

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A.NO# 457/92**  
**T.A.NO.**

DATE OF DECISION 21/6/99

M.B.Gosai Petitioner

Mr .M.M.Xavier Advocate for the Petitioner [s]  
Versus

Union of India & ors. Respondent

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 ? ~

Mohangar Bhikhugar Gosai,  
Senior Khalasi, office of the  
Chief Train Controller,  
Western Railway,  
Bhavnagar,  
Bhavnagar.

Applicant

Advocate Mr.M.M.Xavier

Versus

1. Union of India, Through:  
General Manger,  
Churchgate,  
Bombay.
2. The Chief Personal Officer,  
W.Rly., H Q Office,  
Churchgate,  
Bombay.
3. The Divisional Railway Manger,  
W.Rly., Bhavnagar,  
Bhavnagar.

Respondents

Advocate Mr.R.M.Vin

**J U D G M E N T**

**I N**

**O.A.NO.457/92**

21/6/99  
**Date: 16/1999**

**Per Hon"ble Mr.A.S.Sanghavi**

**Member [J]**

The applicant challenges the rejection order passed by the respondent no.2 and as communicated by the office of the DRM dated 16.9.92 for the alteration of his birth date and has prayed that the decision of the respondent no.2. refusing to consider his request of the alteration in his birth date be quashed and the respondents be directed to treat his date of birth as 28.11.38 and his service book be corrected accordingly. He has also prayed for continuation in service till he attains the age of 58 years i.e. till 30.11.96, after the alteration of his date of birth.

2. The applicant has joined the service on dated 11.4.59 as a Leave Reserve Gangman. According to him, he was aged about 20 years and 5 months at that time. He was thereafter posted as Khalasi in Control office at Bhavnagar and had been working as a Sr. Khalasi in the office of the Chief Train Controller on the date of filing of this O.A. According to the applicant, his date of birth as recorded in his service book is 28.11.34 and the same has been incorrectly recorded. According to him he had not declared his date of birth as 28.11.34 nor had he produced any documentary evidence in support of his date of birth being 28.11.34. He is illiterate and was not in a position to produce any school leaving certificate. He has contended that the date of birth recorded in his service sheet is not binding to him and on inquiry he had learnt from his mother and elders that his date of birth was 28.11.38 and as such this correct date of birth was required to

be recorded in his service book. He had therefore, submitted a representation on 28.11.91 to the general Manager, Western Railway, Churchgate, as well as to the D R M, Bhavnagar Para for the alteration in his date of birth. His representation however, has been turned down and hence this O.A.

3. The respondents have denied the allegations of the applicant that the date of birth of the applicant was incorrectly recorded in his service sheet and that the same was not recorded as per his say. They have contended inter alia that the date of birth was recorded as per declaration made by the applicant at the time of joining the service and the same is even acknowledged by the applicant by signing the same. He was also medically examined at the time of his appointment and the medical certificate showed his age as 24 years. This certificate was also signed by the applicant which showed that he had acknowledged the age mentioned therein. They have also contended that at the fag end of his service the applicant now cannot be heard to say that his date of birth is not correctly recorded and that whatever date of birth recorded is not binding to him.

4. The applicant has also filed his rejoinder asserting the contentions that his date of birth was not correctly recorded. We have heard the learned counsels of both the sides and have also perused the documents produced by them. According to Mr.Xavier, learned counsel for the applicant, the applicant being illiterate, had no documentary evidence with him to show that his date of birth was 28.11.34 and therefore it is not possible to believe that he would have declared his date of birth at the time

of his recruitment. According to Mr.Xavier, the applicant had learnt from his mother that his date of birth was 28.11.38 and on the basis of the affidavit of the mother, an entry is also made in the death and birth register of Padri Gram Panchyat. Referring to sub clause [c] of rule 145 of Indian Railway Establishment Manual , Mr .Xavier has submitted that the applicant had no knowledge about his date of birth having been recorded as 28.11.34 and since he had not declared his date of birth before the competent authorities , the date of birth recorded in the service sheet is not binding to him.

5. On the other hand, Mr.R.M.Vin, learned counsel for the respondents has relied upon the service sheet as well as medical certificate, Annexure R-1 and has submitted that these documents which were executed as far back as on 3.4.59 and 11.4.59 cannot be doubted now and the contents thereof cannot be discarded merely because the applicant states that he had not declared his date of birth as 28.11.34. He has also submitted that now the applicant was due to retire on superannuation and just to add 4 more years to his service, this application is moved and the same cannot be entertained.

6. We may at the out set refer to the decision in the case of Union of India & ors. Vs. Kantilal Hematram reported in 1995 [2] GLR 1650 wherein, the Supreme Court has in unequivocal terms laid down that the alteration in the birth date after a lapse of a long time and just before the date of superannuation should not be permitted. Referring to the case of Union of India & ors. Vs. Harnam Singh reported in 1993




[2] SCC 162, the supreme Court has observed that a government servant who makes an application for correction of date of birth beyond the time so fixed cannot claim as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts and tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

7. In the instant case, till the year 1991 when he sent a representation for correction of his birth date, the applicant has not taken any step to get his date of birth revised. This conduct of the applicant clearly suggests that the representation sent by him was motivated only with a view to get some extension in his service and not with a genuine cause. Apart from the fact that no representation was made by the applicant during his service and that he had not uttered a single word about his birth date being not correctly recorded in his service book till the year of his retirement from the service, the applicant is not in a position to provide any cogent evidence to suggest that his date of birth was 28.11.38 and not 28.11.34. The only reliance placed by the applicant for the alteration in his birth date is on an affidavit sworn by him dated 28.4.91 wherein he had stated that he had learnt from his mother that his date of birth was 28.11.38. Obviously no reliance can be placed on such an affidavit and also on the certificate of birth obtained from the Gram Panchayat which mutated his name, in the birth register dated 27.11.91 on the strength of this affidavit. There is therefore, obvious

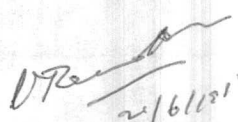
cogent evidence to show that the correct birth date of the applicant was not recorded in the service sheet and that whatever the date of birth recorded therein was in correctly recorded. Since the applicant is not in a position even to justify his claim that his birth date was not recorded correctly in his service sheet even at this juncture, his prayer for a direction to the authorities for the correction of his birth date cannot be allowed on merit.

8. Mr.Xavier has emphasized that the applicant was illiterate and therefore had no knowledge as to what birth date was recorded in his service sheet but this submission of Mr.Xavier does not appeal to us. It appears from the service sheet as well as medical certificate that as far as back <sup>as</sup> in 1959, the applicant knew how to sign and had signed both these documents. Furthermore being an illiterate also cannot be an excuse for alteration in his date of birth at the fag end of his service. It would on the contrary go to show that he has no knowledge regarding his date of birth even today and therefore, he cannot prove his correct date of birth. Under the circumstances, the date of birth of applicant recorded in the service sheet will have to be considered to be correct date of birth and presumption requires to be raised that what was recorded was correctly recorded.

9. For the reasons discussed above, the application deserves to be rejected on the ground of delay and laches as well as having no merit. Hence, the O.A. is rejected with no order as to costs.

  
[ A.S.SANGHAVI ]  
MEMBER [J]

SS

  
2/6/81  
[ V.RAMAKRISHNA ]  
VICE CHAIRMAN