

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.NO./ 443/92

T.A.NO.

DATE OF DECISION : 16/8/99

Shri Kamaljeet B _____ 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? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the judgment? no
4. Whether it needs to be circulated to other Benches of the Tribunal? no

Shri Kamaljeet B.
10, Kamal Nivas,
Behind Bank of Baroda,
Maninagar [east],
Ahmedabad.

Applicant

Advocate Mr.K.K.Shah

Versus

1. Union of India,
Through : General Manager,
W.Rly., Churchgate,
Bombay.
2. Chief Personnel Officer,
W.Rly., Churchgate,
Bombay.
3. Divisional Railway Manager [E],
Divisional office, W.Rly.,
Pratapnagar,
Baroda.
4. Sr.Divisional Mechanical Engineer[D],
Diesel shed, W.Rly., Vatwa,
Ahmedabad.

Respondents

Advocate Mr.N.S.Shevde

J U D G M E N T

I N

O.A.NO.443/92

Dt. 16/8/1999

Per Hon'ble Mr.A.S.Sanghavi :

Member [J]

This O.A. seeking alteration in the date of birth of the applicant from 19.3.34 to 19.9.36 along with the reinstatement of the applicant with all consequential benefits has a chequered history. The applicant has joined the service with the railways on dated 11.5.53 under the Loco Foreman, Kankaria and since then he has been working with the railways. When he was working as diesel mechanic grade I under the Diesel Mechanical Engineer, Vatva, he had sent representation to the respondents to alter date of birth to 9.3.36 instead of 9.3.34 shown in the service record. His representation was turned down and hence, he had filed the O.A.41/92 before this Tribunal. The respondents had resisted the O.A. contending inter alia that the applicant had given the different birth dates at different times and that he had not availed of the opportunity of changing his date of birth in the year 1972 when all the railway employees were given an opportunity of making the representations for changing the date of birth. After hearing the learned advocates of both the parties and considering the documents on record, the learned Tribunal had vide its order dated 3.4.92 directed the CPO for reconsideration of its decision in the case of alteration of the birth date of the applicant and had further directed

the CPO to decide the case of the applicant for change of date of birth if the CPO found the date of birth of the applicant in the certificate of the St. Xavier's High School , Annexure A , genuine and if there was no prohibition of the appointment of the applicant on the date of his appointment below the age of 18 years, the CPO should rely on the school leaving certificate of the applicant and to decide the case of the applicant for change of date of birth. The O.A. was disposed of with these directions.

2. After the O.A. was disposed of with the above directions, the CPO considered the case of the applicant for the change of birth date and by his order dated 22.7.92 held that as per the school leaving certificate issued on 16.4.52 and subsequent duplicate copy obtained by the applicant, his actual date of birth was 9.3.36. but according to him, as the employee had mislead at the time of his appointment with a purpose and the perusal of the record indicated in the various declaration that he had given different dates of birth varying from 1934 to 1929 and had kept quiet till the date of his retirement and only when his date of retirement is notified he had started representing and therefore he did not see no reason to change the

date of birth at this stage. He had also given finding that at the time of appointment, the applicant would have been appointed under age but with reduction in pay, could have been appointed as on the date of appointment, he would have been below 18 years of age.

3. Since the CPO refused to change the date of birth, the applicant has filed the present O.A. with a prayer to quash the order of the CPO Annexure A and direction to the respondents to alter his date of birth from 09..3.34 to 09.3.36 and reinstating the applicant with all consequential benefits. It is needless to mention that on the date of filing of this O.A. i.e. 29.9.92, the applicant has been retired from the service on his attaining the age of superannuation as per the birth date recorded in his service sheet.

4. After this O.A. was filed by an order dated 6.1.94, this Tribunal had directed the CPO, Western Railway, Churchgate to examine and record his findings on the two points viz. [1] whether there was any prohibition prescribing lower age limit for appointment to a Class IV post in 1953 and [ii] whether the applicant was appointed against a post reserved for Sportsmen. Pursuant to that order, the

CPO examined the case of the applicant as per the directions given by this Tribunal and by a speaking order dated 17.3.94 answered both the points in the negative. Though he clarified that in case of BB & CI Railways and ex State Railways, relaxation below 18 years was permitted and the above stipulation mainly applied to staff of these railways for pay fixation under the prescribed scales laid down in 1947 as a result of the recommendations of the central pay commission, referring to sub rule 307 [ii] of western Railway Establishment Manual, he has opined that the minimum age for recruitment was laid down as 18 years for class IV staff and no rule is provided in the Establishment Manual indicating the relaxation in age. According to the learned CPO, the minimum age for recruitment at the time when the applicant was appointed on 11.5.53 was 18 years.

5. Obviously these orders of the CPO based on different reasons and passed under the different directions clearly reveal the reluctance of the railway authorities to make change in the birth date of the applicant. Mr. Shah learned advocate for the applicant has vehemently submitted that the CPO has not considered the main aspect of the matter i.e. the

genuinity of the birth date of the applicant and inspite of the directions of this Tribunal he has given incorrect findings. Mr. Shevde learned advocate for the respondents on the other hand has maintained that no case for change of birth date is made out by the applicant and that in view of the various supreme court judgments this O.A. cannot be allowed. The main thrust of the submission of Mr. Shevde was that at the fag end of the service, the employee cannot be permitted to change his date of birth so as to get the benefit of increase in his service.

6. There is lot of substance in the submission of Mr. Shevde. it appears that when the order in O.A. 41/92 was passed on dated 3.4.92 the learned Members of the Tribunal had not the benefits of the decisions of the supreme court in the case of Union of India Vs. Harnaam Singh, reported in 1993 [2] SCC - 162 as well as the case of Union of India Vs. Kantilal Hematram Pandya, reported in 1995 [2] GLR 1650 wherein the supreme court has elaborately dealt with the principles to be applied for in the case of change of date of birth. In view of these two decisions, the whole complaxion of this case is changed. In fact we may say that the case of Union of India Vs.

Kantilal Hematram Pandya, which went to the supreme court from the decision of this Tribunal is based on identical facts. In that case, the employee had entered the railway service on 1.7.55 giving his date of birth as 6.9.30. at the time of entry into the service. That date of birth was entered in his service record. On the basis of the said date of birth, the railway administration issued orders on 5.2.88/8.3.88 for the retirement of the respondent with effect from 30.9.88 on attaining the age of 58 years. The respondent-employee represented contending that his correct date of birth was 4.9.34 and he was liable to be retired from service only on 30.9.92. He challenged the order of the Railway Administration by filing the O.A.283/87 before Central Administrative Tribunal at Ahmedbad and by its order dated 26.8.88 the Tribunal allowed the application directing the CPO to decide the matter afresh and if the petitioner's claim for correction of his date of birth was established, the competent authority to give such effect to the correct date of birth by giving all consequential benefits. Pursuant to these directions, the CPO of Railway administration held an inquiry into the claim of the railway employee regarding his date of birth and parties were permitted to lead the evidence and they were orally heard. It was also

noticed that the respondent- employee had not availed of the opportunity given by the Railway Administration in 1972 asking all the literate employees serving with the railways to submit their representations, if any, in case they wanted any correction or alteration in the recorded date of birth latest to 31.1.73 . It was found by the CPO that the employee had made representation for the first time on 25.12.85 and on 12.3.87 seeking an alteration of his date of birth and claiming his date of birth to be as 04.9.34. he had also produced school leaving certificate in support of his claim that his date of birth was 04.9.34. The CPO after analyzing the evidence and material on record and after hearing the parties, rejected the claim of the employee for the alteration of the date of birth from 06.9.30 to 04.9.34 vide order dated 24.1.89 . Aggrieved by the decision of the CPO, employee once again moved an application before the Tribunal challenging the order dated 24.1.89. By its order dated 30.9.93, the Tribunal allowed the application and quashed the order dated 24.1.89 and directed the Railway Administration to alter the date of birth of the employee in his service records from 06.9.30 to 04.9.34 and since the employee had already retired from service on 30.9.88, the Tribunal directed that the employee be treated

as if he had continued in service from 01.10.88 till 30.9.92 and on that basis, he be given all consequential benefits including the pay and allowances. The Tribunal took the view that even though vide its earlier order of 26.8.88 the CPO had been directed to pass a speaking order after giving an opportunity to the concerned employee to produce his evidence and considering the same, the CPO had not complied with the order in its correct perspective. The Tribunal found fault with the opinion of the CPO that since the employee had not availed of the final opportunity, provided by the Railway Board asking all the literate employees to submit their representations, if any, for correction of their recorded date of birth, latest by 31.7.73, therefore his belated claim for correction of his date of birth suffered from the vice of laches. The Tribunal relied upon a full bench judgment of the Tribunal in T.A. No. 1104 and 1089 of 1986, wherein it had been held that the Railway Board's letter No. E[NG] ii-70 BR/1, dated 04.8.72, prescribing 31.7.73 as the last date for making representation for effecting the change of date of birth, did not have the force of law and that an application by a railway employee for correction of his date of birth, could not be rejected on

the ground that it had not been made before the last date prescribed in the Railway Board's letter dated 04.8.72.

7. When the case reached the supreme court, relying on the decision in the case of Union of India Vs. Harnam Singh, reported in 1993 [2] SCC -162, the supreme court observed as under:-

" The approach of the Tribunal is patently objectionable and does not commend to us. It attempted to circumvent the law laid down by this court on untenable reasons by stating that " we are required to consider the case on merits " without in fact so considering. The law laid down by this court is binding on all courts and Tribunals. Indeed the law as declared by this Court has to be applied to the facts were so eloquent that no scope was available with the Tribunal to get over the opinion expressed by this court in Harnam Singh's case and on the facts as established on the record the tribunal had no option but to refuse relief to the respondents."

The Supreme Court has further observed in para- 9 as under :-

" The material on record established that after filing of the option forms declaring his date of birth as 06.9.30, in 1960 and after the filing of the P.F. withdrawl form on 20.2.80, the respondent made his representation for correction of date of birth in 1985 and 1987 but failed to substantiate his claim through any reliable and trustworthy documentary evidence. He allowed the matter to rest till he neared the age of superannuation. The respondents slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only. The law laid down by the Court in Harnam Singh [supra] was, thus fully applicable to the facts and circumstances of the case of the respondent and the Tribunal failed to follow the same without even pointing out any distinguishing features on facts. 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.

7. The above observations of the supreme court apply with full force to the facts of the instant case. The applicant in the instant case has woken up about his date of birth only at the time of his retirement. It is not that he did not know that his birth date was not correctly recorded in the service-sheet as the facts clearly disclosed that he knew about the same and that he had given different birth dates at different times. His school leaving certificate showed his birth date as 09.3.36 while at the time of joining the service with the BB & CI railways in 1953 he has given his birth date of that of 23.4.29 and in his service sheet of western railway he has given his birth date as 09.3.34. Thereafter in an application for NOC signed by him, he has given his birth date as 09.3.39, while in his P.F. withdrawal form dated 28.1.80, he has given his birth date as 21.3.34 and in his option form he has given his birth date as 09.3.36 and till 09.5.90, when he first

made representation for change of date of birth he had not made any endeavor to get his date of birth altered in the service book. Hence, in view of the decision in the case of Harnam Singh [supra] as well as in the case of Kantilal Hematram Pandya [supra] his case for change of birth date cannot be sympathetically considered. In a recent decision in the case of State of Orissa Vs. Ramnath Patnayak, reported in AIR 1997 SC- 2452, it is laid down that when entry was made in service record and when the employee was in service, he did not make any attempt to have the service record corrected and therefore, any amount of evidence produced subsequently would be of no avail. In the appeal of the State of Orissa, the supreme court held that the birth date cannot be corrected.

8. The applicant in the instant case has also woken up at the fag end of his service to get his birth date altered in the service book and no explanation is forthcoming from the applicant as to why he had not made any attempt to get the birth date changed when an opportunity was given to him by the railway in 1973.. Even if it is considered that this opportunity could not be said to be last opportunity then also since he had woken up from his deep slumber only at the time of his

retirement, his case suffers from vice of latches and no directions can be given to the railway authorities to alter his date of birth in the service book. This O.A. therefore, cannot be allowed and hence, in our opinion, it deserves to be rejected. In the conclusion, we reject this O.A. with no order as to costs.

[A.S.SANGHAVI]
MEMBER [J]

[V.RAMAKRISHNAN]
VICE CHAIRMAN

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This matter was posted today for pronouncing the judgment but before the judgment can be pronounced, Mr.K.K.Shah learned advocate for the applicant has submitted that he wants to cite some decisions which he could not cite at the time of arguments in this matter. According to him, this Tribunal had dealt with the question of correction of birth date in the past in several cases and these decisions are required to be considered by this Bench. He has relied upon the decisions in the case of Nautamlal Laljibhai Trivedi Vs. Union of India & ors.

in O.A. No. 140/89 as well as the decision in the case of Kantial Hematram Pandya Vs. Union of India in O.A.No.71/90, and also Datturao Panurang Shinde Vs. Union of India in O.A.No. 315/90 as well as the decision in the case of Jayant Vishnu Paranjape Vs. Union of India & ors. in O.A.No. 302/91 .

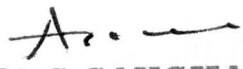
Since the judgment was yet not pronounced, we have permitted Mr.Shah to cite these decisions and we have carefully considered all these judgments. So far as the case of Nautamlal Trivedi [supra] in O.A.No.140/89 is concerned, the date of birth of the petitioner was permitted to be corrected on the ground that the school leaving certificate ought to have been considered as a genuine one and the date of birth ought to have been corrected by the respondents. Similarly in the case of Kantial^{H.} Pandya [supra] in O.A.No.71/90, the date of birth of the applicant was directed to be corrected on the ground that the respondents were not able to give satisfactory reasons how the wrong date of birth was entered into the service record of the applicant. It was also decided on the basis of the full bench judgement in the case of Malleala Sreeram Murthy vs. Union of India in T.A.No. 1104/86 and 1089/86 decided on 17.8.89 rejecting the contention that the railway employee's application


for correction of his date of birth cannot be rejected on the ground that it is not filed within the period prescribed in the Railway Board's letter dated 4.8.72. This decision of the Tribunal in appeal has been overruled by the Supreme Court as mentioned in para - 6 of this judgment. Hence, this decision cannot be applied.

The third judgment in the case of Dutturao Pandurang Shinde [supra] in O.A.No. 315/90, the date of birth was directed to be corrected on the ground that the date of birth was recorded in the service sheet on the basis of the medical certificate and the same ought to have been corrected when other reliable documents were available. Similarly in the case of Jayant Paranjape in O.A. 302/91, the date of birth of the applicant was directed to be corrected on the basis of the entry of the ^{birth} date from the Birth and Death certificate from the municipalities.

to note ~
It is worthwhile that none of these decisions ^{has} considered the question of delay and latches in moving the application for correction of date of birth. In fact the Tribunal at that time had not the opportunity of considering the judgment of the Supreme Court delivered in the case of Union of India Vs. Harnam

~ other judgments as ~ 2 thereafter
Singh and thereafter the same were delivered in 1993.
The Supreme Court judgments have the effect of over
riding the judgment of this Tribunal or over ruling the
judgment of this Tribunal and therefore, none of these
judgments of this Tribunal ^{~ cited} stated by Mr. Shah can be
considered to be a precedent for deciding this O.A..
In fact none of these decisions can be considered to
be ^{~ laying down} long done the correct law in view of the supreme
court's judgment in the case of Harnam Singh and
therefore they cannot be considered to be a binding
principle ^{~ for} of this Bench. Our conclusion earlier ^{~ remains} the
same as stated before and we hold that this O.A.
suffers from vice of latches and no directions can be
given to the Railway Authorities to alter the date of
birth of the applicant. The O.A. therefore is rejected
with no order as to costs.


[A.S. SANGHAVI]
MEMBER [J]


16/11/16
[V. RAMAKRISHNAN]
VICE CHAIRMAN

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