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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~TAX No.~~

341 OF 1990.

DATE OF DECISION 13th April, 1992.

Shri Pitamber Mepabhai Pitroda Petitioner

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

Versus

Union of India and Ors. Respondent

Mr. R. M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R. C. Bhatt

J. Judicial Member

() The Hon'ble Mr.

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 ? ✗

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Shri Pitamber Mepabhai Pitroda,
Rasik Nivas,
Opp.L.E.College Gate,
Morbi.

...Applicant.

(THE APPLICANT DIED ON 24.7.1991)

His legal heirs.
and parties.

1. Smt.Maniben Pitamber Pitroda,
2. Shri Vinodhbhai Pitamber Pitroda,
3. Shri Ashok Pitamber Pitroda,
4. Shri Arvind Pitamber Pitroda.

All of address :

"Rasik Nivas, Opp.L.E.College Gate,
Morbi.

(Advocate : Mr.B.B.Gogia)

Versus

1. Union of India,
owning & Representing,
Western Railway,
Through : General Manager,
Western Railway,
Churchgate, Bombay - 400 020.
2. Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.

...Respondents.

(Advocate : Mr.R.M.Vin)

J U D G M E N T

O.A. NO. 341 OF 1990.

Date :13th April,1992.

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member

This application is filed by one Mr.Pitamber Mepabhai Pitroda, under Section 19 of the Administrative Tribunals Act, 1985, seeking the relief that the respondents be directed to alter the birth date of the applicant from 2.5.1929, to 9th May, 1934, in the

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service sheet and to grant the applicant all the consequential benefits flowing from the said alteration in the birth date, etc.

2. It is important to note at this stage that the original applicant who filed this application expired on 24th July, 1991, and his heirs and legal representatives filed M.A./369/91, to substitute their names in place of the original applicant and the said application was allowed on 25th February, 1992, and hence the heirs and legal representatives of the deceased applicant are prosecuting this application in place of deceased Pitamber Mepabhai Pitroda. In my opinion, the applicants can not prosecute this application, after the death of the original applicant because the personal cause of the applicant regarding the change of his date of birth in the service sheet dies with the death of the applicant and the application abates. . In any view of the matter, these applicants cannot prosecute this application further because the right to sue does not survive on the death of the original applicant. Therefore, the application deserves to be dismissed as abated. However, even if the merits of this application are examined the impugned order of the C.P.O. of the respondents, Annexure-A/4, dated 6/9/2.89, does not suffer from any legal infirmity. The applicant has averred in the application that he was appointed as a Khallasi, in the erstwhile Gondal State Railway on 2nd May, 1948. It is the case of the applicant that persons below the age of 15 years were also admitted

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in service in the erstwhile Gondal State Railway of the ex-ruler of the Gondal State. The respondents on this point have produced at Annexure-R, the true copy of Rule 1925-1926, dated 2nd August, 1923, of the Ex - Gondal Hajur Hukam, according to which the person below the age of 15 years and above the age of 45 years shall not be appointed. The proviso in it is that if in any particular instance it is desirable to appoint, then the same be done after getting the sanction of the ex-ruler. The respondents have denied in the reply that persons below the age of 15 years were appointed by Ex-Gondal State Railway Authority. The Service Sheet Annexure-R/1, produced by the applicant shows "19 (Nineteen) years" in the column of age on appointment and the date of birth shown in it is 2nd May, 1929, which is signed by the applicant in Gujarati at the bottom. The other documents Annexure-R/2, produced by the respondents is the extract of list of Ex-Gondal State Railway Authority which is a bound register, in which at Sl.no.51, there is the entry of the name of the applicant attested by the work shop Supdt. of Ex-Gondal State Railway which also shows the age of the applicant as nineteen years, at the time of his appointment on 2nd May, 1948. This extract is more than thirty years old and there is no reason not to rely on it. Learned advocate for the applicant submitted that the document Annexure-R, does not show absolute bar against the appointment of a person below the age of 15 years, because the proviso shows that in case of necessity the appointment can be made after obtaining the sanction from Ex-ruler. The applicant has not produced any evidence to show that he was appointed after the sanction of the

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Ex-ruler though he was below the age of 15 years, according to his School Leaving Certificate, in which the date of birth is shown as 9th May, 1934. The documents produced by the respondents show that the applicant had declared himself of the age of nineteen years at the time of entering into service, on 2nd May, 1948, and his birth date shown in the service sheet, Annexure-R/1, was 2nd May, 1929. The other document produced by the respondents, R/4, is the copy of the xtract of the particulars of the employees, of the respondents Railways which shows the date of birth as per appointment books produced by WF-GDL, and at Sl. No.204, is the name of the applicant and the date of birth shown is 2nd May, 1929. The applicants' learned advocate submitted that the date of birth of the applicant was wrongly recorded as 2nd May, 1929, in the service sheet of the respondents. Learned advocate for the applicants submitted that this date was not given by the applicant nor had he produced any certificate to show that date. But it cannot be denied that the applicant had signed the pay sheet in Gujarati. Therefore, he was not an illiterate person and the other documents produced by the respondents also show his date of birth as 2nd May, 1929. As observed earlier, the applicant has not produced any evidence to show that though he was below the age of fifteen years on the date of his appointment on 2nd May, 1948, he was appointed after getting the sanction from Ex-ruler as per clause-13 of the order dated 2nd August, 1923, Annexure-R. The burden was

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on the applicant to prove that inspite of the Rule, his case was specially, considered and sanctioned by the Ex-ruler. Therefore, even if the date mentioned in his certificate as 9th May, 1934, is taken as correct, the C.P.O. has rightly observed that his age would have been 13 years, 11 months and 24 days, at the time of his appointment and in that case he would not have been appointed in the Railway service. The applicant in order to get the appointment initially represented that he was nineteen years old and concealed the fact that he was below 15 years of age at that time. The document Annexure-R-II, the extract from the nominal Roll published in the Gondal State Railway register shows that the applicant had studied IVth Gujarati, at the time of his appointment and the pay sheet shows the date of birth in English as well as in Gujarati. Therefore, the C.P.O. has rightly held in para-5 of his order :

"In terms of item (i) under para 4 above, Shri Pitambar Mepabhai can be considered to have already taken undue advantage in getting appointment in Railway as mentioned in para-3 above, if he has falsely stated his age at the time of appointment and since the alteration in recorded date of birth will result in his retention in service for a longer period, such alteration is not permissible."

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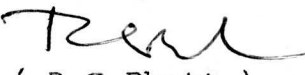
Therefore, considering the grounds against the order of the C.P.O. made by the applicant in his application, these findings in para-3 and 5, of the C.P.O.'s order are sufficient to reach the conclusion that the applicant is not entitled to the relief of the alteration in his recorded date of birth from 2nd May, 1929, to 9th May, 1934, and he had been correctly retired on 31st May, 1987, on the basis of the recorded date of birth. Even, assuming the other grounds of the order, are not accepted, these findings of C.P.O. in para-3 and 5, are sufficient to dismiss the application of the applicant. The reason for dismissing the application and upholding final order of C.P.O. in this case is that if the Government servant or a Railway servant deliberately and by design declares a wrong date of birth at the time of entry into service in order to obtain an undue benefit or unlawful gain such as procuring an appointment to which he was otherwise not entitled, he cannot be allowed to reside from the date later and claim that he was in fact younger than what he had declared himself to be at the time of his appointment. The applicant though was below the age of fifteen years as claimed by him as per his School Leaving Certificate, he in order to obtain an undue benefit and undue gain to procure an appointment gave the birth date as 2nd May, 1929, and got appointment which was in clear violation of the Rule of the ex-ruler produced at Annexure-R. Thus, the

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applicant concealed the true fact and made false suggestion of his date of birth at the time of his appointment and got an illegal entry thereby and now he wants a declaration that he was younger than what he had declared himself to be at the time of his appointment. If such a claim is allowed it would mean not only that he obtained undue benefit in the first instance in the matter of securing the initial appointment, but it would also result in postponement of his retirement and prolong his tenure of service, thus, giving him a second benefit which would be putting a premium on his dishonest conduct. It is clear from his application that he is not merely seeking a declaration of his age but also for a direction for altering the date of birth already entered in his service record so as to have the consequential relief of postponement of his date of retirement. On facts of this case, I hold that the applicant having regard to his conduct at the time of appointment, cannot get the alteration in the date of birth entered in the service record as prayed by him. Hence the following order :

ORDER

"The application is dismissed.
The application is disposed of.
No order as to costs."


(R.C.Bhatt)
Member (J)