

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No.  
XXA/1993

608 of 1993.

DATE OF DECISION 02nd November, 1993.

Shri Abu Hussain Petitioner

Shri B.B.Gogia Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

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?

: 2 :

Shri Abu Hussain,  
Behind RPF Quarters,  
Mafatia Para,  
Rukhadia Colony,  
Rajkot - 360 001.

....Applicant.

(Advocate : Mr.B.B.Gogia)

Versus

1. Union of India,  
Owning & Representing  
Western Railway,  
Through :  
General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020.

2. Divisional Railway Manager,  
Western Railway,  
Rajkot Division,  
Kothi Compound,  
Rajkot.

...Respondents.

JUDGMENT

O.A.NO. 608 OF 1993.

Dated : 02nd Nov.1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application impugns the order dated 14.7.1993, from D.R.M.(E), Rajkot rejecting employment to applicant on ground of <sup>false</sup> declaration of date of birth. We have heard the advocate for the applicant on the point of admissibility.

The facts of the case are that this Tribunal in its

orders in O.A./316/88 decided on 25.02.1992, between the same parties had given a direction to respondents Railway Administration that the applicant's name be interpolated and inserted in the seniority list of casual labourers on the basis of his total service with the Railways of 213 days and his case will be considered for regularisation as and when his turn comes and in case he is regularised the consequential benefits should follow.

2. In compliance with this order the Railway Administration had called the applicant to attend the screening to decide his case for regular absorption in Group-D Post and interalia the applicant was asked to bring proof of age. It was noted that the date of birth declared by him in the casual labour card was 08.07.1954, in as much as he was declared to be 23 years at the time of his initial engagement as casual labourer on 08.07.1977. During the screening, he produced a xerox copy of the school certificate issued by the Principal School No.5, Gondal, and the date of birth was reportedly shown as 10.08.1957. When he was asked to produce the original of the school certificate, instead of doing so he produced an affidavit stating that his date of birth is 10.08.1946.

3. Thus, according to Railway Administration the applicant has given different dates of birth as below :  
08.07.1954, 10.08.1957, and 10.08.1946.

The Railway Administration has decided not to appoint him to regular Railway service because he falsely declared his age as 23 years at the time of his initial engagement, and thus secured employment as casual labourer in Railways by concealing correct date of birth with a malafide intention <sup>as</sup> ~~as~~ otherwise he was over age and not eligible for engagement ~~as~~ <sup>as</sup> casual labour. The orders of Railway Administration are contained in the letter dated 14.07.1993, at Annexure-A/3, and letter dated 27.7.93, at Annexure-A/4. The basic contention of the applicant is that his correct date of birth is 10.08.1946 as per affidavit filed by him and also as per school leaving certificate and that the Railway Administration should be directed to appoint him in relaxation of the age limit required under the employment under the Railways. For this purpose he has relied on Annexure-A/7, which is a copy of circular from Western Railway, Churchgate, Bombay, dated 23.10.1980, which states that the Divisional

Railway Managers are empowered to grant relaxation of upper age limit in the case of the casual labourers to be regularised after screening. The applicant contended that the action of the respondent

him employment is arbitrary, in violation of Article 14 and 16 of the Constitution of India and also against principles of natural justice.

4. On going through the documents produced by the applicant it is seen that the school leaving certificate of the applicant vide Annexure-A/5, shows his date of birth as 10.08.1946, which is the same as the date of birth shown in the affidavit. If so, the reference in Annexure-A/3, stating that school leaving certificate shows the date of birth as 10.08.1957, is some what difficult to understand. The applicant has stated that there was a mix-up/confusion about his date of birth and that he had not produced any other document in support of his date of birth at any given point of time (para-4 (iv) of his application) but he does not throw any light as to why the respondent should have referred to school certificate with 10.08.1957 as recorded date of birth. It is also not explained why the applicant is not able to produce the original of the xerox copy of school leaving certificate.

5. However, leaving apart the mix-ups, the basic reason why the Railway Administration held the applicant ineligible for employment is that in terms of Rule-225 (4) (iii) of Indian Railway Establishment Manual, in case of Group 'D' employees the date of birth as declared on

entering regular Group 'D' service should not be different from any declaration express or implied given earlier at the time of employment as a casual labour/ substitute. The applicant gave a false date of birth viz., 08.07.1954 (implied date on the basis of age of 23 as on 08.07.1977), when his real date of birth was 10.08.1946. The issue is not whether Railway Administration has power to relax the age but the conduct of the applicant in giving false declaration of date of birth.

6. The say of the applicant that the decision of Railway Administration violates principles of natural justice however, appears to have substance. The applicant was being screened on the direction of this Tribunal and the administration ought to have given the applicant an opportunity to explain the circumstances under which he declared a particular age at the time of initial engagement alone and then/taken a decision to disqualify him or otherwise. This is particularly necessary as the applicant is now 47 years of age and has been intermittently working with the Railways since 1977. We, therefore, dispose of this application at the admission stage by following directions :

: 7 :

ORDER

"Railway Administration may treat the present application as a representation. Divisional Railway Manager or his responsible delegate may give a hearing to the applicant, Consider the circumstances under which the applicant made declaration as to age in 1977 and examine whether this is a fit case for relaxation of age and pass a speaking order within three months of the receipt of this direction." *No order as to costs.*"

*R.C. Bhatt*  
( R.C. Bhatt )  
Member (J)  
02.11.1993.

*M.R. Kolhatkar*  
( M.R. Kolhatkar )  
Member (A)  
02.11.1993.

AIT