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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 41 OF 1992.  
~~T.A. No.~~

DATE OF DECISION 03-04-1992.

Shri Kamaljeet B. Petitioner

Shri K.K.Shah Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. R. Venkatesan : Administrative 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 ? ✗

Shri Kamaljeet B.  
Diesel Mechanic, Gr.I,  
working at Diesel Shed,  
Western Railway,  
Vatwa,  
AHMEDABAD.

...Applicant.

(Advocate : Shri K.K.Shah)

Versus

1. Union of India, notice to served through the General Manager, Western Railway, Headquarter Office, Churchgate, BOMBAY.
2. Chief Personnel Officer, Western Railway, Headquarter Office, Churchgate, BOMBAY.
3. Divisional Railway Manager (E), Divisional Office, Western Railway, Pratapnager, BARODA.
4. Sr.Divl. Mechanical Engineer (D), Diesel Shed, Western Railway, Vatwa, Ahmedabad.

(Advocate : Shri N.S.Shevde ) ...Respondents.

J U D G M E N T

O.A. No.41 OF 1992.

Date:03-04-1992.

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

The applicant a Diesel Mechanic, Grade-I, has filed this application against Western Railway, seeking the relief that the orders, Annexure-A, dated 22nd October, 1991, and A/1, dated 28th November, 1990, respectively, be quashed and the respondents be directed not to retire the applicant from 31st, March, 1992. It is the case of the applicant as pleaded in the application that he had applied for altering the date of birth, but the respondents failed to consider his case despite the evidence produced by him. It is alleged by the applicant

that he joined the service with the Railway on 11.05.1953, under Loco Foreman, Kankaria, and at present he is working as Diesel Mechanic Grade-I, under Senior Divisional Mechanical Engineer (Diesel) Vatwa. It is alleged by him that at the time when he was appointed, he bonafidely believed that his date of birth recorded in the service sheet was 9th March, 1936, but only the signature was obtained under the service sheet and rest of the contents were filled up by some other officer. Subsequently he obtained the certificate from St. Xavier's Night High School, Ahmedabad vide Annexure-A/2. It is the School leaving certificate showing the Date of birth of the applicant as 9th March, 1936. This certificate was obtained by the applicant on 5th June, 1959. The applicant then continued his study in the night school and left the school on 31st January, 1961, Annexure-A/3, is the duplicate certificate showing the date of birth as 9th March, 1936, from the same school. The applicant made various representations to the respondents to alter his date of birth to 9th March, 1936, the copies of which are produced at Annexure-A/5, collectively. The applicant has produced at Annexure-A/6, the letter written by the Senior Divisional Mechanical Engineer to the Principal St. Xavier's High School, dated 2nd April, 1991, to check the record and advice correct date of birth of the applicant. There are other documents produced at Annexure-A/7, A/8, by the applicant. Ultimately the C.P.O. decided the case of the applicant about his date of birth and the applicant was informed by Annexure-A, dated 19th November, 1991, that the C.P.O. has rejected the applicant's request. Another document is Annexure-A/1, dated 28th November, 1990, in which it was mentioned that

the date of birth of the applicant was 9th March, 1934, recorded at the time of appointment and he has declared his date of birth as 9th March, 1934.

2. The learned advocate for the applicant submitted that the applicant had produced the School Leaving Certificate vide Annexure-A/2, and A/3, from St. Xavier's High School, to show that the applicant's date of birth was 9th March, 1934, and there was no reason for the respondents not to accept the same. The respondents have filed reply resisting the application. The contention of the respondents in the reply is that the first page of the service sheet shows that the applicant had produced School Certificate at the time of his appointment in support of his date of birth, and it has also been signed by the District Mechanical Engineer, Western Railway, Ahmedabad. Learned advocate for the respondents has produced the service sheet original page-1, which does show the date of birth of the applicant as 9th March, 1934, but in the same page at the bottom on left side to the signature of the District Mechanical Engineer, Western Railway, Ahmedabad, the date is erased from 14th August, 1953, to 19th May, 1954. The date of appointment shown in the service sheet is 11th May, 1953. The service sheet further shows that the date of birth 9th March, 1934, is as per the School Leaving Certificate. The School certificate's true copy found along with the service record, shows the date of birth as 9th March, 1934, in figures and words but 'thirty four' in figures and words is erased. Therefore, no definite reliance can be put on this true copy of the School Leaving Certificate, annexed with the service sheet, to come to the conclusion that the date of birth of the applicant mentioned therein

was correct. Learned advocate for the respondents submitted that the applicant had made a declaration at the time of his appointment and signed by him that his date of birth as recorded in his School Certificate, as 9th March, 1934, was accepted by him. He submitted that the applicant had signed this Statement in English as appears from Annexure-R/2. While it is true that the Annexure-R/2, shows the statement of the applicant that he accepted his date of birth recorded in the School Certificate, but the true copy attached with the original service sheet shows the erasures in words '34', and also in figure 'thirty four', and as observed above no reliance can be placed on such copy of the certificate. Therefore, the reasoning of the C.P.O. that as the date of birth is recorded as 9.3.1934, in the service sheet, it is binding to the applicant cannot be accepted, nor the fact that as he has signed it in English, the said date recorded should be accepted as conclusive.

3. The C.P.O. has in his order mentioned that the applicant ought to have made representation against the recorded date of birth if any, before the crucial date of 31.3.1973, and when such notification was given wide publicity by the Railway Administration. It is mentioned that the employee did not adhere to this date and has made no representation, by that time but made the representations on 9.5.1990, 29th October, 1990, and thereafter, after notifying the retirement list of 1992, and accordingly he is not entitled to make such statement. We find no substance in their reasoning of the C.P.O. in view of the Full Bench decision of Central Administrative Tribunal, Hyderabad Bench in the case of Shri Mallela Sreerama Murthy and Ors. Versus Union of India and Others,

reported in 1990 LAB I.C. Page.547. In view of the decision the applicant can not be estopped from making such request even after such cut off date.

4. The C.P.O. has also a negatived claim of the applicant on the ground that he found from the service record of the applicant that the verification form in service sheet indicated the applicant's date of birth 23rd April, 1929, while Xerox copy of the passport indicates it as 9th March, 1936, and School leaving certificates dated 5.6.1959, 19.3.1963, and 8.1.1991, indicate date of birth as 9th March, 1936, while an application for NOC signed by the employee indicates date of birth as 9th March, 1939, and as such the employee's date of birth varies from time to time. The C.P.O. relied on P.F. withdrawal form dated 28th January, 1980, at page 296, C, which shows the date of birth as 23rd April, 1934, and DRM (E) BRC's letter dated 5th November, 1965, showing the date of birth as 9th March, 1934. This finding of the C.P.O. shows that there was no authentic date of birth, of the applicant in the service records. The question therefore, is that if school leaving certificate of the applicant shows the date of birth as 9th March, 1936, and if the respondents are convinced about the authenticity of the same, can it be discarded on the ground that the other documents showed some other dates ?

5. The learned advocate for the respondents submitted that the C.P.O. in his order in para-6, has

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observed that if the date of birth of the applicant is accepted as 9th March, 1936, he would have been 17 years 1 month and 2 days, at the time of appointment i.e., on 11th March, 1953. He submitted that the applicant would not have been appointed in that case as he has not completed 18 years, if the birth date is accepted as 9th March, 1936. Relying on the decision in Rasiklal Jethalal Thacker versus Union of India and Ors. in Special Civil Application No.408 of 1980, decided by the High Court of Gujarat at Ahmedabad on 27th February, 1980, produced at Annexure-R/6, he submitted that the petitioner having secured the advantage of employment, when he was still underage, on the strength of a false representation, cannot claim the further benefit of continuance in service beyond the date of retirement, by declining to abide by such representation. He submitted that the applicant who has benefitted by his own wrong cannot be allowed to subsequently repudiate the wrong to secure yet another benefit. The respondents in their written statement in reply however have not held that the applicant could not have been appointed if he had shown his birth date as 9th March, 1936. The C.P.O. has only observed that in the case, the applicant would have been appointed with a reduction of Rs.1/- in his fixation of pay as per para 307, of IREM and could have been appointed with the pay of Rs.26/- instead of Rs.28/-. Though learned advocate for the respondents submitted that a person under the age of 18 years could not have been appointed, there is no such observation made by the C.P.O. in para-6, accordingly. Thus, this written statement does not show that applicant could not have been appointed if he was below the age of 18 years on 11th May, 1953. No provision is shown to us by the learned advocate for the respondents that the applicant could not have been appointed at all in the job if he was below the age of 18 years at the time of appointment.

6. Learned advocate for the applicant submitted that the respondents ought to have relied on the School leaving certificate by the St.Xavier's high school, by the applicant as there was no lacuna at all in that certificate. He has relied on the decision in Ram Vinay Singh Versus The Union of India and Others, All India Services Law Journal, 1991 (3), Page No.523. It is held in this decision that the Civil servant can always prove that date of birth as recorded is not correct and a plea to alter date of birth at fag end of carrier is not tenable when it was accepted throughout. The learned advocate for the applicant submitted that the applicant had already submitted the school leaving certificate was produced by applicant while making representations. He also relied on a decision in the case of S.Rangarajan V/s. Union of India and Ors. All India Services Law Journal, 1991 (3) Page. No.433, Madras Bench, in which it is held that though once the Tribunal had directed to reconsider case on merits and to take into account the documents produced by the applicant, still case is rejected by ignoring these documents or verifying the contents thereof. It is also held that the application of change of date of birth can be considered on merits and the Tribunal found the documents containing enough evidence suggesting to alter the date of birth and hence the order was passed accordingly.

7. In the instant case as observed above, page one of the service sheet shows the date of birth of the applicant as 9th March, 1934, on the basis of the School leaving certificate which itself is a copy as found in the original record in which the figure and the word '34' is erased, and even the service sheet bottom column shows

eraser in the date of signature, and hence the reliance cannot be placed on such service sheet. The authority concerned therefore, ought to have considered the genuineness of the birth certificate at Annexure-A/2, and A/3, and if on evidence, it is found that there is no lacuna in it, then the authority concerned should not have rejected the representation of the applicant merely because of his declaration of the age showing date of birth as 9th March, 1934, when he joined the service. More over merely because he could have been appointed only with a reduction of Rs.1/-, in his fixation of pay would not dis-entitle him to his prayer for change of date of birth provided that there is a rule that a person below the age of 18 years could not be appointed to the post when the applicant was appointed. Therefore, all these factors should have been taken into consideration by the C.P.O. while deciding the question of alteration of the date of birth of the applicant, which he has not considered and the order suffers from the said infirmity and also as observed above, merely because he has applied for change of date of birth after 31st March, 1973, would not be the ground to reject his representation. Hence, the order of C.P.O. requires to be quashed and the matter requires to be sent back to the C.P.O. for re-consideration. Hence the following order is passed :

ORDER

"The application is partly allowed. The order of the C.P.O. rejecting the representation of the applicant is quashed and the matter about the alteration of the date of birth is sent back to the C.P.O. for re-consideration and if the C.P.O. finds the date of birth of the applicant in his school leaving 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 C.P.O. 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 decision to be given by the C.P.O. within four months from the date of receipt of the judgment after hearing the applicant in case he wants to be heard. The application is disposed of. No order as to costs.



( R.Venkatesan )  
Member (A)



( R.C.Bhatt )  
Member (J)

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working at Diesel Shed,  
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5. The learned advocate for the respondents submitted that the C.P.O. in his order in para-5, has

observed that if the date of birth of the applicant is accepted as 9th March, 1936, he would have been 17 years 1 month and 2 days, at the time of appointment i.e., on 11th March, 1953. He submitted that the applicant would not have been appointed in that case as he has not completed 18 years, if the birth date is accepted as 9th March, 1936. Relying on the decision in Rasiklal Jethalal Thacker versus Union of India and Ors. in Special Civil Application No.408 of 1980, decided by the High Court of Gujarat at Ahmedabad on 27th February, 1980, produced at Annexure-R/6, he submitted that the petitioner having secured the advantage of employment, when he was still underage, on the strength of a false representation, cannot claim the further benefit of continuance in service beyond the date of retirement, by declining to abide by such representation. He submitted that the applicant who has benefitted by his own wrong cannot be allowed to subsequently repudiate the wrong to secure yet another benefit. The respondents in their written statement in reply however have not held that the applicant could not have been appointed if he had shown his birth date as 9th March, 1936. The C.P.O. has only observed that in the case, the applicant would have been appointed with a reduction of Rs.1/- in his fixation of pay as per para 307, of IREM and could have been appointed with the pay of Rs.26/- instead of Rs.28/-. Though learned advocate for the respondents submitted that a person under the age of 18 years could not have been appointed, there is no such observation made by the C.P.O. in para-6, accordingly. Thus, this written statement does not show that applicant could not have been appointed if he was below the age of 18 years on 11th May, 1953. No provision is shown to us by the learned advocate for the respondents that the applicant could not have been appointed at all in the job if he was below the age of 18 years at the time of appointment.

6. Learned advocate for the applicant submitted that the respondents ought to have relied on the School leaving certificate by the St.Xavier's high school, by the applicant as there was no lacuna at all in that certificate. He has relied on the decision in Ram Vinay Singh Versus The Union of India and Others, All India Services Law Journal, 1991 (3), Page No.523. It is held in this decision that the Civil servant can always prove that date of birth as recorded is not correct and a plea to alter date of birth ~~and~~ end of career is not tenable when it was accepted throughout. The learned advocate for the applicant submitted that the applicant had already submitted the school leaving certificate was produced by applicant while making representations. He also relied on a decision in the case of S.Rangarajan V/s. Union of India and Ors. All India Services Law Journal, 1991 (3) Page. No.433, Madras Bench, in which it is held that though once the Tribunal had directed to reconsider case on merits and to take into account the documents produced by the applicant, still case is rejected by ignoring these documents or verifying the contents thereof. It is also held that the application of change of date of birth can be considered on merits and the Tribunal found the documents containing enough evidence suggesting to alter the date of birth and hence the order was passed accordingly.

7. In the instant case as observed above, page one of the service sheet shows the date of birth of the applicant as 9th March, 1934, on the basis of the school leaving certificate which itself is a copy as found in the original record in which the figure and the word '34' is erased, and even the service sheet bottom column shows

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ORDER

"The application is partly allowed. The order of the C.P.O. rejecting the representation of the applicant is quashed and the matter about the alteration of the date of birth is sent back to the C.P.O. for re-consideration and if the C.P.O. finds the date of birth of the applicant in his school leaving 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 C.P.O. 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 decision to be given by the C.P.O. within four months from the date of receipt of the judgment after hearing the applicant in case he wants to be heard. The application is disposed of. No order as to costs.

( R.Venkatesan )  
Member (A)

( R.C.Bhatt )  
Member (J)

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