R.Kyada.

ORAL JUDGEMENT

O.A./453/89

Date : 22/7/1993

Per : Hon'ble Shri R.C.Bhatt, Judicial Member.

None is present for the applicant. Mr.B.R.Kyada,
learned advocate for the respondents, is present. Hence,
the application is dismissed for default. No order as to
costs.

M.R. Kolhatkar
(M.R.Kolhatkar)
Administrative Member

R.C. Bhatt
(R.C.Bhatt)
Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Application No. CA/453/84. of 199

Transrer Application No. _____ Old writ Pet. No.

C E R T I F I C A T E

Certified that no further action is required to be taken
and the case is ift for consignment to the Record Room (Decided).

Dated : 22/07/93.

Countersigned :

22/07/93
Section Officer/Court Officer

280.
Sign. of the Dealing Assistant

I N D E X
I N D E X

<u>Sr.</u> <u>No.</u>	<u>Particulars.</u>	<u>Page No.</u>
--------------------------	---------------------	-----------------

P A R T - I

(Applicant's Pages.)

- | | | |
|----|---|---------|
| 1. | Petitioner/Applicant's application. | P. 1-4 |
| 2. | Document filed by Petitioner/
Applicant. | P. 5-13 |
| 3. | Rejoinder. | P. |
| 4. | Additional Document filed by
Petitioner. | P. |

P A R T - II

(Respondent's Pages.)

- | | | |
|----|--------------------------------|----------|
| 1. | Reply. | P. 14-17 |
| 2. | Documents filed by Respondent. | P. 18-21 |
| 3. | Affidavit in reply. | P. |

P A R T - III (Proceedings)

- | | | |
|----|----------------|----|
| 1. | Order dt. | P. |
|----|----------------|----|

P A R T - IV (Miscellaneous)

O. Application No. 453/89.

1. Date of Registration : 19/10/89
2. Date of letter by which transferred (if transferred from other Court) :
3. Date of Impugned Order : 8.25.01.89
4. Date of Order regarding admission : 19.01.90
5. Whether Interim Relief granted? If yes, date of Order granting I.R. : NO
6. Whether reply filed? : Yes
7. Whether rejoinder is filed? :
8. Whether Duplicate Set filed? (In case of matter of Division Bench) : Yes
9. Whether any Miscellaneous Application pending? : NO
10. Whether to be heard by Single Judge or Division Bench? : S-J
11. Is paging done properly? : Yes
12. Details of Vakalatnama. :

<u>Party</u>	<u>Name of Adv.</u>	<u>Date of V.P.</u>
Applicant	Mr. B. B. Shah	19.10.89

Resp.	Mr. B. R. Kyada	V.P. - Not filed
-------	-----------------	------------------

13. Whether compliance of any order of Hon'ble Tribunal (Including orders in M.A. if filed) is pending? If yes, give details :
14. Whether there are respondents in private or individual capacity? : NO
15. Details of service of notices :

<u>PARTY</u>	<u>FIRST NOTICE</u>	<u>NOTICE OF F/H</u>
Resp 1	06.11.89	
Resp 2	20.11.89	

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

Submitted;

C.A.T./Judicial Section.

Original Petition No.: 453 of 89

Miscellaneous Petition No.: - of -

Shri K K Machi Petitioner(s).

Versus.

Union of India &c Respondent(s).

This application has been submitted to the Tribunal by
Shri B B Shukla under Section 19 of
The Administrative Tribunal Act, 1985. It has been scrutinised
with reference to the points mentioned in the check list in
the light of the provisions contained in the Administrative
Tribunals Act, 1985 and Central Administrative Tribunals
(Procedure) Rules, 1985.

The application has been found in order and may be
given to concerned for fixation of date.

The application is not been found in order for the
same reasons indicated in the check list. The applicant
may be advised to rectify the same within 21 days/Draft
letter is placed below for signature.

2
19/10
Asst
to
Secy

*He may put up for admission
on 23/10/89 as per order
dismissing on urgent note.*

Office 19/10/89

[Signature]
19/10/89

*K B Sane
19/10/89*

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

APPLICANT(S) ... K... K... Machi.....

RESPONDENT(S) ... Union... of... India... etc.....

Particulars to be examined Endorsement as to
result of examination.

- | | |
|---|--------------------|
| 1. Is the application Competent? | Y |
| 2. (a) Is the application in the prescribed form? | Y |
| (b) Is the application in paper book form? | Y |
| (c) Have prescribed number complete sets of the application been filed? | Y |
| 3. Is the application in time?
If not, by how many days is it beyond time? | Y |
| His sufficient cause for not making the application in time, stated? | — |
| 4. Has the documents of authorisation/ Vakalatnama been filed? | Y |
| 5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D./I.P.O. to be recorded. | DD 775585
5 |
| 6. Has the copy/copies of the order(s) against which the application is made, been filed? | Yes (Annex A, P 5) |
| 7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed? | Y |
| (b) Have the documents referred to in (a) above duly attested and numbered accordingly? | Y |
| (c) Are the documents referred to in (a) above neatly typed in double space? | Y |
| 8. Has the index of documents been filed and has the paging been properly? | Y |

Particulars to be examined.	Endorsement as to result of examination.
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application?	y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal?	y
11. Are the application/duplicate copy/spare copies signed?	y
12. Are extra copies of the application with annexures filed.	y
(a) Identical with the original.	
(b) Defective.	
(c) Wanting in Annexures	
No...../Page Nos.....?	
(d) Distinctly Typed?	
13. Have full size envelopes bearing full address of the Respondents been filed?	y
14. Are the given addresses, the registered addresses?	y
15. Do the names of the parties stated in the copies, tally with those indicated in the application?	y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true?	y
17. Are the facts for the cases mentioned under item No.6 of the application.	y
(a) Concise?	
(b) Under Distinct heads?	
(c) Numbered consecutively?	
(d) Typed in double space on one side of the paper?	
18. Have the particulars for interim order prayed for, stated with reasons?	y

checked.
APL
19/10/8

To

The Registrar,

FORM II

(See Rule 4()

Receipt Slip

Receipt of the application filed in the Central Administrative Tribunal Ahmedabad Bench by Shri Kishanlal Kunjbihari Machi working as Machinist in the Department of Western Railway residing at Sabarmati Ahmedabad is hereby acknowledged.

Place : Ahmedabad

Dt. 16-10-89.

For Registrar
Central Administrative Tribunal
Ahmedabad Bench.

CAT To
The Registrar,
~~High Court of Gujarat,~~
Ahmedabad.

Sir,

Sri. Kishanlal K. Machi V/s W.R.

Sub: O.A Appl. No. 453 /89

& others

Be pleased to direct the office to place the matter abovementioned before the Court for admission on to-morrow's board as I want to obtain stay/bail/injunction. I personally undertake to remove all office objections and pay deficit Court fee if any.

Ahmedabad

Dt: 19/10/89

Yours faithfully,

M. M. Shah

Advocate for the petitioners

Note

Affidavit verification

may be kept a 23/10/89 as per rules

19/10/89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH.

O.A. APPLICATION NO. /1989.

APPLICANT :- KISHANLAL KUNJBIHARI MACHI.

H-S-2, Machinist, Locosteamset,
Sabarmati, Ahmedabad.

V/S.

RESPONDENT :- Union Of India through,

(1) General Manager,

Western Railway,

Charch Gate, Bombay.

(2) Divisional Railway Manager,

Western Railway,

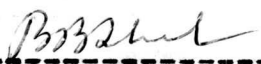
Rajkot Division, Rajkot.

I N D E X.

Sr.No.	Annexures.	Particulars.	Page.No.
1.	2.	3.	4.
1.		Memorandum of Application.	1 to 4.
2.		Vakalatnama.	-----
3.	A-1.	Order dt.25-1-89.	5.
4.	A-2.	Letter dt.31-8-88.	6.
5.	A-3.	Letter dt.14-10-88.	7.
6.	A-4.	Letter dt.24-4-89.	8 to 9.
7.	A-5.	Letter dt.2-5-89.	10.
8.	A-6.	Horoscope.	11 to 12.
9.	A-7.	Affidavit.	13.

Ahmedabad.

Dt.19/10/1989.



Signature of the Applicant's
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

AHMEDABAD BENCH. *CA. App/No 653/89*

APPLICANT :- KISHANLAL KUNJBIHARI MACHI,
H-S-2, Mechinist, Locasteamset,
Sabarmati, Ahmedabad.

V/S.

Union of India, through
RESPONDENTS :- (1) General Manager,
Western Railway,
Charch Gate, Bombay.
(2) Divisional Railway Manager,
Western Railway,
Rajkot Division,
Rajkot.

DETAILS OF APPLICATION :-

1) Particulars of the order against which the application is made :
Order passed by D.R.M.(E), Rajkot, W.R. vide memorandum No. EL(K),
128, dated 25-1-89. A copy of order is attached herewith and
marked as Ann. "A-3"

2) JURISDICTION OF THE TRIBUNAL :-

The applicant is resident of Ahmedabad and serving at A'bad.
The Divisional Office of the Respondents situated at Rajkot.
The order dt. 25-1-89 was passed within the territory of Gujarat
State. Hence, the applicant declares that the subject ~~the~~ mater
of the order against which he wants redressal is within the
Jurisdiction of the Tribunal.

3) Limitation :-

Final order of retirement w,e,f. dt. 31-10-1989. was passed
on 25-1-89. F and Asstt. Comm. of Labour (Central), Ahmedabad has
replied on 2-5-89. Therefore, the applicant declares that the
application is within the limitation period prescribed in Section
21 of the Administrative Tribunal Act, 1985.

4) Facts of the Case :-

(a) The applicant has joined services of Western Railway on
24-10-55 as H.S.I.LF-SBI-(N.G. Staff-Mech-Dept.) At present the
applicant is designated as skilled Machinist Grade-I and posted at Loc
Locoshed-Sabarmati, Ahmedabad.(W.R.).

(b) It is the say of the applicant that his native place is
village-Ahhen (अहहन), Taluque: Hathrash (हथराश), Dist : Alli-
gadh (अलिगढ), State: Uttarpradesh. He is an illiterate manual
worker. He has lost his father and mother (parents) in his early
childhood. The ~~father~~ applicant is underliterate and had left
school during his primary education of 4th Std. Therefore authentic
document of school leaving Certificate is not available at present.
Horoscope (Janmapatrika) is only the document showing the date of
birth as 30-12-1935. (Thirtiath-December-Nineteen hundred thirty
five.)

(c) It is the say os the applicant that vide Office memorandum No.ELK/128, dt.31-8-88 and memorandum No.ELK/128, dt.14-10-88, Original School Leaving Certificate was called for. But the same was not available and hence it could not be produced the same.

Both letters are produced herewith and marked as Ann-"A-04 &A-05).

(d) In absence of Original School Leaving Certificate, the applicant has produced a copy of Horoscope and affidavit (A-9) showing the date of birth as 30-12-1935 insted of 6-6-1931. It is the say of the applicant that date of retirment will be in the middle of 1994 and not 31-10-1989.

(e) Without prejudice to the aforesaid cantentions the respondent No.2 has communicated to the applicant Office memorandum dt.25-1-1989. and thereby date of retirment was deter^{mined}andam was 31-10-1989.

(5) Grounds for relief with legal provisions :-

(a) It is the averment of applicant that in absence of authentic proof of age, the respondent ought to have agreed with the date of birth as declared by duly executed affidavit. The respondents have not considered representation of application in a legal manner, which is badat-law.

(b) That the respondents have not followed the provisions of B.C.S.R. for admittance of date of birth and without giving an opportunity for justand fare representation, concluded the date of birth as 6-6-1931, which is not tenable at law.

(c) Under the mistaken belief, of wrong date of birth, respondents have suo-moto changed the date ^{of}retirment from 30-6-89 to 31-10-89. Which is also not just and proper.

(d) It is humble submission of the applicant that he is a poor employee and if he may be ^ecompelled to retire (though pre-mature), it will result in to huge ^{monetary} difficulties and hardship.

(e) It is the further averment of the applicant that the order and decision of the respondents and its subordinate officers are against the ^{principle}s of natural justice and equity. The respondents have arrived at an ex-parte decision and ^{therefore} findings of retitement w.e.f. 31-10-1989 are perverse too.

(f) Under the circumstances aforesaid, the applicant proves his case and findings dated 25-1-1989 deserves to be dismissed with cost.

6) Details of the remedies exhausted :-

The respondent was requested orally and in writind to agree with the date of birth as 30-12-1935. But the respondents dt. 31-8-88 and 14-10-88 to produced Original School Leaving Certificate with its certificate copy. Ultimately, office memorandum 25-1-89 determined the date of retirement as 31-10-89. The applicant vide its latter dt. 2-5-89 has replied to approach the Hon'ble Tribunal. Both letters ^{were} produced at Ann-"A-6-& A-7 ". ^{collectively}. Hence, the applicant declates that he has availed

of all the remedies available to him under the relevant service Rules.

7) Matters not previously filed or pending with any other court :-

The applicant further declares that he had not previously filed any application, writ, petition or suit, regarding the above matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8) Relief sought :-

In view of the facts mentioned in para 6 above, the applicant prays that :-

(a) The Hon'ble Tribunal may hold that the correct date of birth is 30-12-1935 and accordingly date of retirement will be in the middle of 1994 and not 31-10-1989.

9) Interim order, if any prayed for :-

Pending final decision of the application, the applicant seeks the following interim relief :-

The respondents be restrain from ~~circumstances of the case.~~ *retiring the applicant w.e.f 31-10-1989 under the circumstances of the case.*
(Exact date of birth is 30-12-1935.)

10) In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed Postcard or Inland Letter, at which intimation regarding the date of hearing could be sent to him.

Application is not sent by Registered Post A.D..

The same is presented in person. Therefore this column is not applicable.

43

.4.

11. Particulars of Postal order filed in respect of the application fee is as under Postal order worth Rs. 50/- No. DD 775585 S dt 13-10-89 obtained from Raipur Post Office , Ahmedabad.
12. List of enclosures :
 1. Memorandum of application.
 2. Vakalatnama.
 3. Zerox copy Affidavit of applicant
 4. Zerox copy of Horoscope
 5. Correspondence letters.

VERIFICATION

I Kishanlal (Name of the applicant)S/O, W/O,D/O Kunjbihari Machi, Age 54 years working as Machinist in the office of Western Railway, Ahmedabad resident of Sabarmati, Ahmedabad do hereby verify that the contents of paras 1 to 4 are true to my personal knowledge and paras 5 to 12 believed to be true on legal advice and that I have not suppressed any material fact.

Date : Ahmedabad.

Place : 16/10/89.

Kishanlal

Signature of the applicant.

filed by Mr... *B.B. Shor* ...
Learned Advocate for Petitioners
with second set & ... *2* ... pages
copies copy served/not served to
other side

19/10/89

Office
Dy. Registrar C.A.T.C
A'ed Bench

19/10/89

Western railway.

A-1

16

No.EL/K/128.

Divisional office,
Rajkot: 25-1-89.

Memorandum.

Sub:-Alteration in date of birth-NG Staff-Mech deptt-case
of shri Kishanlal K. Machinist of LF SBI.

Ref:-HQ office letter No.EM/283/16/7,dt.4-1-89.

CPO CCG, vide HO office letter quoted above, has accorded
sanction to the alteration in date of birth of Shri Kishan-
lal K. Machinist LF SBI from 6-6-1931 to 14-10-1931 and not
to 30-12-35 as claimed by him and as such the employees is
to be retired with effect from 31-10-1989.

This should be got noted by the employee concerned.

Sd/-*****
for DRM (E), RJT.

Copy to :-

DAO RJT SUPDT-E-Settlement; Supdt-EP B; PI-Settlement.

LF SBI. party concerned through LF SBI memo file ;

Pass/increment/ss/record clerks;

The CME(E) CCG in refrence to his letter No.EM/283/16/7,
dt.4-1-89.

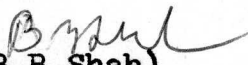
No.EM/949/5/1/vol II(T) ;

No.EM/283/5/1.

Sd/-*****
9-2-89.

321
28/1/89.

TRUE COPY.


(B.B. Shah)
Advocate.

6 A-2
D 6

No. ELK/128

Dated 31-8-88.

From : DRM(E)
RJT

To

Shri Kishanlal K. Machi,
H S Gr.I LF-SBI, (Through LF -SBI)

Sub:- Alteration ⁱⁿ date of Birth - NG Staff Mech-Deptt.
Ref:- Your representation dt. 25-8-88.

In reference to your representation quoted above, you are advised to submit the original School Leaving Certificate, together with one zerox copy thereof duly attested, as called for in this office letter of even no. dt. 16-8-85 to enable further action being taken by this office.

Please treat this as most urgent.

Sd - illegible
DRM (E) RJT

Copy to LF-SBI.

Who will please obtain original School Leaving Certificate together with one zerox copy thereof duly attested, from the employee and send the same to this office immediately to take further action.

True - Copy
[B.B. Shukh]
A.W.

No. EL/K/128

Dated : 14-10-1988

7 A3
@7

From : DRM(E) RJT

To

Shri Kishanlal K. Machi,
H S Gr. I of LF - SBI
(Through LF-SBI)

Sub:- Alteration in date of birth - N G staff -
Mech. Deptt.

Ref:- Your representation dt. 6-10-88

Please refer to this office letter No.
even dt. 16-8-85 and 31-8-88 and arrange to send the
original School Leaving Certificate together with one zerox
copy thereof duly attested, as called for to enable this
office so further action can be intiated.

Please treat this as most urgent.

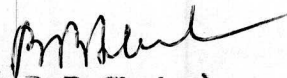
Sd/- illegible

DRM (E) RJT

Copy to LF-SBI

Who will please obtain original school leaving
certificate together with one zerox copy there of
duly attested, from the employee and send the same
to this office immediately to take further action.

True - Copy


(B.B.Shah)
Advocate

From:- Kishanlal Kunjbihari
Varma.

H.9-2, Loco Steamset,
Sabarmati, Ahmedabad.

Date:- 24-4-1989.

To,
The Asstt. Commissioner of Labour, (Central)
Gujarat Region,
Karnavati Society, Ushmanpura,
Ashram Road, Ahmedabad-

Sub:- An application for reference-
Change of date of birth in respect
of KISHANLAL KUNJBIHARI VARMA-
MACHINIST.

Respected Sir,

I, the undersigned applicant was joined
services of Western Railway on 24-10-85, and at present
I am designated as Skilled Machinist Grade-I, and posted
at Locoshed -Sabarmati, Ahmedabad, W.R.

That I belongs to Uttarpradesh. My home
town is Village Ahhen (अहन), Taluque : Hathrash
(हाथराश), Dist:-Alligadh (अलिगढ़). I have studied
up to Std.IV, but no authentic document of School Leav-
ing Certificate is available at present, and therefore
an affidavit showing date of birth dt.30-12-85 was
executed by me on 19th July, 1985 and a xerox copy of
the same was submitted by me to the Railway Authority.

To enrol me at school as a student, the
then the date of birth was wrongly shown as 6-6-1931
and the same is shown by Janmaxar.

Under this circumstances. The W.R. Autho-
rities have come to the conclusion that date of birth is
6-6-1931 and I am likely to be retired from 31.10.89. And
a notice dt.25.1.89 is issued to me. The xerox copies of
notice and affidavit are enclosed herewith.

I have humbly to request you to scrutinise
the papers in due course and if satisfied, kindly admit

...2...

9/10
.....
it as conciliation proceedings to make out a reference
as "Industrial Dispute". If, I may be summoned for
personal hearing, I will be highly obliged.

Thanking you.

Yours faithfully,

કે.મ. વર્મા

(K.M. Varma)

Machinist.

C.C. to:-

The Commissioner of Labour, (State)
Shram Bhuvan, Rustankama Marg,
Khanpur, Ahmedabad-380001, for information
and needful action.

True-Copy

મહાશય

Adw

Govt. of India
Ministry of Labour,

① A-5
⑩

Office of the Regional Labour
Commissioner (C)
13, Karnavati Society, Ashram Road,
Ushmanpura, Near Central Bank of India,
Ahmedabad-380 013.

No.ALC/ADI/95(1)/89, Dated:- 2-5-89.

To,
Shri Kishanlal Kunjbihari Verma,
H.S-I, Loco Steamset,
Sabarmati, Ahmedabad.

Sub:- Application for change of date of birth.

Dear Sir,

Please refer to your application in the above matter, dated 24-4-89, In this connection, it is to inform you that the issue requires judicial scrutiny hence you are requested to approach Central Administrative Tribunal for redresal of your grievance.

Yours faithfully,

Sd/- *****

(R. L. Damor)

Asstt. Labour Commissioner(C)
Ahmedabad.

C.A.T:-
B.D.Patel House,
Sardar Patel Colony,
Naranpura,
Ahmedabad.

TRUE COPY.

[Handwritten Signature]
[Handwritten Initials]

14

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A. No. 453 of 1989

Kishanlal K. ... Applicant.

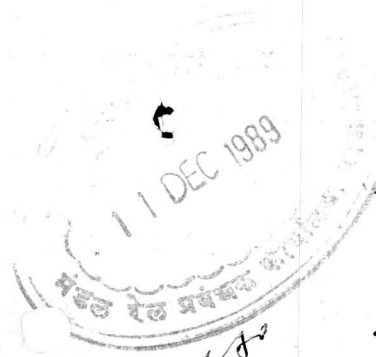
Vs

Union of India & others ... Respondent.

Reply by the Respondent.

1. At the outset the Respondent states and submits that the application of the Applicant is not tenable and maintainable under the provisions of Central Administrative Tribunal Act, 1985 and deserves to be dismissed.
2. The Applicant has not exhausted the alternative remedies available to him before filing this application and therefore the same deserves to be dismissed.
3. With reference to para 4 (A), the averments made in the said para are not correct. So far as the appointment of the Applicant is concerned, he was appointed as Khalasi to Artisan at SBI Loco Shed of Western Railways on 24-10-1955 and not as HS-I as contended by the Applicant. Thereafter, the Applicant was promoted as skilled Machinist with effect from 18-7-1958, as Machinist Gd-II on 1-8-1972 and Machinist Gd-I on 1-4-1988 and from that date he was working as Machinist Gd-I till the time of his retirement.
4. With reference to Para 4(B), the averments made in the said para are not correct and is denied hereby. The averments regarding the illiteracy of the Applicant is not correct. On the contrary the Applicant has completed his study up to Standard IV of Hindi and as per the

~~DE~~
DE



Copy stored to
Mr. K.K. Sharma
Mr. H. J. ...
Mr. B. R. ...

B.R.C.

Service Records maintained right from the beginning by the Railway authorities, the date of birth of the Petitioner is recorded as 6-6-1931.

5. With reference to para 4(C) to (E), the Respondent states that the averments made in the said paras are not correct, and is denied hereby. It is submitted that the Applicant had represented his case for alteration of his date of birth from 6-6-1931 to 31-12-1935, but at that time he was asked to produce his school leaving Certificate. Many reminders were sent to him for production of his original School Leaving Certificate but unfortunately somehow or the other the same was not produced and he continued to make representations alleging that his date of birth should be changed from 1931 to 1935 as stated earlier in this reply.

6. It is also pertinent to note here that the Railways had issued a Circular in which opportunity was given to persons who wanted to change their recorded date of birth and the last date was fixed on 31-7-1973. During this time it was open for the Petitioner to make representation along with supporting documents, but somehow or the other it was not done. Thereafter he again requested the authorities and his case was referred to the competent authority and after examining the case of the Applicant the competent authority was pleased to change his date of birth from 6-6-1931 to 14-10-1931 and accordingly a Memorandum was issued under Office Order dt. 25-1-1989. A copy of the Memorandum is enclosed marked as Annexure R-1. Not only this, the speaking order passed by the competent authority is also enclosed herewith along with Annexure R-1 for the perusal of the Hon'ble Court to decide the real dispute.

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7. The Application of the Applicant was considered and after considering the same, change in his date of birth was made from 6-6-1931 to 14-10-1931 and therefore he was to be retired under superannuation. So it cannot be said for a moment that the superannuation order passed by the authority is bad in law and violative of any rule but the same is legal and in accordance with the rules. It is the duty of the Applicant to produce his original School Leaving Certificate and at one time he had produced it but it lead to doubts as its contained overwriting as discussed in the speaking order and therefore the speaking order passed by the competent authority may be taken into consideration as part of this reply and therefore the respondent does not want to make any further comments, as the same has already been decided by the competent authority for change in the date of birth, the documents produced and its over writing etc.

8. With reference to para 5(A), the Respondent states that the allegations are not correct. So far as the competent authority is concerned, the change in the date of birth made by him is legal and in accordance with the rules and therefore, it cannot be said that the same are illegal and invalid. It was the duty of the authority to decide the application of the Applicant and to consider the case after perusing the records and evidence in support of the application etc. and therefore the same has been decided on merits and therefore it cannot be said that the same are violative of any rules.

9. The Respondent further states and submits that the True copies of Service sheets, Speaking order of CPO CCG along with HQ letter dt. 4-1-1989 and copy of the order dt. 25-1-1989 are also enclosed as Annexure R-2 and R-3.

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10. The Respondent further states that the other allegations which are not specifically admitted by the Respondent are denied hereby. It was the duty of the Petitioner to produce the relevant documents ~~specified by the competent authority~~ specifying that the Applicant has applied within the time limit prescribed or even there after, in support of the change of date of birth, but unfortunately the same has not been done at any point of time and therefore, as the petitioner has completed the age of superannuation there was nothing left with the authorities but to retire him from service. Therefore the order of retirement passed by the Railway authorities is legal, valid and in accordance with the rules.

Ahmedabad.
Dt: ~~10-12-1989~~ 11-1-90

(B.R. Kyada)
Advocate for Respondent.

For and on behalf of the
Union of India.

[Signature]

Addl. Divisional Railway Manager (E)
Western Railway, Rajkot.

VERIFICATION.

I, C. K. Chakvana,
Addl. Divisional Railway Manager (E), Western Railway,
Rajkot, Respondent, do hereby solemnly affirm and state
that what is stated above is true to my knowledge,
information and belief and I believe the same to be true.

Ahmedabad.
Dt: ~~10-12-89~~
11-1-90

[Signature]
Addl. Divisional Railway Manager (E)
Western Railway, Rajkot.

Reply/Rejoinder/written submissions
filed by Mr. B.R. Kyada
learned advocate for petitioner/
Respondent with second set.
Copy served/not served & other side

07-11/11/90

Dy Registrar C A F (J)

R-1
18

COPY
No. EL/K/128

Western Railway

Divisional office
Rajkot. 25.1.89.

Memorandum:

Sub:-Alteration in date of birth-NG staff-Mech. deptt.-case
of Shri Kishanlal K., Machinist of LF SBI.
Ref:-HQ office letter No. EM. 23/16/7 dt. 4.1.89.

(16)

CPO CCG, vide HQ office letter quoted above, has accorded sanction to the alteration in date of birth of Shri Kishanlal K., Machinist LF SBI from 6.6.1931 to 14.10.1931 and not to 30.12.35 as claimed by him and as such the employee is to be retired with effect from 31.10.1989 instead of 30.6.1989.

This should be got noted by the employee concerned.

sd/-
for DRM (E) RJT.
Copy to-
DAO RJT: SUPDT-E. Settlement; Supdt. EPB; PI-Settlement
LF SBI: Party concerned through LF SBI; Memo. file;
Pass/increment/ss/record clerks;
The CME(E) CCG in reference to his letter No. EM. 23/16/7
dt. 4.1.89.
No. EM. 949/5/1 Vol. II (T); No. EM. 23/5/1.

[Handwritten Signature]
Assistant Divisional Officer,
RAJKOT

*True copy
Mr. G.P. Bhandari
[Signature]*

Assistant Divisional Officer,
RAJKOT

*File copy
Mr. B. R. Wadhwa
18/11/89*

DA: As above.

The papers in connection with the above were put up to the competent authority for his orders in the matter. The speaking orders in original is enclosed herewith for information and necessary action. The employee concerned may be recalled suitably under advise to this office. The s/sheet and p/file are returned herewith. Please acknowledge receipt.

Subj:-Alteration in date of birth No staff-Case of Shri
K. Shantlal K., Machinist Gr. I under LF SBI - RTI
Ref:-Your letter No. TL/K/123 dt. 18.11.88.

To,
DIN (B) RTI.

COPIES
No. 233/16/7

From: OMR (B) CCG
Dt. 4.1.1989.

R-II
18/11/89
(11)

Assistant General Manager
BANK OF INDIA

~~Mr. B. R. Wadhwa~~

sd/-
FOR OMR (B)

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I have gone through the representation of Shri Kishanlal K., Machinist Gr. I - SBI under DM RJT wherein he has requested for alteration in his recorded date from 6.6.31 to 30.12.35 on the basis of affidavit and horoscope.

2. Shri Kishanlal K. was appointed as Khallasi Artisan on 24.10.55 on Ex. EB & CI Rly. I find from his S/sheet that his date of birth is recorded as 6.6.31 authority for which is quoted (i) " as per Medical Certificate issued by AS ABR" and (ii) " as per staff register of SBI shed maintained at shed". I also find that the date of birth first recorded as 14.10.31 has been overwritten to 6.6.31 to be in conformity with the date of birth recorded in the staff register of SBI shed. His age on appointment is recorded as 24 years. The employee has also signed the S/sheet in Hindi. Educational qualification indicates that he had studied upto 4th std. Hindi.

3. While going through his P. files I find that Shri Kishanlal had represented for alteration in recorded date of birth for the first time in Aug. 1988 when he produced the affidavit dt. 19.7.85 in support of his claimed date/as regards transfer/promotion that he is quite literate. He should have therefore represented against his date of birth before the last date i.e. 31.7.73 to which effect wide publicity ~~was~~ had been given, but he did not avail this opportunity.

L of Birth. I also find from his various representations

4. Having accepted his date of birth as 6.6.31 for all these years, he represented for the first time in 1985. His option form dt. 27.12.79 also indicates his date of birth as 6.6.31. The employee in his application submitted in Oct. 1988 (P. 256c of P/Files) has stated that since there was a mistake in recording date of birth in the School Leaving Certificate, he produced affidavit by declaring his correct date of birth as 30.12.35. The affidavit and horoscope produced by him cannot be accepted at this stage.

5. If the date of birth claimed by the employee as 30.12.35 is accepted, his age would have been 19 years 9 months and 24 days at the time of his appointment (i.e. 24.10.55) and as such he would not have been taken in Rly. service except by fixing his pay at a lower stage by one rupee for each year by which the age fell below 21 yrs. in terms of Rule 307 of WRM. It is seen that no such reduction was made and the employee had already gained undue benefit in fixation of pay by declaring wrong date of birth.

6. In terms of Rule 225(4) of RI(1985 edition) the date of birth as recorded in accordance with extant 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 General Manager/Chief Personnel Officer in the case of Group 'C' and 'D' Rly. servants to cause the date of birth to be altered in the following types of cases:-

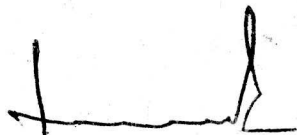
21
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- i) Where in his opinion it had been falsely stated by the Rly. servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the Rly. servant being retained in service longer than if the alteration had 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 not be entertained after completion of the probation period or three years service whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the Rly. servant concerned, together with the statement or any previous attempts made to have the record amended.

7. In terms of item (i) under para 5 above, Shri Kishanlal K. can be considered to have already taken undue advantage in fixation of his salary as mentioned in para 4 above if he has falsely stated his age at the time of appointment and since alteration in recorded ~~xxxx~~ date of birth will result in his retention in service for a longer period, such alteration is not permissible. Therefore, none of the above conditions is satisfied in this case to permit the competent authority to alter his recorded date of birth.

8. However, one more point requires consideration in this case. The date of birth as per the medical certificate dt. 14.10.55 flag 'A' of his S/sheet works out to 14.10.31, as his age was assessed 24 years, by Rly. Doctor. It is seen that this date was entered originally in his S/sheet quoting the authority as Medical Certificate and thereafter overwritten as 6.6.31 probably as recorded in school Certificate dt. 18.10.55 (Flag 'B' or S/sheet) quoting the authority as staff register of SBI shed. In this School Leaving Certificate also his date of birth appears to be overwritten. The employee has already declared that the date of birth entered in the School Certificate was wrong and hence he declared a affidavit. Therefore, the correct way is to accept his date of birth as per the age assessed by Railway ~~Exam~~ Doctor according to which his date of birth comes as 14.10.1931.

9. I therefore, come to the conclusion that the date of birth of Shri Kishanlal K. may be altered from 6.6.1931 to 14.10.1931, and not to 30.12.35 as claimed by him.



सहायक कार्यालय अधिकारी,

sd/-
Chief Personnel Officer.

The copy
Mr. B. R. Agarkar
sd/-

Chief Personnel Officer
RAILWAY

6
Vester

SPD

4/1/23

Memorandum

Subj: Alteration in date of
of Shri Bishanlal
Ref: H office letter No. 1

Case No. 100, vide H office letter
sanction to the alteration
Bishanlal B. Machhiast 18
and not to 30.12.35 as claim
employee is to be retired
instead of 30.6.1933.

This should be got noted by

Handwritten notes and stamps on the left side of the page, including a date stamp "4/1/23" and some illegible text.

Copy to
D/O: / Dept. B Settlement
P/S: Party concerned
Pass/Increment/SS/record
The 100 (1000) in reference
dt. 4.1.23.
No. BY 240/5/1/vol II(T):
No. BY 243/5/1.

321
18/1/23
29/1/23

True - Copy

B. B. Shukla
B. B. Shukla
4/1/23