

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.306/92

Date of Decision : 15-12-99

Mr.B.R.Rajput : Petitioner (s)

Mr.K.K.Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr.N.S.Shevde : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr.A.S.Sanghavi : 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? ~

Bhuwaneshar Singh R Rajput
Residing at Railway Colony,
Quarter No. 45/D Gandhidham,
Kutch, Gujarat

applicant

Advocate Mr.K.K.Shah

Versus

1. Union of India, Through :
The General Manager,
W.Rly., HQ Office, Churchgate,
Bombay.
 2. Divisional Railway Manager,
Divisional Office, W.Rly.,
Ajmer.
 3. Station Supdt.,
W. Rly., Gandhidham Railway Station,
Gandhidham.
- Respondents

Advocate Mr.N.S.Shevde

J U D G M E N T
IN
O.A.NO.306 OF 1992

Dt. 15-12-99

Per Hon'ble Mr.A.S.Sanghavi Member [J]

The applicant has moved this O.A. for correction in his date of birth and prayed for a direction that the respondents should not retire the applicant w.e.f. 30.10.92. According to the applicant at the time of joining the service with the Railways, he was not called upon to furnish certificates regarding educational qualification etc. and therefore, he had not furnished any such certificates. He had however given the date 20.7.37 as his date of birth, since he believed that he had given the correct date he had no reason to apply for change of birth date. However, in the year 1991, he was informed that he was going to retire in the year 1992 and getting the list of the persons who were to be retired from 2.1.92 to 1.1.93, he had come to know that his date of birth was wrongly recorded and consequent to that he was being retired earlier. He had therefore immediately represented on dated 27.11.91 that his date of birth was wrongly recorded and as per the school certificate his date of birth was 20.7.37 and not 1.10.34 as shown in the service record. No reply was received to his representation and therefore, he had again sent another representation through proper channel for which a reply was given that he had not applied during his service

and therefore, now it was not possible to correct the birth date. He has therefore, moved this O.A. for correction of his date of birth.

2. The respondents have resisted this application vide their reply contending inter alia that the applicant had joined the service on dated 4.10.56 but it is not correct that he was not required to furnish certificates at the relevant time showing his educational certificates etc. In fact he was asked to furnish the certificates to show his date of birth but he was not in possession of such certificates and was therefore, sent for medical examination to ascertain his age. As per the medical officer's certificate No.93063 dated 1.10.56, he was assessed to be of 22 years at the time of his examination on dated 1.10.56., and therefore, his date of birth was recorded in his service book as 1.10.34. The same was attested by the Sr. Supervisor and the A.P.O. Ajmer at that point of time and therefore, the allegations that he was not asked or he was not required to furnish any certificates etc. are false and made on after thought. They have denied that the applicant had given his date of birth as 20.7.37 and have contended that the applicant had suppressed material facts and now at

the time of retirement after about 35 years of the service, he has come up with a false case for the first time that he had given his date of birth as 20.7.37. They have also raised doubt regarding the genuinity of the school leaving certificate contending that the certificates does not bear the registration number or the serial number and that the same has been obtained by the petitioner only in the month of October 1991. It is also contended that the certificates shows that the applicant had entered the school on 20.7.48 and he had left the school on 10.5.51 and at that time he was in standard 8th. This should mean that within 3 years, he had completed 8th standard. Hence, the certificates cannot be believed and relied upon. In any case, he has suppressed the fact that he was medically examined to ascertain his date of birth and his birth date was recorded in view of the certificates given by the Doctor. He cannot now be heard to change his date of birth after 35 years of service as the application is barred by delay and laches. They have prayed for rejection of the application.

3. It is an undisputed position that since the filing of this application, the applicant has retired from the service on attaining the age of supeannuation as per the birth date recorded by the Railway authorities in

his service book. It is evident from the contents of the application itself that at the time of entry in the service on dated 4.10.56, the applicant did not furnish the certificates showing his birth date and therefore, he was medically examined for the ascertainment of the birth date. Though the applicant does not say anything about his medical examination for ascertainment of the birth date, he concedes that he had not produced any educational certificates or any birth certificates at the time of the entry in the service. The contention of the respondents in their reply that the applicant had not produced any birth date certificate and therefore he was sent for medical examination and as per the medical examination, his age was ascertained as of 22 and hence, his birth date was recorded as 1.10.34 is not denied by the applicant by filing any rejoinder. No rejoinder is filed by the applicant to the reply given by the respondents and therefore, the contentions of the respondents in their reply remain unrebutted. Under the circumstances, there is no reason not to believe the say of the respondents that the applicant even though required to furnish the birth date certificates, could not furnish the same as he was not in possession of the same, and was therefore sent for medical examination to determine his age. It is therefore quite

obvious that the say of the applicant that he has given the birth date as 20.7.37 is a got up story on after thought and applied only to get some more years of service.

4. It is now well settled by several decisions of the supreme court that the principle of delay and latches is attracted to the cases where an employee does not move the authorities concerned to correct his date of birth within a reasonable time. The supreme court has now held that in such cases where the government servant had been negligent and careless in not getting his date of birth corrected in reasonable time, no remedy should be provided. It is also held that inordinate and unexplained delay and latches on the part of the government servant to seek the necessary correction would in any case justify the regular of relief to him.

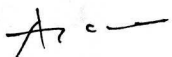
5. In the case of Union of India Vs. Harnam Singh reported in 1993 [2] SCC 162, the supreme court has laid down that when the alteration in the date of birth was sought after 35 years of induction into the service by a government servant that in view of the inordinate and unexplained delay in getting his date of birth corrected, the relief

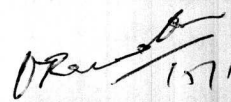
prayed for ought to be rejected. Thereafter again in the case of Union of India, vs. Kantilal Hematram Pandya, reported in 1995 [2] GLR 1650, the supreme court relying on the Harnam's case has laid down that the stale claims and belated applications for alteration of the date of birth recorded in the service book at the time of initial entry made after an unexplained and inordinate delay on the eve of retirement need to be scrutinized carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual "

6. Again in the case of Union of India Vs. Ram Suia Sharma reported in [1996] 7 SCC-421, the supreme court has laid down that the court or the Tribunal at the belated stage cannot entertain the claim for the correction of date of birth duly entered in the service records. Again in the case of Commissioner of Police, Bombay Vs. Bhagwan L.Lahane reported in [1997]1 SCC 247, the supreme court has again reiterated that the claim of correction of date of birth at the belated stage should be rejected and it should also be observed that the employee seeking alteration himself must show that his

date of birth was made due to some other person or obvious clerical error where the employee fails to do so, the relief should not be granted by the Administrative Tribunal.

7. All these decisions apply with full force to the facts of the instant case. Considering the ratio of these decisions in the facts and circumstances of the instant case, we are of the opinion that the birth date of the applicant cannot be allowed to be altered at such a belated stage and that the application suffers from vices of latches and delay and the same therefore deserves to be rejected and hence, in the conclusion, we reject the O.A. with no order as to costs.


[A.S.SANGHAVI]
MEMBER [J]


[V.RAMAKRISHNAN]
VICE CHAIRMAN

S.Solanki