

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 121/92

~~T.A.NO.~~

DATE OF DECISION 15.7.96

Shri Hayatkhan H. Dathan Petitioner

Mr. P. H. Pathak Advocate for the Petitioner [s]
Versus

Union of India & Anr. Respondent

Mr. A. S. Kothari Advocate for the Respondent [s]

CORAM

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

The Hon'ble Mr.

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 Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

(5)

Shri Hayatkhan H.Pathan
Ghachiwad, Nr.Masjid
Tower Road,
Surendranagar

: Applicant

(Advocate: Mr.P.H.Pathak)

versus

Union of India
Notice to be served through
Divisional Railway Manager (E)
Western Railway,
Kothi Compound,
Rajkot.

: Respondent

(Advocate: Mr.A.S.Kethari)

ORAL ORDER

O.A./121/92

Date:15.7.96

Per: Hon'ble Mr.V.Radhakrishna

: Member (A)

The applicant joined the Railway service as Khalasi on 21.2.1962. The date of birth was entered in service book as per School Leaving Certificate given by him is 16.8.1934. The applicant states that his correct date of birth is 1.1.1937. The applicant submitted an affidavit dated 13.2.1958 along with the letter dated 4.12.73 from his father affirming that his date of birth is 1.1.1937. The applicant also states that he has given representation dated 4.12.1973 based on his father's affidavit, to the higher authorities regarding change of date of birth. The application was forwarded on 5.12.1973 to the Divisional Engineer, Rajkot, page 14 of the paper book, Annexure A-I, no reply was given to the applicant. When the seniority list of the non-gazetted

class III staff are published in 1980 the applicant's date of birth had not been changed. Again the applicant made an application on 4.11.80 requesting the authorities to correct the date of birth. This application was also forwarded through proper channel, Annexure A-2. When the applicant's retirement was notified, the applicant noted with objection that his date of birth was not correct (Annexure A-3).

2. Being aggrieved by the rejection of the request for change of date of birth by the Respondents the applicant prays for the following reliefs:

- " (A) The Hon'ble Tribunal be pleased to declare the impugned order dt.22.12.89 issued by the respondent refusing to change the date of birth of the applicant on the ground that he has not made the representation prior to that, as illegal, invalid and inoperative in law and is being non application of mind, be pleased to quash and set aside the same and direct the respondent to treat the applicant in continuous service treating the date of birth of the applicant as 1.1.1937.
- (2) Be pleased to direct the respondents to correct the date of birth of the applicant, as 1.1.37 and grant the applicant all consequential benefits and to continue the applicant in services on that basis.
- (C) Be pleased to declare the inaction on the part of the respondent to decide the representation of the applicant to change the date of birth, as arbitrary, ~~xxx~~ unconstitutional and violative of Art.14 of the Constitution of India and direct the respondent to decide the representation of the applicant within stipulated time.

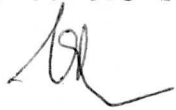
- (D) Be pleased to direct the respondent to pay the cost of this application as is required to be filed due to non application of mind on the part of the respondent.
- (E) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice."

3. The respondents have filed reply and taken an objection that the applicant has not exhausted departmental remedies available to him. According to the respondents, the applicant had represented only on 15.12.89 to change of date of birth which was replied to on 22.12.89, Annexure A by rejecting the same. They have denied receipt of earlier representations of 1973 and 1980. The respondents have stated that the applicant has not given the original certificate from the village authorities therefore, it is not possible to change the date of birth recorded in the service book as per School Leaving Certificate.

4. ^{the} From / documents produced by the applicant it appears prima facie that the applicant had been representing to the authorities from 1973 for change of his date of birth and not only nearabout the date of retirement. The respondents are directed to recheck and reverify their records further to verify the claim of the applicant that he had sent representation through proper channel in 1973 and 1980. The applicant is directed to file a fresh representation within four weeks from today giving all the original documents in support of his contention that his date of birth should be 1.1.1937

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including the extract from the birth register from the Panchayat to the respondents and when such a representation is received by the respondents, they shall consider the same after due verification and enquiry regarding genuineness of the documents submitted. Taking into account the documents produced by the applicant and after a personal hearing to him, the Respondents shall decide the matter regarding change of date of birth within three months from the date of the receipt of the representation and intimate the applicant the decision taken by the competent authority. Annexure A is passed by the authorities is accordingly quashed and set aside. The application is disposed of with the above direction. No order as to costs.


(V. Radhakrishnan)
Member (A)

vtc.