

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No.
~~XXXXXX~~

2

1990

DATE OF DECISION 22.3.1990

Shri P.K. Bhatt Petitioner

Shri G.I. Desai Advocate for the Petitioner(s)

VERSUS

Union of India & Ors. Respondents

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.S. Nair Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
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

*See
22/3*

Mr. P.K. Bhatt

.. Applicant

Versus

Union of India & Anr.

.. Respondents

CORAM : Hon'ble Mr. G.S. Nair .. Vice Chairman

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

Counsel for Applicant : Mr. G.I. Desai

Counsel for Respondents: Mr. N.S. Shevde

O R D E R

Date : 22.3.1990

Per : Hon'ble Mr. G.S. Nair .. Vice Chairman

Applicant, a Chief Clerk in the Divisional Railway Manager's Office, Baroda who is due to retire on superannuation on 31st March, 1990 as per his recorded date of birth in his service record viz. 27.3.1932, has filed this application on 7.12.1989 for a declaration that the entry relating to the date of birth in his service record is illegal and for entering the date of birth "according to the school leaving certificate".

2. It may be pointed out at this stage itself that though there are elaborate averments in the application, significantly the applicant has no assertion as to what his date of birth is.

3. The School Leaving Certificate that ~~he placed~~ is pressed into service is one issued on 3.10.1989 wherein the date of birth is mentioned as 2.6.1933.

4. In reply filed on behalf of the respondents, it is stated that the applicant was appointed on 29.3.1951 and at that time since he did not produce any documentary evidence in support of his date of birth, he was sent for medical examination and as certified by the Medical Officer, the date of birth was entered in the service sheet as 27.3.1932. It is also stated that the applicant has put ^{his} signature therein in token of his acceptance of the same.

5. It is contended by the respondents that the applicant had applied in the year 1962 for alteration ~~of~~ in his date of birth but it was rejected by the order dt. 15.10.1962.

6. The respondents ~~also~~ ^{have} also relied on a circular issued by Railway Board on 30.8.1972 affording opportunity to all Railway employees for applying for correction of recorded date of birth in case of any mistake. It is stated that the applicant did not submit any application pursuant to the circular.

7. Respondents have also pointed out that if the date of birth as claimed by the applicant at present is accepted, he would not have ~~been~~ completed 18 years of age at the time of appointment, ^{and} as such he would not have been entitled to full wages. It is contended that having taken the financial advantage, it is not open for the applicant to put forward a case at this stage that the entry relating to the date of birth is wrong.

8. There is a further statement ~~on~~ the reply that on 21.9.1951, the applicant declared that he is not able to produce the school certificate in order to prove his date of birth, and that he accepted the recorded date of birth as per the Medical certificate.

9. The respondents have also taken up the plea that the application is not maintainable since a representation that was submitted by the applicant praying for correction of date of birth was considered and rejected by the Chief Personnel Officer by a reasoned order on 22.8.1989 which has not been challenged by the applicant.

10. Though, advocate Mr. G.I. Desai, assisted by the applicant, strenuously made an appeal for allowing the relief that is claimed in the application, we are not persuaded.

11. This is a case where the applicant joined Railway service on 29.3.1951 when he had already studied upto the ninth standard. Yet no certificate of the schools from any point where he studied or the copies of the admission register maintained in any such school was produced by the applicant at that time. He was contained with the date of birth as assessed by the medical authority being recorded in his service card. It is not in dispute that the Railway Medical Officer issued the certificate after examination of the applicant, on the strength of which the date of birth was entered in service card as 27.3.1932. Copy of the service sheet is produced by the respondents;

it is at Annexure R-3. It shows that the applicant has affixed his signature therein, which be it noted is in English, in token of its correctness.

12. It is on record that in the year 1962, there was a request from the applicant for alteration of his recorded date of birth, but by the order dated 15.10.1962 it was rejected. The applicant left the matter there. No doubt he would allege that when the 1972 circular issued by the Railway Board, he had made an application for correction of the date of birth. However, the respondents denied the receipt of such an application. Assuming that such an application was made, when the correction was made within a reasonable time, the applicant was bound to pursue the matter. We do not mean to say that there is any limitation as such in making a claim for correction of the recorded date of birth in the service card. But when a request in that behalf has been made and it was rejected, if that order is not challenged within a reasonable time, it may not be open to a civil servant or a Railway servant to approach this Tribunal with a prayer for alteration of the recorded date of birth in the service register, by filing an application on the verge of retirement. The circumstance that the earlier order rejecting the representation was not questioned and that the challenge has been made only at the fag-end of the service career itself is sufficient to infer want of bonafides.

13. As it was argued by the counsel of the applicant that there is evidence on record to establish that the recorded date of birth is wrong, we are adverting to the said question. The two documents on which the

reliance is placed are ~~a certificate~~ issued by the school authorities. One of them refers to the date of birth as 2.6.1933 while the other mentions the date of birth as 15.4.1933. Those dates themselves are ~~conflicting~~ ^{conflicting} evidentially. It was after leaving the school which has issued the certificate that the date of birth ~~is~~ ^{is} 2.6.1933, that the applicant joined the other school which has issued the certificate containing the date of birth as 15.4.1933. It has also to be pointed out that neither of these certificates can be relied upon under section 35 of the Indian Evidence Act as having probative value. Under the said section entry in any public or other official book register or record made by a public servant in the discharge of his official duty or made by some other person in the performance ^{is a relevant fact} of a duty especially enjoined by the law of country, ^{the} By virtue of the aforesaid provision ^{the} entry made by the Head Master or other competent officer of a Government school at the time when a pupil is admitted therein records ^{the} the date of birth of ~~said~~ ^{the} pupil may be ~~an irrelevant~~ ^{a relevant} fact, and it can be established by production of ~~the~~ admission register or atleast a certified copy thereof. It is to be remembered that when a pupil is admitted to a school the date of birth is being recorded on the strength of the information furnished by the parent or guardian and ^{it is an} ^{the} in that account that ~~entry was~~ made by the public servant, as enjoined by the law of the land, ^{that the entry assumes relevance.} Hence such probative value cannot be attributed to a certificate issued by the Head Master or an officer of that school later on wherein it is said that the ^{In this case there is also a circumstance that} date of birth of a pupil is such and such. ~~the~~ certificate

and based

on which reliance is placed, and basis on which the date of birth in service card has to be altered is sought to be altered only on 30.10.1989, on the eve of the filing of the present original application.

14. It follows that this is not a case where the applicant has been able to establish by ~~caution~~ ^{Cogent} evidence as to what his date of birth is or that the recorded date of birth in service card is mistaken. At the risk of reiteration, we would add that the applicant has no case anywhere in the application as to what his real date of birth is. The question is without such an averment can a Railway servant approach this Tribunal for a declaration that his recorded date of birth in service card is mistaken and is to be altered. The answer can only be in negative.

15. Counsel of the respondents invited our attention to the order of ^{the} Chief Personnel Officer dt. 7.11.1989 under which the request of the applicant for alteration of date of birth was considered by a reasoned order and was negative. The applicant has not cared to challenge the aforesaid order. The relief as claimed in the application cannot ~~on no account~~ be allowed ^{on well account as well}.

16. Counsel of the respondents also invited our attention to the declaration submitted by the applicant on 21.9.1951 (Annexure R-2) agreeing to accept the recorded date of birth in the service card. Even at that time, the applicant never wanted to rely on any entry relating to his date of birth in the school record, on the contrary he had positively

stated in the said declaration that "I have no other evidence to prove the date of birth".

17. Before parting with this application, we have also to point out that accepting the date of birth as the applicant wants to be entered in the service record, it would mean that while he joined the service, he had not completed 18 years of age, it was pointed out by the counsel of the respondents that though persons below 18 years were admitted in service at that time, such persons were paid only lower wages and as the applicant was being paid wages as one who had completed 18 years of age, it is not open to him at this stage to put forward the present plea. There is considerable force in the submission. A person, on the basis of representation with respect to his date of birth having secured a benefit, cannot at a later stage put forward the plea that the date of birth originally declared was wrong.

It follows that the application is totally devoid of merits. It is dismissed.

M. M. S.
(M M Singh)
Administrative Member

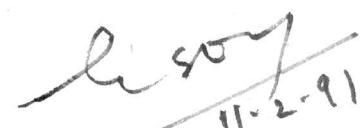
22-3-1970
(G S Nair)
Vice Chairman

08/03/91

R.A.17 of 1990

I am not satisfied that there is sufficient ground for review of the final order. There is no error apparent on the face of the record as is sought to be made out. Indeed, reference has been made in paragraph 12 of the final order about the alleged representation stated to have been submitted by the applicant for correction of date of birth pursuant to the circular of the Railway Board issued in the year 1972. Actually, it is a re-hearing of the matter that is attempted to be made through this review petition.

2. The petition is rejected.


(G. Sreedharan Nair)
Vice-Chairman

Dated 11.2.1991

I fully endorse the above views of my Learned Brother.


(M.M. Singh)
Administrative Member

Central Administrative Tribunal
Ahmedabad Bench
Inward No. 3196
Date 29/11/91

(13)

581/91/SEC.IX. Supreme Court of India
New Delhi
Dated 13-11-1991.

From:

The Registrar (Judicial),
Supreme Court of India,

To:

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9254 OF 1991.

(Petition under Article 136 of the Constitution of India

from the Judgment and Order dated 8-3-1991 of the High

Court of Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad
in R.A. No. 17/90 in O.A. No. 2/90).

.. Petitioner(s)

Shri P.K. Bhatt

Versus

.. Respondent(s)

Union of India & Anr.

Sir,

I am directed to inform you that the Petition above-mentioned filed in the Supreme Court was dismissed by the Court on 9-7-1991.

Yours faithfully,



FOR REGISTRAR

(31)

Seen


(01/12)


16/12/91
(S)