

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 201 OF 1992.

~~Ex. No.~~

DATE OF DECISION 11.8.1992.

C.M. Solanki, Petitioner

Mr. K.A. Kalani, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

- ✓
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 ? ✓

C.M. Solanki,
residing at Baroda,
at Hathikhana,
Harijanvas, Hutments,
Near Machhari Kabrastan,
Vadodara.

.... Applicant.

(Advocate:Mr.K.A. Kalani)

Versus.

1. Director,
Postal Service,
C/o. The Post Master General
Vadodara Region,
Vadodara.

2. Union of India,
through Post Master General,
Vadodara Region,
Vadodara.

..... Respondents.

(Advocate:Mr. Akil Kureshi)


ORAL ORDER


O.A.No. 201/1992

Date: 11.8.1992.

Per: Hon'ble Mr. N.V.Krishnan, Vice Chairman.

This application dated 29.10.1991 was before us for the first time on 17.6.92. Notice to the counsel for appearance on this date was served. But none was present. Further notices sent to the applicant have been returned unserved. Neither the applicant nor his counsel has remained present for the last several hearings. None is present today also. In the circumstances, this application is dismissed in default.


(R.C.Bhatt)
Member(J)


(N.V.Krishnan)
Vice Chairman

vtc.

Date

Office Report

ORDER

9-11-1992

Recd Submitted
This order requires
Ref of order of 11-8-92 according to
which OA was
dismissed.

The MA is for
restoration of OA 2
is under objection
2. was placed
for orders to
remove the
objections. Object-
s of MA are yet to be
complied with.

Sd/- 25/11
25-11-92

Int to con
on 25/11/92
25/11/92

25-11-1992

Present : None for the applicant
M.A. 373/92 The respondent Shri Akil
Kureshi states that the reply has been
filed today therefore the M.A has now
no substance and it is dismissed. Rejoinder
if any to be filed within two weeks. Register
to give date. M.A. disposed off.

(N.V.Krishnan)

Vice Chairman.

*AS.

None for the applicant. Records were not
available at the time of hearing. Place
for orders on 30-11-1992.

on basis of Registry LR

(R.C. Bhatt)

Member (J)

*AS.

(N.V.Krishnan)

Vice Chairman.

Date

Office Report

O R D E R

9-11-1992

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if any to be filed within two weeks. Register
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(N.V.Krishnan)

Vice Chairman.

*AS.

25-11-1992

None for the applicant. Records were not
available at the time of hearing. Place
for orders on 30-11-1992.

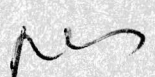



(R.C. Bhatt)

Member (J)

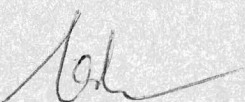

(N.V.Krishnan)

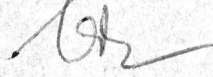

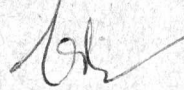

Vice Chairman.

*AS.

DATE	OFFICE REPORT	ORDERS.
30.11.92		<p>Neither the applicant nor his counsel is present today. The applicant has filed M.A.St.373/92 Objections; the applicant has not been removal. In the interest of Justice one more opportunity is given to him.</p> <p>Call on 16.12.1992.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (R.C.BHATT) MEMBER (J) </div> <div style="text-align: center;">  (N.V.KRISHNAN) VICE CHAIRMAN </div> </div> <p style="text-align: center; margin-top: 20px;">*SS</p>
16.12.92 15	<p><i>Recd Submitted Regular No to MA was given as the MA was MA vide order dtl 9/11/92. However the matter was kept on hold keeping MA pending as per note dtl 25/11.</i></p> <p><i>The copy of MA is not served on other side which is the only objection pending.</i></p> <p style="text-align: right;"><i>32/12</i></p>	<p>The cause list shows that the objections has not been removed in M.A.St.373/92 filed by the applicant. In the original application. A perusal of the M.A. shows that, the subsequently a regular number has been given 398 which is M.A.St.373/92. Therefore, it would appear that the objections has have already been removed. Registry should extract ^{verify} the note.</p> <p>Call on 4.1.1993.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">  (R.C.BHATT) MEMBER (J) </div> <div style="text-align: center;">  (N.V.KRISHNAN) VICE CHAIRMAN </div> </div> <p style="text-align: center; margin-top: 20px;">*SS</p>

DATE	OFFICE REPORT	ORDERS.
5.3.93		<p>None is present for the applicant.</p> <p>Mr. Kureshi learned advocate for the respondents the matter is adjourned. is present. For want of time, call on 10.3.93.</p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>*K</p>
10-3-1993		<p>Mr. Kalani has sent a sick note. Hence matter is adjourned to 17th March 1993.</p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice Chairman.</p> <p>*AS.</p>

DATE	OFFICE REPORT	ORDERS.
17-2-1993 3		<p>Heard learned Advocate Mr. Kalani for the applicant and Mr. Akil Kureshi for the respondents</p> <p>The applicant has made certain averments against the staff of this Tribunal in a issuing notice at a wrong address was mentioned in para 4 of Miscellaneous Application. These averments are not correct because before this date 24th June 1992 the applicants learned an advocate had already received the notice of hearing which was fixed on 17th June 1992. Therefore, it was the duty of applicant thereafter to inquire from the Tribunal the next date of hearing. Mr. Kalani submits that these averments in para 4 are made due to mis apprehension of facts and he by separate application today wants to withdraw. He ay withdraw it.</p> <p>This application is filed by applicant for <u>resotration</u> of the original application No. 201/92 which was dismissed for default on 11th August 1992. After hearing learned Advocates we allow this application setting aside the order of dismissal and restore OA to the file. Call on <u>2nd</u> April for admission of original application.</p> <p>M.A. is disposed of accordingly.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;">  (V. Radhakrishnan) Member (A) </div> <div style="text-align: center;">  (R.C. Bhatt) Member (J) </div> </div> <p>*AS.</p>

DATE	OFFICE REPORT	ORDERS.
2-4-93		<p>Still leave to be by applicants' / respondents' advocate. Admitted to 7-4-93. No</p> <p>Further time will be given.</p> <p>admitted to</p> <p> (V. Radhakrishnan) Member (A)</p> <p> (N. B. Patel) Vice Chairman</p>
7-4-1993		<p>Admitted. Notice requiring the respondents to file reply within four weeks. Rejoinder may be filed within two xx weeks after the filing of the reply. After the pleadings are complete the matter be fixed for final hearing.</p> <p> (V. Radhakrishnan) Member (A)</p> <p> (N. B. Patel) Vice Chairman.</p> <p>*AS.</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE CA 20192 OF 19

NAMES OF THE

PART IES

Shri. C. M. Salanki.

VERSUS

U. O. J. & Co.

PART A B & C

[illegible]

rice Report

ORDER

Being a Division Bench matter, adjourned
to 17-10-1996.

R
(K. Ramamoorthy)
Member (A)

ait.

17.10.96.

Being a Division Bench matter, adjourned
to 25.10.1996.

R
(K. Ramamoorthy)
Member (A)

ait.

25-10-96

For want of time the matter is adjourned
to 26-11-96...

R
K. RAMAMOORTHY
MEMBER (A)

BEING A DIVISION BENCH MATTER
ADJOURNED TO 17/12/96

R
K. RAMAMOORTHY
MEMBER (A)

7.12.96.



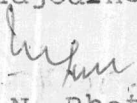
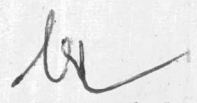
Heard the learned counsel.
Reserved for Judgment .

(A.K. Mishra)
Member (J)

R
(K. Ramamoorthy)
Member

1-97
ait. The Judgment of D.B. Hon
A.K. Mishra is
per sent by the Hon
The Application is a
direction is for J
as to long

< Ramamoorthy
Member

Date	Office Report	ORDER
2.2.96		<p><u>MA/101/96</u></p> <p>M.A. for bringing heirs on records allowed.</p> <p>Necessary amendment may be carried out within ten days.</p> <p>MA/101/96 stands disposed of.</p> <p><u>OA/201/92</u></p> <p>May be fixed for final hearing in due course.</p> <p style="text-align: right;">  (K. Ramamoorthy) Member (A) </p> <p>npm</p>
5.8.96		<p><u>MA/503/96</u></p> <p>M.A. for early hearing allowed.</p> <p>MA/503/96 stands disposed of.</p> <p>Earlier MA for bringing heirs on record was allowed on 2.2.96. The applicant should carryout correction in the petition within a period of tw one week.</p> <p><u>OA/201/92</u></p> <p>May be fixed for final hearing on 22nd August, 1996.</p> <p style="text-align: right;">  (K. Ramamoorthy) Member (A) </p> <p>npm</p>
8.96		<p>At the request of Mr. R.R. Tripathi, the matter is adjourned to 11.09.1996.</p> <p style="text-align: center;">  (T.N. Bhat) Member (J) </p> <p style="text-align: center;">  (V. Radhakrishnan) Member (A) </p> <p>npm</p>

Office Report

ORDER

1.9.96.

Being a Division Bench matter, adjourned
to 17-10-1996.

(K. Ramamoorthy)
Member (A)

ait.

17.10.96.

Being a Division Bench matter, adjourned
to 25.10.1996.

(K. Ramamoorthy)
Member (A)

ait.

25-10-96.

For want of time the matter is adjourned
to 26-11-96.

K. RAMAMOORTHY
MEMBER [A]

BEING A DIVISION BENCH MATTER
ADJOURNED TO 17/12/96

K. RAMAMOORTHY
MEMBER [A]

7.12.96.

Heard the learned counsel.
Reserved for Judgment.

(A.K. Mishra)
Member (J)

(K. Ramamoorthy)
Member (A)

3-1-97

The Judgment of DB Hon K Ramamoorthy
ait. Hon A.K. Mishra is found to be
proper sent by the Hon K. Ram
The Application is directed
discretion is sent with the Judgment
in 2002

Date	Office Report	ORDER
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22.8.96		<p>At the request of Mr.R.R.Tripathi, the matter is adjourned to 11.09.1995.</p> <p style="text-align: center;">(T.N. Bhat) (V.Radhakrishnan) Member (J) Member (A)</p> <p>npm</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 201 of 1992
~~E.A.NO.~~

DATE OF DECISION 3rd January 1997

C.M.Solanki Petitioner

Mr. R.R.Tripathi Advocate for the Petitioner [s]
Versus

Union of India and others Respondent

Mr. Akil Kureshi Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. K.Ramamoorthy, Member (A)

The Hon'ble Mr. A.K.Mishra, 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 Lordships wish to see the fair copy of the Judgment ?
 - 4, Whether it needs to be circulated to other Benches of the Tribunal ?
- / 250

C.M.Solanki
Hathikhana, Harijanvas
Hutments, near Machhari Kabrastan
Vadodara.

Applicant

Advocate: Mr. R.R.Tripathi

Versus

1. Director
Postal Service,
C/o. The Post master, ~~General~~
General, Vadodara Region
Vadodara- 2.

2. Union of India
Through Post Master General
Vadodara Region
Vadodara- 2.

Respondents

Advocate: Mr. Akil Kureshi

JUDGEMENT

IN

O.A. No.201 of 1992

Dated 3rd January 1997

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

This application has been filed against the order of removal passed on the applicant after departmental inquiry. During the pendency of the proceedings, the applicant died on 4.12.95 and Misc. Application No.101 of 1996 was allowed bringing from the legal heirs Mrs. S.C.Solanki widow of the applicant on record to pursue the present application.

The short facts ~~are~~ of the case are as under:-

The applicant has been working as a full time safaiwala with effect from 1.10.82. Before this time he had been working as a part time sweeper. On his confirmation, on the strength of an affidavit dated 20.9.80 made by the uncle of the applicant Shri Motibhai Chitabhai Solanki the date of birth has been recorded as 1.6.56 for want of records to that

effect and also because the entry of his birth date was not made before the local authorities. However, it was later discovered that at the time of observing the prescribed formalities awarding Q.P. status, a zerox copy of the School Leaving Certificate dated 19.6.78 issued by ^{Danoli} ~~Dave~~ Primary School Taluka Padra was seen in the P.F. of the official which reflected the date of birth as 4.5.42. Shri Solanki thereafter submitted the original school leaving certificate on 25.2.86 with clarification that his name was Chimanbhai Harijan and his date of birth was 4.5.1942. ~~Thexfat~~ He further stated that there was no mal intention in doing so as in their caste Harijan and Solanki were same.

However, in view of this discrepancy the applicant was issued chargesheet for deliberately concealing his date of birth and for failure to observe the prescribed procedure for changing the surname. Necessary inquiry was conducted in this matter after issue of chargesheet dated 20th July '89. The Inquiry Report was furnished under letter dated 22.1.95 wherein all the charges were found to have been partially proved. Thereafter the punishment of removal was passed on the applicant vide ~~lat~~ order No. E 4/CMS/88 dated 28th Novr.1990 (~~page~~ 50). The appeal was filed by the applicant which was also rejected vide order No. STA/3-17/91 dated at ~~Vad~~ 2 the 31.5.91.

The applicant has challenged the above order of removal by the Disciplinary Authority and confirmed by the Appellate Authority on the ground that the charge levelled against the applicant had been found to have been only partially proved as ^{per} the report of t

Inquiry Officer. There was no malafide intention on the part of the applicant in filing the affidavit. In fact, it was on the specific inquiry from the department that the applicant had filed the affidavit regarding date of birth as at that time no exact information was available with him. Since earlier record was already available with the department, the department should not have sought for further record. In any case in 1986 when the record was available the applicant had explained the position and the department should have taken further action to set right the records based on the record already available with them. As regards the charge of changing his surname from Harijan to Solanki it was a minor lapse deserving no departmental action at all.

In the written statement the respondent department have stated that the main charge of the official having deliberately concealed the correct date of birth with a view to secure employment in contravention of Rule 281 of F.H.& B. Vol.I thereby failing to maintain devotion to duty is a self proved charge since the applicant himself has admitted the fact of his having furnished another record with a differing date of birth earlier. For this main charge, which involved question of integrity, the department was well within its right to pass the order of removal.

Both the counsel for the applicant as well as respondents were heard.

The learned counsel for the applicant argued that he was basically concerned with the quantum of punishment in this case. The applicant

Scheduled caste, the question of the applicant's filing a false affidavit ^{to derive benefit of} ~~covering~~ the age factor at the time of entry did not arise as even the year 1942 as date of birth would have still entitled him to get regularised ^{and} ~~as~~ the age factor would not come in his way. It was the contention of the applicant that the applicant was working as a Sweeper and the fact that he had ultimately ~~retired~~ ^{expired} in 1995 also proved that the applicant did not derive any advantage from that change in the record of his date of birth. The quantum of punishment called for review taking into account the socio-economic condition of the applicant and the fact that no particular advantage was derived by the applicant and also by the fact that ~~w~~ even when the record was available with the department, the department had chosen to ask for a fresh affidavit. The learned counsel for the respondents has however confined his argument to the fact that action was taken on a question of integrity and the affidavit has been filed deliberately to obtain additional years of service. However, his death occurred in 1995 and the applicant could not however ~~at~~ actually get the advantage of additional years.

The Tribunal has gone through the facts of this case and has come to the conclusion that the case is one which deserves remittance with a direction to the appellate authority to reconsider the quantum of punishment in view of the fact that the applicant had not come to derive any benefit and also due to the fact that the department could not have asked for a fresh record of birth date for a second time when some record was already available with them. The fact that the applicant

had put in certain number of years of service to enable the family to claim for family pension is also a factor to be taken into consideration by the appellate authority while deciding on the formal punishment which was required to be passed in this case. Hence the case is ordered to be remitted to the appellate authority for consideration as above and to decide the issue within the period of next four months.

There would be, however, no orders as to costs.



(A.K.Mishra)
Member (J)



(K.Ramamoorthy)
Member (A)

pmr