

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO./374/92

T.A.NO.

DATE OF DECISION : 1-9-99

Vinayak Jayantilal Bhatt Petitioner [s]

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. 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? ~

Vinayak Jayantilal Bhatt,
Head Clerk in the office of
Divisional Railway Manager,
Western Railway, Bhavnagar Para.

Applicant

Advocate Mr.M.M.Xavier

Versus'

1. Union of India, Through :
General Manager,
Western Railway, Churchgate,
Bombay.
2. The Divisional Railway Manager,
Bhavnagar Division,
Western Railway,
Bhavnagar.
3. The Head Train Examiner[at present
office of Carriage Depot Officer],
Western Railway,
Bhavnagar Division,
Bhavnagar terminus

Respondents

Advocate Mr.R.M.Vin

J U D G M E N T

IN

O.A.NO.374/92

Dt.01-9-99

Per Hon'ble MR.A.S.SANGHAVI : MEMBER [J]

The applicant who was serving as a Head Clerk at Bhavnagar para in the office of DRM, has filed this O.A. on dated 1.7.92 after his retirement on superannuation on dated 30.4.92 for the correction of his date of birth. According to the applicant, he had joined the services of the railway on dated 16.4.55 and at the time of joining the service he had declared his date of birth as 24.7.35. He was thereafter on dated 5.10.63 asked to submit proof of his date of birth and he had replied vide his letter dated 7.10.63 that his date of birth is 24.7.35 and had also annexed school leaving certificate of Bhavnagar. He has also contended that on a number of occasions his date of birth was shown in correct in official documents and he has taken strong objection and had asked the department to correct his date of birth as 24.7.35. According to him, in the seniority list notified by the respondent no.2. on dated 24.5.91 his date of birth was wrongly shown as 24.7.34. He had therefore immediately submitted a representation on dated 26.2.91. and had also produced the copy of the school leaving certificate wherein his date of birth was shown as 24.7.35. He has alleged that while preparing the settlement papers, concerned official insisted that he mention his date of birth as 24.7.34 to facilitate the smooth and quick payment of settlement

dues to which he had strongly objected. According to the applicant his correct date of birth is 24.7.35 and since the same has not been corrected by the respondents even though representations for the correction of the same were sent, he has been wrongly retired from service w.e.f. 30.4.92. He has prayed for a declaration that the order dated 17.9.91 as annexure A/1 is illegal and to hold that his date of birth is 24.7.35 and consequently he is entitled to continue in the service up to 31.7.93.

2. The respondents have resisted the application contending inter alia that the date of birth of the applicant was noted in his service record as per the information given by him and the same date of birth i.e. 27.4.34 as notified time and again in the seniority list and other documents. It is also contended that the applicant has himself shown his date of birth in the P.F. application as well as in the application for the post of Vigilance Inspector for which he had applied on dated 15.1.90. The respondents have denied that the applicant has produced the school leaving certificate for correction of his date of birth in the official record and have contended that no such certificate has ever been produced by the applicant and only to misguide the Tribunal, he has raised the false contention. It is also further contended that an opportunity was given to

railway servants vide circular dated 6.9.72 to make representation for the correction of their date of birth up to 31.7.73 through supervisor and if the applicant's grievance was genuine that his date of birth was not correctly recorded in the official record, he ought to have moved the application for correction of his date of birth before 31.7.73 . No such application was moved by the applicant and therefore, he is not entitled to re-agitate the question again. It is further contended by the respondents that this application is moved after the applicant has retired on superannuation as per his date of birth shown in the official record and therefore, this O.A. is not maintainable. They have prayed that the application be rejected.

3. Though the applicant has contended that he had made several representations to the authorities for the correction of his date of birth, no reason is forthcoming from him why he had not taken any steps to see that his date of birth is corrected by the respondents. It is interesting to note that the applicant himself has tried to change his date of birth as 27.4.34 and not 24.7.35 as seen from his own bio-data forwarded by him to the DRM, Bvp. on dated 15.1.90 Annexure R/1. From this bio-data signed by the applicant himself

an application was invited for the selection for the post of CVI in the scale of Rs.2000-3200 and therein he has not only given his name, designation and department and the present pay but has also given his date of birth as 27.4.34 . This bio-data was supplied by the applicant himself and therefore now he cannot be heard to say that his date of birth was 24.7.35 and it has been incorrectly recorded as 27.4.34 in the official record. He is in fact estopped from raising the plea that his date of birth is incorrectly recorded in the official record. The applicant has maintained in his application that he has sent several representations for correction of his date of birth but no reason is forthcoming from him why had mentioned his date of birth as 27.4.34 as far back as 15.1.90. in an application tendered by him for the grade of 2000.-3200/-. It is quite obvious that he had slept over his right to get his date of birth changed and had woken up from his deep slumber only at the time of his retirement. In fact he has filed this O.A. after his retirement on superannuation on dated 30.4.92.

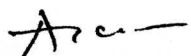
4. It is now well settled by several decisions of the Supreme Court that the principle of delay and laches is attracted to the cases where an employee does not move the authorities concerned to correct his date of birth

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 laches on the part of the government servant to seek the necessary correction would in any case justify the refusal 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 Harnaam'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 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. Bhagwam 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 laches 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]
SS


[V.RAMAKRISHNAN]
VICE CHAIRMAN