

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 397 OF 1992

~~Ex No.~~

DATE OF DECISION 4-11-1993.

Oza Kanaiyalal Manilal, Petitioner

Mr. M.M. Xavier, Advocate for the Petitioner(s)

Versus

Union of India & Ors., Respondents

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R. Kolhatkar, Admn. 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 ? ✗

Oza Kanaiyalal Manilal,
Electrical Fitter (TL),
Bhavnagar Para Workshop,
Bhavnagar Para.
Residential Address:
Block No. 10/A, Room No.3156,
Vardhman Nagar, (Bharat Nagar),
Bhavnagar.

.... Applicant.

(Advocate: Mr. M.M. Xavier)

Versus.

1. The Union of India, Owing &
Representing Western Railway,
Through its General Manager,
Western Railway, Churchgate,
Bombay. (Notice to be served to
Chief Personal Officer,
Churchgate, Bombay)

2. The Works Manager,
Office of the Works Manager(Electrical),
Bhavnagar Para Workshop,
Bhavnagar Para.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL JUDGMENT

O.A.No. 397 OF 1992

Date: 4-11-1993.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. M.M.Xavier, learned advocate for the
applicant and Mr. R.M. Vin, learned advocate for the
respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
applicant seeking the relief that he is entitled to get
his date of birth corrected on the basis of the School
Leaving Certificate and the direction be given to the
respondents to carry out necessary alteration in the

..... 3/-

service record of the applicant. It is also prayed by the applicant in his relief that the impugned action in retiring the applicant with effect from 31st October, 1989 and the impugned order dated 15th July, 1992 issued by the C.P.O, CCG rejecting the alteration in the date of birth on irrelevant ground is illegal and void and the same be quashed and the respondents be directed to consider the applicant to have continued in service till he attains~~s~~ the age of 58 years i.e., 30th November, 1993 and to grant all the consequential benefits arising thereof.

3. The respondents have filed reply contending that the applicant has produced copies of two School Leaving Certificates at Annexure A-1 which consists of Gujarati language and English language and there can not be two original certificate in different languages. There are many other contentions taken in the reply.

4. We have heard the learned advocates and we have considered the documents on record.

5. The applicant had earlier filed O.A. 84/90 on the same ground for which he filed the present O.A. for correction of his date of birth as 14th November, 1935 in place of wrong recording of the birth date in the service record as 20th October, 1931. We decided that O.A. 84/90 on 18th March, 1992 and we passed the following order in that matter.

"Application is partly allowed. The impugned order Annexure A-3 dated 4th April, 1988, Ann.A-4 dated 15th September, 1989 are quashed and set aside. The General Manager or the Chief Personnel Officer or the officer competent to decide the case of date of birth of Class IV servant to decide the date of birth of the applicant on his representation dated 10th March, 1986 on merits, taking into consideration the school leaving certificate which is produced by the applicant on his representation if the school certificate produced at the time of entry of the applicant is not traceable. The decision on merits be taken by the officer competent to decide it after giving opportunity to the applicant to be heard. The decision be taken within four months from the receipt of the judgment of this Tribunal. No orders as to costs. Application is disposed of."

Thus we had quashed the impugned order Annexure A-3 dated 4th April, 1988 and Annexure A-4 dated 15th September 1989 in that matter and the General Manager or the C.P.O was directed or the competent officer to decide the case of date of

birth of the applicant on his representation dated 10th March, 1986 on merits taking into consideration the School Leaving Certificate produced by the applicant on his representation if the School Certificate produced at the time of entry of the applicant is not traceable. We had also observed in that judgment just before our final order that if it is found on merits that the birth certificate is not genuine then the decision be taken accordingly by the respondents on merits but not

on technical ground.

6. After our remand to the competent authority, the competent authority has passed an order which is impugned before us by the applicant. The said impugned order is produced at Annexure A-1 along with the forwarding letter dated 20th July, 1992, the C.P.O. in his order Annexure A-1 dated 15th July, 1992 in para 3, 4, 5 & 6 has held as under:

"3. The employee during personal hearing showed a copy of the School Certificate, which was in torn condition with vital information missing. However, he also had produced a zerox copy of the same certificate which appeared to be a duplicate copy of the original certificate as the handwriting was different. The employee could not produce the original of duplicate certificate from which ~~they~~ zerox copy had been taken and submitted by him. The employee had claimed that his original certificate in torn condition was available with him long back. If it was so, it is obvious that the employee was well aware of his date of birth as per School certificate. He should have been careful and checked properly before entering in service sheet and signing the entry. In the option form dated 21.2.1980 signed by him the date of birth has been shown 20.10.1981. In the seniority list, issued from time to time in 1965, 1973, 1985, his date of birth has been shown as 20-10-1931. This means that he was well aware of the date of birth as recorded in the service sheet. With a original certificate available with him he should have made representation much earlier.

4. From the above, it is clear that the ~~employee~~

employee has made representation when close to his retirement about change in date of birth.

5. As per the Railway Board's circular referred to above, the chance for change of ~~xxxx~~ date of birth is not to be given after 31.3.1973. Railway Board vide letter No.E(NG)-II-70/BR/12 dated 6.3.79 have clarified that chance of representation at any time would be only permitted illeterate staff. This is not so in case of Mr.K.M.Oza, as he has studied upto VII Standard.

6. In view of the above, I do not see any reasons for change in date of birth as asked for by the employee at this stage."

The ground of rejecting the representation of the applicant was that the copy of the School Certificate shown by him was in torn condition with vital information missing, ^{that} the applicant had produced the zerox copy of the same certificate which appeared to be duplicate copy of the original certificate as the handwriting was different. The CPO observed that the employee had claimed that his original certificate in torn condition was available with him long back and if that was so, the employee was well aware of his date of birth as per his School Certificate and he should have been careful and checked properly before entering in service sheet and signing the entry. He has observed that the representation was made just prior to the retirement and therefore, as per the Railway Board's circular, the representation or request for change of date of birth can not made after 31st March, 1973 and such representation would be

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only permitted to illiterate staff after that period, but the applicant has studied upto VII Standard.

7. We are aware of the latest decision of the Hon'ble Supreme Court of India in the case of Union of India V/s. Harnam Singh reported in (1993) 24 ATC page 92. However, this is not a fresh case before us, as originally the matter was remanded to the concerned authority to examine the School Certificate of applicant. The question now arises is whether the respondents' competent authority has decided the matter as per the direction given by us in O.A. 84/90 on 18th March, 1992.

8. At the time of hearing, we had summoned the witness from the Bhavnagar Middle School, Bhavnagar which is now converted as Middle School Bhavnagar Taluco Shala No.3, to produce the original certificate issued in the name of the applicant. This order was passed on 22nd April, 1993. In pursuance of our direction, the witness remained present before us and has produced the document as per our order dated 22nd April, 1993 with the list which was taken on record. The original documents were returned after taking zerox copy of the counter foiles of certificate No.105/56. The M.A. 431/93 was also produced by the applicant containing five documents. The zerox copy made from original certificate from Bhavnagar Middle School


was taken on record. Mr. Vin, learned advocate for the respondents had also seen the original record and / the certificate which from the said School then witness had brought and the original was returned after taking the zerox copy. The zerox copy of the original produced before us by the said witness from the Bhavnagar Middle School Bhavnagar shows the full name of the applicant, and his date of birth is shown as 14th November, 1935 in words and figure. We find no reason not to rely on such certificate which is original one of that zerox copy produced. The C.P.O. had an opportunity to examine the certificate produced by the applicant, but it was in a torn condition, and it was not accepted. The other grounds mentioned by the C.P.O for not allowing the representation can not be accepted for the simple reason that he had to comply with the direction which was given by us in O.A.84/90 decided on 18th March, 1992, but he while dismissing the representation of the applicant has reopened the whole case as / if it was a fresh case before him. The C.P.O could not have treated our directions by as reopening the whole case / the remand was only on limited purpose mainly that if the birth certificate produced by the applicant was not genuine then he could take an appropriate decision on merits, but not on technical ground.

9. Having seen the birth certificate produced by

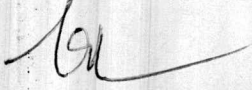
the witness from the School we are satisfied that the date of birth of the applicant was 14th November, 1935, we shall have therefore, to quash the order of the C.P.O have to Annexure A-1 dated 15th July, 1992 and we shall allow the application. Hence the following order:

ORDER

The application is allowed. The impugned order dated 15th July, 1992 Annexure A-1 passed by the C.P.O is quashed and set aside. The respondents are directed to correct the date of birth of the applicant in the service record as "14th November, 1935" in place of "20th November, 1931", which entitles the applicant to serve according to the rules on the strength of that birth date. The respondents to treat the applicant in service accordingly and to give consequential benefits as if the applicant's date of birth was 14th November, 1935. Consequential benefits like salary and increments which he could have earned as if he was in service/ should be given according to rules. The respondents to comply with this direction within one month from the receipt of the order. Application is disposed of. No order as to costs.


(M.R. Kolhatkar)
Member (A)


(R.C. Bhatt)
Member (J)

Date	Office Report	Order
10-1-1994.		<p>Mr.R.M. Vin for the respondents and Mr.M.M. Xavier for the applicant present. The respondents had filed M.A.No. 10/94 for extension of time to implement the order of this Tribunal dated 4-11-1993 in O.A.No. 397/92. Time is granted upto 28th February, 1994. M.A.No. 10/94 stands disposed of.</p> <p style="text-align: right;"> (V.Radhakrishnan) Member (A)</p> <p>vtc.</p>

Date	Office Report	Order
10-1-1994.		<p>Mr.R.M. Vin for the respondents and Mr.M.M. Xavier for the applicant present.</p> <p>The respondents had filed M.A.No. 10/94 for extension of time to implement the order of this Tribunal dated 4-11-1993 in O.A.No. 397/92. Time is granted upto 28th February, 1994. M.A.No. 10/94 stands disposed of.</p> <p style="text-align: right;">(V.Radhakrishnan) Member(A)</p> <p>vtc.</p>