

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.No. 40/97

in

O.A.NO. 206/91
T.A.NO.DATE OF DECISION 17.4.1997Union of India & Ors.

Petitioner

Mr.R.M.Vin

Advocate for the Petitioner [s]

Versus

Ramjibhai Ladhabhai Chauhan

Respondent

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Radhakrishnan

: Member (A)

The Hon'ble Mr. T.N.Bhat

: Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

1. Union of India through:
General Manager, Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway, Bhavnagarpara,
Bhavnagar.

3
: Applicants
(ori.Respondents)

(Advocate: Mr.R.M.Vin)

Versus

Ramjibhai Ladhabhai Chauhan,
Ramkrupa, Sardar Vallabhbhai
Patel Society, At Village:
Supedi, Taluka: Dhoraji

: Respondents
(ori.Applicant)

(Decision by Circulation)

ORDER

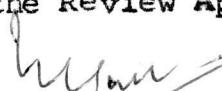
R.A. 40/97 in

O.A. 206/91

Date: 17.4.1997

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

This Review Application does not bring out any error apparent on the face of the record of our judgment dated 24.1.1997. Hence, we see no reason to review the said judgment. Accordingly, the Review Application is rejected.


(T.N.Bhat)
Member (J)


(V.Radhakrishnan)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Application No. RAJ 40187 D. 08/206/32
Transfer Application No. —

CERTIFICATE

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

Dated: 22/4/82

Countersign :

Section Officer.

23/4/91

K. B. Rao

Signature of the Dealing
Assistant

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

INDEX - SHEET

CAUSE TITLE Roff40193 in 009206/81
NAME OF THE PARTIES Umar Ali - Plaintiff

VERSUS

VERSUS
Ramfikeni chaucheni

SR. NO.	DESCRIPTION OF DOCUMENTS	PAGE
8	RA	23
9	A 1 & 2	24 to 32
	Signature of B14	

✓ 1. Judgment / order by
 (i) Hon'ble Mr. V. Radhakrishnan and
 (ii) Hon'ble Mr. T. M. Bhat

✓ 2. Both the aforesaid Members are functioning in this Tribunal.

✓ 3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

5. Hon'ble Mr. _____ has ceased to be Members of Tribunal but Hon'ble Mr. _____ is available in this Bench.

6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.

7. The case is not covered by any of the above contingencies.

✓ 2. Hence to be placed before the said Members i.e. Hon'ble Mr. V. Radhakrishnan Hon'ble Mr. T. M. Bhat

3. Hence may be sent for consideration by circulation to the said Members i.e., Hon'ble Mr. _____ & Hon'ble Mr. _____

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any 2 Members of this Bench.

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Members of this Bench for preliminary hearing.

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Vice - Chairman.

Jm
 24/2/97

S.O.(3)
 24/2/97

DAI
24/2/97

Submitted:

On Scrutiny, it is found that Ann. A/1
and Ann. A/2 not legible.

Notification is placed below for signature.

For
14/12/97

S.O.(J)
82429
82429

DR(J)
82429

R.J. sub.

obj. have not been complied with. Since
time granted for removal of obj. over, if approved
RA will be placed before the Hon. Bench for orders.

For
17/12/97

S.O.(J)
82429

DR(J)
82429

R.J. sub.

obj. have been complied with today. If approved,
RA will be registered.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

R.A. NO. 40/97 IN
O.A. NO. 206/91

1. Union of India through:

General Manager, Western Railway,
Churchgate-MUMBAI.

2. Divisional Railway Manager,

Western Railway, Bhavnagar Para.
BHAVNAGAR.

.... Applicants

(original Respondents)

V/S

Ramjibhai Ladhabhai Chauhan,

"RAMKRUPA", Sardar Vallabhbhai

Patel Society, At village: Supedi,

Tal:- DHORAJI....

Respondents.

(original applicants)

: INDEX :

S.NO.	Ann. Nos.	Documents.	Page No.
1.	-	Revised Application.	1 to 3
2.	'A'	Copy of judgement in O.A.NO.206/91	4 to 11
3.	A/1	Copy of judgement in O.A.No.301/91 decided on 22.01.96.	12 to 16
4.	A/2	Copy of judgement in O.A.NO.20/92 decided on 9.7.96.	17 to 20
5.	A/3	Copy of judgement in O.A.NO.731/96 decided on 24.10.96.	21 to 23

Place: Bhavnagar Para.

(S.K.Albela)

Date:- 19.02.97

Sr. Divisional Personnel Officer,

Western Railway, Bhavnagar Div.

RA
RIMvin
Served by S.A.
Served Advocate for Plaintiff
With second set 2 Hrs
Copies copy registered 26/2/97
Other 26/2/97

20/2/97
1/1/97
S. Registrar C.A.T.
Albad Beach

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

R.A.NO. 40 /97IN

O.A.NO.206/91

1. Union of India through
General Manager, Western Railway,
Churchgate, BOMBAY.

2. Divisional Railway Manager,
Western Railway, Bhavnagar Para.
Bhavnagar..

Applicants

(original respondents)

v/s

Ramjibhai Ladhabhai Chauhan,
"Rambrupa" Sardar Vallabhbhai
Patel, Society, At village: Supedi,
Tal:- DHORAJI....

Respondents.

(original applicant)

The applicants herein being original respondent in O.A. files this review application against the judgement dtd. 27.1.97 by this Hon. Tribunal in O.A.206/91 filed by Ramjibhai Ladhabhai Chauhan a copy of which is annexed hereto & marked Ann.A. as the following amongst other grounds:-

Annex A

1. The judgement and order in question is based on errors apparent and obvious on the face of the record.
2. The Hon. Tribunal erred in not following the correct procedure in deciding the matter.

3. The Hon. Tribunal overlooked the fact that it was only after the intimation of the retirement that the original applicant i.e. present respondent woke up and urged that his date of birth as recorded in official record was not correct.
4. The Hon. Tribunal overlooked the obvious position of law as laid down by Supreme Court that the disputes regarding the birth date ~~at~~ raised almost at the end ~~of~~ the service should not be countenanced.
5. The Hon. Tribunal should have held that the applicant respondent was stopped from challenging his birth date as he had accepted his birth date as recorded in the official records by signing the service sheet. It should have been noted that had he stated his birth date to be in 1933 as claimed by him now, he would have been rejected as underage. Having taken the advantage of appointment as an under aged person it was not open to the respondent applicant to challenge his birth date *and claim benefits both at the time of appointment and retirement.*
6. The Hon. Tribunal committed an error of procedure by calling for the school leaving certificate from Kalka School Shapur and relying upon the same.
7. The Hon. Tribunal's reliance on the judgement of state of Orissa V/s **Bimpam Dei & Others** reported in AIR 1967 SC 1269 is misconceived.
8. The judgement & order under review are otherwise bad, illegal and without jurisdiction.

9. That this Hon. Tribunal had rightly rejected identical matters by judgements passed in O.A. 301/91 decided on 22.1.96, O.A. NO. 20/92 decided on

Ann. A/1
A/2
A/3

9.7.96, 731/96 decided on 24.10.96 etc. Relying upon the law laid down by the Apex Court on the issue under challenge. Annexed hereto & marked Ann. A/2, A/2 and A/3 respectively are copies of the judgement.

10. The judgement under review was given on 24.1.97 and the applicant got copies thereof on 27.1.97. This review application is therefore in time.

In view of above, the applicants pray:

(a) that this review application be allowed, the judgement and order under review be reversed or set aside and the O.A. be ordered for to be dismissed.

(b) that such other and further relief be granted as may be deemed to be just & proper in the facts and circumstances of the case.

: AFFIDAVIT :

I, S.K.Albela, age 32 years, ~~am~~ Sr.Divisional Personnel Officer, Western Railway, Bhavnagar Division do hereby solemnly affirm that what is stated under para 1 to 10 above is true partly to my knowledge, partly to my information and partly to my belief. I am competent to file this application.

gents
S.K. Albela
18/2/97

Bhavnagar Para.

(S.K.Albela)

Solemnly affirmed by Sr. Divisional Personnel Officer,
Date: 18/02/97
Shankarkumar Albela
who is identified by me
by Shri. S. K. Albela
Western Railway, Bhavnagar Div.

Bhavnagar, Clerk of the Court
Dated.....18/02/97
18/2/97 Bhavnagar.



(u) Annex A

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 206/91
RE-A.O.NO.

DATE OF DECISION 24.1.1997

Shri Ramjibhai Ladhabhai Chauhan Petitioner

Mr. P. H. Pathak

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr. R. M. Vin

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. T. N. Bhat : Member (B)

संस्कृत लार्सेन अंड कॉंपनी
प्राइवेट लिमिटेड, भवनगर परा
Asst. Personnel Officer
W. Rly. Bhavnagar Para

24.1.1997
OCT 1997
24.1.1997

Shri Ramjibhai Kadhabhai Chauhan,
Ramkrupa,
Sardar Vallabhai Patel Society,
At Village : Supedi, Ta.Dhoraji

:Applicant

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India
Through:
General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager,
Western Railway,
Bhavnagarpara,
Bhavnagar,

: Respondents

(Advocate: Mr.R.M.Vin)

JUDGMENT

O.A.206/91

Date:24.1.1997

Per: Hon'ble Mr.V.Radhakrishnan

: Member A)

Heard Mr.P.H.Pathak and Mr.R.M.Vin, learned counsels for the applicant and the respondents respectively

2. The applicant joined service with the respondents in 1950. According to the applicant in the year 1960 he was asked to submit proof of his date of birth to the Administration and he had given his school leaving certificate showing date of birth as 10.5.1933. According to him in the station records the date of birth has all along been shown as 10.5.1933 vide copies placed at Annexure-A in the records deputing him for medical examination. According to the applicant in 1986 he was informed that he would retire from service on completion of 58 years i.e. on 10.9.1988. From this the applicant came to know that his date of birth was recorded as 10.9.1930. Immediately, thereafter the applicant made a representation claiming his date of

(G)

(SC)

birth as 10.5.1933 and he also submitted a copy of the school leaving certificate issued by Kalka School, Shahpur. The grievance of the applicant is that the respondents have wrongly recorded his date of birth as 10.9.1930 while his actual date of birth is 10.5.1933 as shown in the school leaving certificate. The applicant also raised the matter through the Union to correct the date of birth. No reply was given to the representation.

Orders were issued retiring him from service w.e.f.

30.9.1988 on the basis of date of birth being 10.9.1930 (Annexure A-2). Later on through the Union the applicant came to know that his date of birth was recorded as 10.9.1930 based on medical examination at the time of his appointment. The applicant claims that when documentary proof was available regarding his date of birth the respondents could not rely on medical examination for determining his age, which is only a rough method of ascertaining the age. Accordingly, the applicant prays for the following relief:-

- " (A) The Hon'ble Tribunal be pleased to hold the action of the respondents, retiring the applicant with effect from 30.9.1988 on the ground that the date of birth of the applicant is 10.9.30, as arbitrary, illegal and be pleased to quash and set aside the same and direct the respondents to consider the applicant in continuous service and grant all consequential benefits upto 31.5.91.
- (B) Be pleased to declare the impugned action of the respondents not accepting the documentary proof regarding the date of birth of the applicant, as arbitrary, illegal and irrational and direct the respondents to consider the date of birth of the applicant as stated in the school leaving certificate i.e. 10.5.33 and further direct to grant all consequential benefits with 18% interest.

JUL 07
2002
Asst, Personnel Officer
W. R. Bhavnagar Para

(c) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice".

3. The respondents have contested the application and have taken a preliminary objection regarding delay in approaching the Tribunal. They have stated that the applicant was appointed in the Railways in the year 1950 and his date of birth recorded as 21.9.1930 in the service sheet as per the instruction of Chief Medical Officer, Saurashtra Railway under his certificate No.1507. The applicant was also informed of his recorded date of birth in service sheet as 21.9.1930 vide letter No. EP/1205/JND dt. 16.3.1955 (Annexure R & R1). It is stated that at the time of initial appointment the applicant failed to produce any document regarding date of birth and hence the age was assessed as per the Chief Medical Officer's certificate. The applicant also signed the service sheet confirming correctness of the entries therein. They have stated that if his date of birth as given by the applicant is taken into account would have only 17½ years at the time of his appointment from 23.11.1950 while the minimum age of entry is 18. They have also stated that the applicant has not submitted any representation. The applicant has filed rejoinder. He denies that at the time of his appointment he was informed about the date of birth nor his service sheet prepared at the time of his entry in the service. He states that the service sheet was prepared subsequently. He claims that he is an illiterate person and he denies that his signature was taken in the service sheet. Regarding the

*Surat Lokayukta Sahayak
Sachiv, Bhavnagar Rly.
Asst. Personnel Officer
W. Rly. Bhavnagar Rly.*

question of age of entry, he claims that there was provision for employing the person at the age of 16 and not at the age of 18 only. He states that his date of birth was not mentioned as per school leaving certificate. He states that his date of birth has also been mentioned as 10.5.1933 in the station records continuously. He insists that he had submitted school leaving certificate in 1958 when he was asked to do so and the school leaving certificate clearly mentioned his date of birth as 10.5.1933. He also states that when evidence was available regarding his date of birth in the school leaving certificate he could not be medically examined for assessing his date of birth. During the arguments Mr. Pathak, learned counsel for the applicant pointed out that as per the medical memos issued by the station his date of birth was 10.5.1933. The applicant was never informed of any doubt regarding his date of birth as 10.5.1933 and only in 1986 he was informed that his date of birth was 10.9.1930. Therefore, it is clearly violation of principle of natural justice and that the applicant was not given any chance to explain before changing his date of birth which was all along recorded in the station records. In this connection he supported his contention with the judgment of Hon'ble Supreme Court in State of Orissa vs. Binapani Dei and others AIR 1967 SC 1269, according to which even administrative orders which involves civil consequences have to be passed consistently with the rules of natural justice after informing the

Deputy

कामिक विभाग
पर्सनल ऑफिसर, भावनगर परा
Asst. Personnel Officer
W. Riy. Bhavnagar Para

(A) 6

affected parties. Here it was not done and the date of birth which the applicant believed to be correct or altered to his disadvantage without informing him or giving him show cause notice. He also cited the case of B.K.Chakraborty vs. Union of India & Ors. 1991(17) ATC 134. According to which the date of birth in his service record should be based on the entry in the matriculation certificate.

4. Mr.Vin contested the claim of Mr.Pathak and contended that the applicant has no case as he has signed the service book showing the date of birth as 21.9.1930 and the application was also filed late as it was filed only on 14.5.1991 i.e. after delay of nearly three years.

5. We have heard the learned counsels for both the parties and gone through the records produced before us. It is difficult to accept the contention of the respondents that the applicant was informed about the non-acceptance of school leaving certificate by them in 1955. Had it been so, the station records maintained by Shahpur Station should not have shown continuously for several years the date of birth of the applicant as 10.5.1933 in the memo issued to the applicant from the station for his periodical medical examination. Moreover, the letter quoted by the respondents at Annexure R-1 does not give any reason for rejecting the school leaving certificate.

If there had any doubt regarding the date of birth given in the school leaving certificate, the respondents could have made an enquiry. No such

SI (S. J. Dony)
महाराष्ट्र का नाम का अधिकारी
प्रशिक्षण एवं विकास विभाग
Asst. Personnel Officer
W. Rly. Bhavnagar Para

(10)

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this Tribunal had referred the matter to the school authorities namely Kalka School, Shahpur and the school authorities vide their letter dated 20.4.95 have confirmed the genuineness of the certificate. It is conclusively proved that the date of birth shown in the school leaving certificate is as per school records. Regarding the contention of the respondents that the applicant had not raised the question of date of birth in 1986, it is seen that the applicant has stated that he was all along under impression that his date of birth was taken as 10.5.1933, as per records maintained by the station. The applicant * could not have made any representation regarding his date of birth as he was not informed about the date of birth being other than 10.5.1933 till 1986 when only he was informed about his retirement based on the date of birth as 20.9.1930, he made a representation immediately thereafter.

6. In the facts and circumstances of this case, we allow the application and direct the respondents to correct the date of birth of the applicant as per school leaving certificate i.e. as 10.5.1933. However, in view of delay in approaching the Tribunal by the applicant, it is directed that his pay will be fixed notionally after taking into account the date of birth as 10.5.1933 and he will be entitled for pension and gratuity as per the notional pay as arrived at without however any payment or arrears of pay. The revised pension and other retirement benefits of the applicant

सहायक कार्यालय अधिकारी *[Signature]*

प्राप्ति संरक्षक अधिकारी पारा

Asst. Personnel Officer *[Signature]*

W. Rly. Bhavnagar Para

(11)

(WS)

888

shall be calculated and disbursed to him within
three months from the date of receipt of a copy
of this judgment.

1 No order as to costs. 1-1

Sd/-

(T.N.Bhat)
Member (J)

Sd/-

(V.Radhakrishnan)
Member (A)

aab

File Col
Done
Shri Jayant Patel
Asst. Personnel Officer
W. Rly. Bhavnagar Para

W.M.M.

(12) *Anne A/2*
(118) *30-1-96*

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

CAT/J/13

O.A. NO. 301 of 1991
~~Textbook~~

DATE OF DECISION 22-01-1996

Shri Kakubhai Kanjibhai Rathod Petitioner

Mr. T. H. Sompura 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. K. Ramamoorthy : Member (A)

The Hon'ble Mr.

True Copy

Signature

लहाड़क कार्पोरेशन अधिकारी
प्रिवेट रेलवे, भावनगर शहर
Asst. Personnel Officer
W. Rly. Bhavnagar Para

Signature

(13)

(13)

- 2 -

Shri Kakubhai Kanjibhai Rathod,
Deval Commercial Centre,
Near Vanthali Gate,
Ghadi Khana,
Junagadh.

..Applicant.

(Advocate : Mr.T.H.Sompura)

Versus

1. The Union of India,
Notice to be served through
The Secretary,
Rail Mantralaya,
Rail Bhavan,
New Delhi.
2. The General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Signal and
Tele Communicat... Engineer. (D.S.T.E.)
Western Railway,
Bhavnagar Para.
4. Chief Personal Officer (C.P.O.),
Western Railway,
Churchgate,
Bombay.
5. Chief Signal Inspector,
Dhola (JN) Western Rly.
Junagadh.

..Respondents.

full by
(Advocate : Mr.R.N. Patel)

DR
Mr. R.N. Patel
Advocate
C.S.
Asst. Personal Officer
W. Rly. Bhavnagar Para

JUDGEMENT

S.A.NO. 301 OF 1991.

Date : 22-01-1996

✓ Per : Hon'ble Mr. K. N. Moorthy : Member (A)



The application relates to the question of change

in the date of birth. The applicant had entered the
Railway Service as a Ferro Khalasi on 1.4.1954. At that
time, his year of birth was recorded as 1933, on the
basis of medical examination, as he had not produced any

documentary evidence regarding his date of birth.

However, later in 1989, having realised the error in the recorded date of birth, he had represented to the authorities. He also produced the school record, as he had attended the primary classes. According to the school record his correct year of birth should have been recorded as 1936, and based on the documentary evidence, the applicant has sought change to be effected.

The respondent's case is explained in detail in the speaking order, communicated to the applicant on 16.1.1991 (Annexure-A/4). The rejection of the request by the applicant is based on the following grounds : -

- (1) The request has not been made in time. The Railways had called for all such request to be sent by 1973. No such request had come forthwith till then.
- (2) The year of birth is shown in all seniority lists. He had himself accepted the date in the Service Book by his attestation and had also used that very date in his subsequent application for withdrawals from the Provident Funds.
- (3) Undue advantage is being sought to be obtained by this change. If this year of birth has been recorded as 1933, he would not have been in receipt of full pay for the first three years, as up to the year 21, his pay would become reduced by one Rupee which had not happened in this case.



महाराष्ट्र रेलवे
प्रशिक्षण विभाग विभाग
Asst. Personnel Officer
W. Rly. Bhavnagar rara

(S)

The applicant claimed illiteracy to be the main factor for not taking action earlier. He has also claimed illiteracy as the alibi for not realising the fact of the wrongly recorded year of birth. Having come to know about the consequences, he had gone back to his old school and secured the necessary certificate from the school authorities. The applicant has claimed that the authority had also verified the authenticity of the certificate by sending the Welfare Inspector to the School.

We have gone through all the pleadings and averments. We heard both the counsels at length. The speaking order passed by the respondent is a self-contained order. The applicant has not been able to adequately explain the delay factor. Though there is an arithmetical error in the claim of the respondents that the applicant would have been under aged if the new date of birth were to be accepted, there is still some merit in the argument that the applicant would not have attained 21 years on the date of recruitment if the new birth date claimed were to be corrected. In the absence of documentary evidence, medical evidence is as much a valid evidence, and respondents were right in accepting it as a base, especially when the applicant had also accepted it as such. The apex court of this Country have already laid down the law that the records regarding date of birth should not be lightly interfered with especially when the request is belated. There is also some merit in the argument of the counsel for the respondents that the proof regarding this recorded date of birth is also of 1990 in 1990 only. The verification by the Range Welfare Inspector is not

सरकारी अधिकारी
सरकारी अधिकारी

Asst. Personnel Officer

W. Rly. Bhavnagar Para

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(18)

confirmed, and even if such a verification had been carried out, the onus still remains on this applicant to connect the enquiry as belonging to this applicant. In view of the definite rulings in this regard by the Supreme Court, I do not see any reason to interfere with the decision of the respondents in not accepting the request of the applicant for a change in the recorded date of birth. The delay factor in seeking change has not also been explained.



ait.

No order as to costs.

Prop
Final
Cor
Clerk

free copy
S.R.
Rajendra Singh Bhavnagar
Personnel Officer
W. Kly. Bhavnagar Para

Annex/12

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO.
~~SECRET~~

20/62.

(34)

DATE OF DECISION 09-07-1996.

Shri Bachubha G.Rana

Petitioner

Mr.G.A.Pandit.

Advocate for the Petitioner (s)

VERSUS

Union of India and ...

Respondent

Mr.R.M.Win

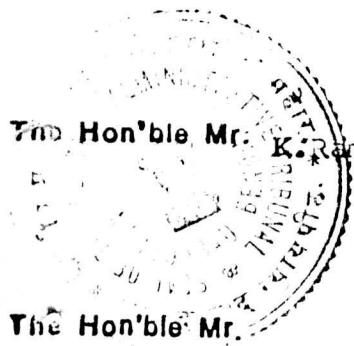
Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K.Ramamoorthy

: Member (A)

The Hon'ble Mr.



Amecav

SP
સાધુદાસ રાજ્ય કાર્યકારી
પદાધિક, ભાવનગર પદ્ધતિ
Asst. Personnel Officer
W. Rly. Bhavnagar Para

19/7/96

Shri Bachubha G.Rana
SPA Grade II MD,
Western Railway,
Chuda, Bhavnagar Div.,
Bhavnagar.

...Applicant.

(Advocate : Mr. G. A. Puri, Esq.)

Versus

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Bombay - 20.
2. Divisional Railway Manager,
Western Railway,
Divisional Office,
Bhavnagar Division,
Bhavnagar.
3. S.E.F.,
Western Railway,
Botad.

... Respondents.

(Advocate : Mr.R.M.Vid.)

J. S. C. LEE ET AL. / E. N. T.

O.A. D. 20 OF 1992.

Date : 09-07-1996.

Per : Hon'ble Mr.K.Ramamurthy : Member (A)

The present application relates to a question of alteration in the date of birth. According to the applicant his actual date of birth is 20.2.1995. However, it had been recorded wrongly as 21.1.1933, which has resulted in the retirement of the applicant 12 years prior to his actual year of superannuation. It is the contention of the applicant that he has produced a birth certificate as given by the school, (Anand - 1/1). At the time of his

entry into service, the birth date also has been recorded in his Identity Card. Thereafter, when he received a letter from respondent No.3 on 30.3.1990, impending superannuation in 1991, he had made the further application. Inspite of this, applicant has been retired on 31.1.1991.

In their written statement the respondents have contended that the applicant had not produced any school leaving certificate at the time of entry and therefore, the date of birth had been recorded as per medical examination. The year of birth was also shown as 1933 only in the Identity Card. It is the contention of the respondents that there has been a later tampering in the Identity Card, in the copy furnished alongwith the applicant which is apparent from the copy itself.

In such cases, the Railway Board specifically issued a circular (as at Annexure A/1), whereby every Railway employee who was in employment on 31.12.1971, had been given opportunity to represent against wrongly recorded date of birth upto 31.7.1973, and no such representation has been received from the applicant. It is now an established law that representation received for change in the date of birth at the fag end of one's career should not deserve any consideration.

The counsel for the applicant Sri Ravankumar was present. He strenuously argued that the applicant in this case was a semi-literate person who did not come to know of his impending retirement in 1991, i.e., 1990. Hence, he could not make any representation as he was

under the bona fide impression that the year of birth

महादेव कान्तिल अधिकारी

परिवहन विभाग अधिकारी

Asst. Pers. Officer

W. Rly. Bhavnagar Para

recorded in his Identity Card in 1935. On perusal ~~of~~ ^{when} of the Identity Card, it is found that there has been an over writing in respect of the entry regarding date of birth. There is also substantial merit in the argument of the respondent-department that representations received towards the very fag end of one's career specially when all the Railway employees had been given an opportunity to represent against the wrongly recorded date of birth. The applicant has not shown any evidence regarding any such representation by that date. The law in this regard has been reported by the Apex Court in the case of Union of India versus Ramseva Sharma delivered on 1.2.1996 S.C.C. (Las) 605. The Supreme Court has held that claim for correction of recorded date of birth made 25 long years after doing service is held ~~per se~~ ^{alleged} and attracts laches and delay clause.

In view of the above reasoning the application is ~~ex~~ considered to be devoid of merit and is rejected. In the particular circumstances of this case, there will be however, no order as to costs.

(K.Ramamoorthy)
Member (A)

ait,

प्रधानकार्यिक अधिकारी
प्रशिक्षण रेलवे, भावनगर परा
Asst, Personnel Officer
W. Rly. Bhavnagar Para

(2)
(82)
Annee A/3

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(11)

O.A.NO. 731/96 with M.A.702/96
T.A.NO.

DATE OF DECISION 24.10.1996

Shri Vashram Hari

Petitioner

Mr. M.T. Kikani

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. A. V. Haridasan

* Vice Chairman

The Hon'ble Mr. K. Ramamoorthy

* Member [s]

Full COPY

सहायक कार्यिक अधिकारी
प्राइवेट रेलवे, भावनगर परा
Asst. Personnel Officer
W. Rly. Bhavnagar Para

Shri Vashram Hari
Kadvator,
House No.72-B
Rukhodia Colony,
Behind Rajkot Junction,
Railway Station,
Rajkot-360 001
(Advocate: Mr.M.T.Kikani)

* Applicant

Versus

1. The Union of India
Through:
The Chief Mechanical Engineer,
Western Railway, Churchgate,
Mumbai-400 000.
2. The Divisional Railway Manager (E)
Western Railway, Bhavnagar Para,
DRM's Office, Bhavnagarpara.
3. Divisional Accounts Officer,
Western Railway, Bhavnagarpara,
DRM's Office, Bhavnagarpara-
4. Divisional Mechanical Engineer (E)
Western Railway, Bhavnagarpara,
DRM's Office, Bhavnagarpara, * Respondents

(Advocate:)

ORAL ORDER

O.A.731/96
with

M.A.No.702/96

Date: 24.10.1996

Per: Hon'ble Mr.A.V.Haridasan

* Vice Chairman

The applicant, who commenced his career with the Railway as a Fitter Mistry in the year 1953, was retd on superannuation on 30.4.1992. In the year 1989 he had made a representation that his real date of birth was 3.2.1936 and not 3.2.1934 and therefore, he should be allowed to continued in service as his date of birth as 3.2.1936. This representation was turned down by the Railway administration. Therefore, he pursued the matter again, even after retirement, when he received the order dated 18.8.94 and 31.3.95 stating that his request of alteration of his date

Asst. Personnel Officer
W. Rly. Bhavnagar Para

Asst. Personnel Officer
W. Rly. Bhavnagar Para

(23)

(62)

of birth was not agreed to. A direction has been sought to direct the respondents to alter the date of birth as 3.2.1936 and to treat the applicant as continued in service on the basis of the same, the applicant has filed this application. Since this application has been filed even after the prescribed period beyond which the impugned orders have been served the applicant has filed an M.A. for condonation of delay.

2. We have heard the learned counsel for the applicant. The applicant, who joined the service in 1953 did not take care to get the date of birth altered for more than four decades. In the year 1989 only he made a representation for alteration of his date of birth. ~~If the applicant having been put~~ ^{coming to} his date of birth in his service record was wrongly recorded as 3.2.1934 instead of 3.2.1936, should have taken steps to have the date of birth altered within a reasonable time. Till 1989 for more than four decades he did not take any action. Even after 1989 when he did not get any response to his representation he did not take any legal advise. If the applicant had lived for about 5 decades of his life when his date of birth recorded as 3.2.1934 then he has to live the rest of his life also with that recorded date of birth. ~~On the approaching year of~~ ^{have} long after his retirement, the applicant cannot be permitted to raise up his

claim of his so called correct date of birth.

85146 The application therefore does not merit and dismissed.

अनुसार (राज्य M.A. for condonation of delay is also rejected.

Sectional (1)
Administrative Tribunal
Sd/-
K. Ramamoorthy
Chairman
Member (A)
Albad Bench

Sd/-
G.V. Haridasan
Vice Chairman

सहायक कार्यिक अधिकारी
सहायक नियमित सचिव परा
Asst. Personnel Officer
W. Rly. Bhavnagar Para

Jan 21/96
24

CAT/J/18

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 301 of 1991
TRIBUNAL

DATE OF DECISION 22-01-1996

Shri Kakubhai Kanjibhai Rathod **Petitioner**

Mr. T. H. Sompura **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. K. Ramamoorthy : **Member (A)**

The Hon'ble Mr.

Jan 21/96
301 of 1996
24

Shri Kakubhai Kanjibhai Rathod,
Deval Commercial Centre,
Near Vanthali Gate,
Ghadi Khana,
Junagadh.

..Applicant.

(Advocate : Mr.T.H.Sompura)

Versus

1. The Union of India,
Notice to be served through
The Secretary,
Rail Mantralaya,
Rail Bhavan,
New Delhi.

2. The General Manager,
Western Railway,
Churchgate,
Bombay.

3. Divisional Signal and
Tele Communication Engineer, (D.S.T.E.)
Western Railway,
Bhavnagar Para.

4. Chief Personal Officer (C.P.O.),
Western Railway,
Churchgate,
Bombay.

5. Chief Signal Inspector,
Dhola (JN) Western Rly.
Junagadh.

..Respondents.

(Advocate : Mr.R.M.Vin)

J U D G M E N T

O.A.NO. 301 OF 1991.

Date : 22-01-1996.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The application relates to the question of change in the date of birth. The applicant had entered the Railway Service as a Ferro Khalasi on 1.4.1954. At that time, his year of birth was recorded as 1933, on the basis of medical examination, as he had not produced any

documentary evidence regarding his date of birth. However, later in 1989, having realised the error in the recorded date of birth, he had represented to the authorities. He also produced the school record, as he had attended the primary classes. According to the school record his correct year of birth should have been recorded as 1936, and based on the documentary evidence, the applicant has sought change to be effected.

The respondent's case is explained in detail in the speaking order, communicated to the applicant on 16.1.1991 (Annexure-A/4). The rejection of the request by the applicant is based on the following grounds : -

- (1) The request has not been made in time. The Railways had called for all such request to be sent by 1973. No such request had come forthwith till then.
- (2) The year of birth is shown in all seniority lists. He had himself accepted the date in the Service Book by his attestation and had also used that very date in his subsequent application for withdrawals from the Provident Funds.
- (3) Undue advantage is being sought to be obtained by this change. If this year of birth has been recorded as 1933, he would not have been in receipt of full pay for the first three years, as up to the year 21, his pay would become reduced by one Rupee which had not happened in this case.

The applicant has claimed illiteracy to be the main factor for not taking action earlier. He has also claimed illiteracy as the alibi for not realising the fact of the wrongly recorded year of birth. Having come to know about the consequences, he had gone back to his old school and secured the necessary certificate from the school authorities. The applicant has claimed that the authority had also verified the authority of the certificate by sending the Welfare Inspector to the School.

We have gone through the pleadings and averments. We heard both the counsel at length. The speaking order passed by the respondents is a self-contained order. The applicant has not been able to adequately explain the delay factor. Though there is an arithmetical error in the claim of the respondents that the applicant would have been under aged if the new date of birth were to be accepted, there is still some merit in the argument that the applicant would not have attained 21 years on the date of recruitment if the new birth date claimed were to be corrected. In the absence of documentary evidence, medical evidence is as much a valid evidence, and respondents were right in accepting it as the base, especially when the applicant had also accepted it as such. The apex court of this Country have also now laid down the law that the records regarding date of birth should not be lightly interfered with especially when the request is belated. There is also some merit in the argument of the counsel for the respondents that the proof regarding this recorded date of birth is also obtained in 1990 only. The verification by the Railway Welfare Inspector is not

28

(96)

- 5 -

confirmed, and even if such a verification had been carried out, the onus still remains on the applicant to connect the enquiry as belonging to this applicant. In view of the definite rulings in this regard by the Supreme Court, I do not see any reason to interfere with the decision of the respondents in not accepting the request of the applicant for a change in the recorded date of birth. The delay factor in seeking change has not also been explained.



The application therefore, fails.

No order as to costs.

Sd/-

(K. Ramanorth)

Member (A)

ait.

द्वयार कानूनीवाला

Prepared by: 25/1

मिलान वार्ड

Compared by:

रामनाथ रामनाथ

Copy

RSC
25/1/96

अधिकारी

अधिकारी

Central

कानूनी

25/1/96
R. M. King
2.4.97

Annex. A/2

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

29

34

O.A.NO. 20/92.
EX.A.NO. 20/92

DATE OF DECISION 09-07-1996.

Shri Bachubha G.Rana **Petitioner**

Mr.G.A.Pandit.

Advocate for the Petitioner(s)

Versus

Union of India and ors.

Respondent

Mr.P.M.Vin

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. K.Ramamoorthy

: Member (A)

The Hon'ble Mr.



filed w/ Abod

17/7/96

(33)

- 2 -

Shri Bachubha G.Rana
SPA Grade II ND,
Western Railway,
Chuda, Bhavnagar Div.,
Bhavnagar.

...Applicant.

(Advocate : Mr.G.A.Pandit)

Versus

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
Bombay - 20.
2. Divisional Railway Manager,
Western Railway,
Divisional Office,
Bhavnagar Division,
Bhavnagar.
3. S.E.F.,
Western Railway,
Botad.

...Respondents.

(Advocate : Mr.R.M.Vin)

JUDGMENTO.A.NO. 20 OF 1992.Date : 09-07-1996.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The present application relates to a question of alteration in the date of birth. According to the applicant his actual date of birth was 8.2.1995. However, it had been recorded wrongly as 21.1.1933, which has resulted in the retirement of the applicant, two years prior to his actual year of superannuation. It is the contention of the applicant that he has produced the birth certificate as given by the school, (Annexure-A/1). At the time of his

entry into service, the birth date also has been recorded in his Identity Card. Thereafter, when he received a letter from respondent No.3 on 30.3.1990, impending superannuation in 1991, he had made the further application. Inspite of this, applicant has been retired on 31.1.1991.

In their written statement the respondents have contended that the applicant had not produced any school leaving certificate at the time of entry and therefore, the date of birth had been recorded as per medical examination. The year of birth was also shown as 1933 only in the Identity Card. It is the contention of the respondents that there has been a later tampering in the Identity Card, in the copy furnished alongwith the applicant which is apparent from the copy itself.

In such cases, the Railway Board specifically issued a circular (as at Annexure-R/4), whereby every Railway employee who was in employment ~~on~~ 31.12.1971, had been given opportunity to represent against wrongly recorded date of birth upto 31.7.1973, and no such representation has been received from the applicant. It is now an established law that representation received for ~~change~~ in the date of birth at the ~~far~~ end of one's career should not deserve any consideration.

The counsel for the applicant Shri Pavankumar was present. He strenuously argued that the applicant in this case was a semi-literate person who had come to know of his impending retirement in 1991, only in 1990. Hence, he could not make any representation early as he was under the bonafide impression that the year of birth

(31)

32

- 4 -

recorded in his Identity Card was 1935. On perusal ~~of~~ of the Identity Card, it is seen that there has been an over writing in respect of the entry regarding date of birth. There is also substantial merit in the argument of the respondent-department that representations received towards the very fag end of one's career specially when all the railway employees had been given an opportunity to represent ~~did not deserve consideration~~ against the wrongly recorded date of birth. The applicant has not shown any evidence regarding any such representation by that date. The law in this regard has been reported by the Apex Court in the case of Union of India versus Ranseva Sharma delivered on 15.2.1996 S.C.C. (L&S) 605 ^{when} ~~the~~ Supreme Court has held that claim for correction of recorded date of birth made 25 long years after ~~going~~ service is held ~~per se~~ ~~alleged~~ and attracts laches and delay clause.

In view of the above reasoning the application is ~~now~~ considered to be devoid of merit and is rejected. In the particular circumstances of the case, there will be however, no order as to costs.

प्राप्त कर्तव्यात
Prepared by: K.R.S.
प्रमाणित
L. M. M.
Date: 18.7.96
Time: 10:00 A.M.

स. 1/
(K. Ramamoorthy)
Member (A)

dit.

अनुमति दिला (कर्तव्य)
प्रतिक्रिया की जाएगी।
केंद्रीय विधि विभाग
Central Administrative Tribunal
विधि विभाग,
Ahmedabad Bench.

Grace Lohy
Rohini
2.4.97