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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 84 OF 1990.

~~Ex. No.~~

DATE OF DECISION 18-3-1992.

Oza Kanaiyalal Manilal, Petitioner

Mr. M.M. Xavier, Advocate for the Petitioner(s)

Versus

Union of India & Ors., Respondent s

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

CORAM :

The Hon'ble Mr. R.C.Bhatt, 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 ? ✗

Oza Kanaiyalal Manilal
Plot No. 2383
Chamunda Krupa
Panchvati Chawk
Subashnagar,
Bhavnagar.

..... Applicant.

(Advocate: Mr. M. M. Xavier)

Versus.

1) The Union of India
Owning and representing
Western Railway through
its General Manager,
Churchgate, Bombay.

2) Works Manager
Office of the Works Manager
(Electric), Western Railway,
Bhavnagar Para.

..... Respondents.

(Advocate: Mr. R. M. Vin)

J U D G M E N T

O.A.No. 84 OF 1990

Date: 18-3-1992.

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

Heard Mr. M. M. Xavier, learned advocate
for the applicant and Mr. R. M. Vin, learned
advocate for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by
the applicant, who was a Cleaner in Class-IV
category under Bhavnagar Para group of Workshops,
challenging the order Annexure A-3 dated 4th
April, 1988 passed by the respondents and another
order Annexure A-4 dated 15th September, 1989

passed by the respondents and claiming the relief that the respondents be directed to correct the ^{his} date of birth as 14th November, 1935, in place of wrong recording of the birth date in the service record as 20th October, 1931 and the impugned orders be quashed and set aside and the respondents be directed to continue the applicant in service upto 30th November, 1993.

3. The applicant has averred in the application that he was appointed on 30th August, 1957 as Cleaner in Class IV category under Bhavnagar Para group of workshops, that at the time of his appointment he had declared his date of birth as 14th November, 1935 and had also produced the School Leaving Certificate as an authenticated document required to be produced by the employee as per the extant rules. But according to him, the respondents have not corrected ^{the} the recorded date of birth in the service record and instead of the date shown in his school leaving certificate, the respondents recorded his date of birth as 20th October, 1931 in service record which is incorrect. According to him, he was asked to sign the service record wherein the date of birth was pre-recorded wrongly and being an illiterate Class IV staff he could not verify the correctness

of the same, but when he demanded to show his school leaving certificate to tally the date of birth, he was told that the recorded date in the service record was not final and that the applicant could seek alteration in the recorded date of birth at any stage prior to his retirement as per existing rules. He has alleged that however, he learnt that he was to be compulsorily retired with effect from 31.10.1989 and hence he made the representation Annexure A-5 dated 10th March, 1986 that his correct date of birth was 14th November, 1935. The applicant has produced at Annexure A-1, a duplicate of his birth date issued to him on 21st June, 1988 by Mahanagarपालिका Bhavnagar showing his date of birth 14th November, 1935 the applicant has produced at Annexure A-2 a xerox copy of Rule 145 from the Indian Railway Establishment Code, Vol.I. It is the case of the applicant that inspite of the clear documentary evidence i.e. school leaving certificate, the respondents without applying mind, rejected the application of the applicant on 4th April, 1988 vide Annexure A-3 on technical ground which according to the applicant was illegal. The applicant again made request by application dated 27th January, 1987 to reconsider his representation which was rejected by the respondents vide

Annexure A-4 dated 15th September, 1989.

4. The learned advocate for the applicant submitted that on perusal of the impugned order Annexure A-3 dated 4th April, 1988, it is clear that the application of the applicant has been rejected on technical ground and not on merits. The grounds given by the respondents in the order Annexure A-3 shows that the application was rejected on the strength of new rule 225(4) of the Indian Railway Establishment Code that there was no clerical error, eraser or overwriting in the recorded date of birth and also on the ground that the applicant has signed the service sheet, option form, Provident Fund nomination form in Gujarati and he has passed Standard 7. The other grounds mentioned in the order that the applicant had not made any representation till 19th March, 1986 even though the seniority list were notified in the years 1965, 1967, 1973, 1978 and 1985 indicating his date of birth as 20th October, 1931 and the applicant being illiterate employee did not make any representation against his recorded date of birth latest by 31st July, 1973. The reference is also made to the three conditions of rule 225(4) of Indian Railway Establishment Code 1985 edition, and respondents have stated that none of the conditions of that rule is satisfied.

The learned advocate for the applicant has at the time of arguments produced the recruitment rule of Class IV Railway Servants from the Indian Railway Establishment Manual dealing with rule 225 he has also invited my attention Railway Ministry's decision below that rule. He submitted that as the applicant, a class IV servant was appointed prior to the amendment made in Rule 145, time limit as mentioned in the order Annexure A-3 namely 31st July, 1973 reiterated in the order Annexure A-4 cannot be considered and the applicant was entitled to make application before his date of retirement. On this point, there is a Full Bench decision of the Central Administrative Tribunal, Hyderabad Bench in Mallela Sreerama Murthy and another V/s. Union of India and others, reported in Vol. II of the Full Bench judgment of the C.A.T. (1989-91) in which a detailed discussion about Rule 145 and new rule 225 and its amendment made in 1971 prescribed time limit for asking for alteration of date of birth is discussed. It was held in this decision that the railway board's letter dated 3rd December, 1971 by which an amendment was made in old rule 145 will not effect the persons who were in service prior to the date. Thereafter, the Railway Board issued another letter dated 4th August, 1972, the question for consideration before the Full Bench

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was whether by the amendment dated 3rd December, 1971, it was the intention of the rule making authority to take away the right of railway servants to get their date of birth altered. It was held that the railway board's circular dated 4th August, 1972, which is an executive order is in conflict with sub-rule 143 of the Railway Establishment Code and, as such, cannot have the force of law, and therefore, the direction was given to the authorities to dispose of the representation of the applicant of that case regarding alteration of date of birth and to consider and decide the matter on merits. The order dated 4th April, 1988, Annexure A-3 is not decided on merits considering the school leaving certificate of the applicant produced at Annexure A-1.

More over, the glaring defect in the impugned order Annexure A-3 is that the competent authority by headquarter office has made a remark that the school leaving certificate was not available with AEE(W) BVP. Now if this certificate is not available, how could it be conclusively held that the date of birth recorded in the service sheet as 20th October, 1931 was on the basis of this school certificate which was produced by the applicant. The date of his entry in the service sheet and then / the subsequent events namely signature of the

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applicant on the first page of the service sheet and the seniority list published subsequently and option form signed by the applicant though show the date of birth as 20th October, 1931, the basis and source of that date is the date of birth in the school leaving certificate. If that school leaving certificate is not available as shown in the impugned order Annexure A-3 how could it be said that the said date is the date of birth shown in the school leaving certificate produced by the applicant at the time of entry without examining the genuineness of the birth date recorded in the school leaving certificate produced by him vide Annexure A-1. There is no application of mind on the part of the respondents in not considering the duplicate birth date certificate produced by the applicant.

5. The respondents have contended in the reply that the applicant signed his service sheet declaring in his own handwriting his birth date as 20th October 1931 on the strength of school certification personally produced by him and the first page of the service sheet is produced at Annexure R-1, R-2 & R-3 are the documents showing the procedure for recording date of birth on entry in railway service and its alteration and request for alteration of date of birth. As

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observed above, the Full Bench judgment of the Central Administrative Tribunal shows that even if the applicant, Class Iv servant had not made an application for alteration in the date of birth within the time as mentioned in the impugned order, he was entitled to apply as per old rule 145 as he had joined the service before that amendment. The respondents have also produced at Annexure R-4 the form regarding option for pension signed by the applicant on 21st February, 1980 in which his birth date has been shown as 20th October, 1931. The learned advocate for the respondents has vehemently argued that in view of the signature of the applicant in the front page of his service sheet Annexure R-1 and also in the form for option of pension in which the date of birth mentioned by him is 20th October, 1931, there is no room for doubt that the date was not correct. The applicant in his rejoinder has stated that the date of birth shown in Annexure R-1 is not in his handwriting and he has denied that the said date was entered on the strength of school certificate personally produced by him. The documents produced by the respondents show that the date of birth recorded therein is on the strength of the school leaving certificate produced by the applicant but it is very strange that the authority is not able to

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pin point that certificate. As observed earlier, the impugned order Annexure A-3 shows that when the applicant's applications were forwarded to the remarks Headquarter office/show that the school leaving certificate produced by the applicant about his birth date was not available with AEE(W) BVP. Now/^{if} trace the authority concerned does not / this certificate produced by the applicant, how could the blame be shifted on the applicant that he made representation late and not by 31st July, 1973 and that as the service sheet on the front page, seniority list, option form for the pension of the applicant bear the signature of the applicant showing birth date as 20th October, 1931, the same is conclusive. It was the duty of the respondents to decide on the school leaving certificate produced originally by the applicant or in absence of that to consider on merits /^{on} the school leaving certificate produced by the applicant after his representations. The respondents ought to have heard the applicant on merits but instead of doing so the respondents have relied on other documents forgetting the basic principle of evidence that the date of birth namely 20th October, 1931 shown in all the documents of the respondents flow from the school leaving certificate produced by the applicant and that and hence it is of no value, documents is missing / Therefore, this is a fit case

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in which the direction should be given to the General Manager or the personnel officer or the competent authority of the respondents to decide the case of the applicant about his date of birth on the basis of the documentary evidence produced by the applicant and after hearing him. The respondents should try to find out the certificate produced by the applicant at the time of his entry in the service and ^{if} that is not possible, the respondents to consider the certificate produced by the applicant subsequently on his representation and if found genuine then the date be corrected accordingly in the service record and the benefits be given to the applicant.

It is found that on merits the birth certificate is not genuine then the decision be taken accordingly by the respondents on merits but not on technical ground. Hence I pass the following order:

ORDER

Application is partly allowed. The impugned order Annexure A-3 dated 4th April, 1988, Annexure A-4 dated 15th September, 1989 are quashed and set aside. The General Manager or the Chief Personnel Officer or the officer competent to decide the case of date of birth of Class IV servant to decide the date of birth of the applicant on his representation dated 10th March, 1986 on merits,

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taking into consideration the school leaving certificate which is produced by the applicant on his representation if the school certificate produced at the time of entry of the applicant is not traceable. The decision on merits be taken by the officer competent to decide it after giving opportunity to the applicant to be heard. The decision be taken within four months from the receipt of the judgment of this Tribunal. No orders as to costs. Application is disposed of.

R.C. Bhatt

(R.C. BHATT)
Member (J)