

5

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 409 OF 2000  
Cuttack this the 21st day of June, 2001

N. Kantha

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 44.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

22.6.01.  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

6

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.409 OF 2000  
Cuttack this the 2<sup>1</sup>st day of June, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)  
...

Shri Nishakar Kantha, aged about 53 years,  
S/o. Late Mahadev Kantha, a permanent  
resident of Village/PO-Pankapal, PS:Kujanga  
District-Jagatsinghpur - at present working  
as Electrical Train Lighting, H.S.F. GR.I,  
T.No.15110 at Carriage Repair Workshop,  
S.E.Railway, Mancheswar, Bhubaneswar

By the Advocates

...

Applicant  
M/s.C.Behera  
K.K.Barik  
R.N.Tripathy

-VERSUS-

1. The Union of India represented through the Secretary to Government of India, Ministry of Railways, Rail Bhawan, New Delhi
2. The General Manager, South Eastern Railway, Garden Reach, Calcutta-43, (West Bengal)
3. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43 (West Bengal)
4. The Deputy Chief Personnel Officer (Mechanical & Electrical) South Eastern Railway, Garden Reach, Calcutta-43 (West Bengal)
5. The Chief Workshop Manager, South Eastern Railway Carriage Repair Workshop, Mancheswar, Bhubaneswar-16, District-Khurda
6. The Assistant Personnel Officer, South Eastern Railway, Traction Distribution Waltair Division, At/PO: Waltair, Andhra Pradesh

...

By the Advocates

Respondents  
Ms.S.L.Pattnaik  
Mr.Md.Arif  
Mr.S.Nayak  
Mr.M.Panda

-----  
O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Nishakar Kantha  
who was in casual service under the Railways for some times  
and subsequently recruited as Fitter, Gr.III in the scale of

Rs.260-400/- in Group-C category on 23.9.1983 in Waltair Division and since transferred to Carriage Repair Workshop, S.E.Railway, Mancheswar on 28.4.1984 filed this application on 30.8.2000 praying for correction of date of birth in his service records as 28.5.1947 in place of 25.8.1942. His case is that at the time of his initial entry in the railway service, Respondent No.6, viz., Assistant Personnel Officer, Waltair Division had made wrong entry of his date of birth as 28.5.1942 in place of 28.5.1947, which is his actual date of birth as per School Leaving Certificate and Horoscope. However, he was not aware of such wrong entry made in the Service Book till the Gradation List of Electrical Fitters Gr.II was published by Respondent No.5, i.e., the Chief Workshop Manager, Mancheswar in the month of August, 1995. Thereafter he represented to the concerned authorities for correction of date of birth. In letter dated 3.3.1998, the Department directed him to submit the original School Leaving Certificate (Annexure-4). In response to that letter, he submitted his reply on 17.4.1998, stating that during shifting of his house the file containing the original SLC was turned and lost and he, therefore, obtained the certificate from the Headmaster, Pankajal High School on 18.3.1998 (Annexure-5/A), wherein the Headmaster certified his date of birth is 28.5.1947. The horoscope (Annexure-6) also discloses that his date of birth is 28.5.1947. Since there is no further response from the Department he filed this Original Application.

2. The Department in their counter maintained that the applicant though a failed Matriculate was a Skilled Casual Labour under Electrical Foreman for sometimes and being a

literate person he was recruited as Fitter, Gr-III in Group-C category on 29.3.1983 in Waltair Division. He subsequently came on transfer to Carriage Repair Workshop at Mancheswar on 28.4.1984 and since then he has been continuing in that Workshop. During his casual service from 10.1.1981 to 18.10.1982, his casual service record book No.0054414, issued by the Electrical Foreman, S.E.Railway, Jagdalpur (Annexure-R/1) contains his date of birth as 28.5.1942 and his age was mentioned as 38 years, 7 months and 12 days on the date of his initial engagement in casual service. At the time of his regular appointment as Fitter, Gr.III in Group C category in Waltair Division his date of birth was correctly entered as 28.5.1942 in figures as well as in words in the service particulars under Annexure-1. It was duly signed by the applicant and attested by the Assistant Personnel Officer, S.E.Railway, Waltair. The applicant at that time submitted School Leaving Certificate (Annexure-R/5), which was issued by the Headmaster, Pankapal High School and in that certificate his date birth has been mentioned as 28.5.1942 in figures as well as in words. He has also signed the attestation form under Annexure-R/6 on 21.9.1983 describing the date of birth as 28.5.1942 also giving out his age as 41 years by that time.

In terms of Para 225 of Indian Railway Establishment Manual, Vol. I, 1985 (Annexure-R/4), every person entering railway service shall declare his date of birth which shall not differ from any declaration expressed or implied for any in a public purpose before entering railway service. In case of literate staff the date of birth shall be entered in the record of service by the railway servant's own handwriting.

In case of illiterate staff the declared date of birth shall be recorded by Senior Railway Servant and witnessed by another railway servant. A person who is not able to declare his age should not be appointed to railway service. Such date of birth recorded in accordance with this rule shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. When a candidate declares his date of birth he should produce documentary evidence, such as, matriculation certificate or a municipal birth certificate. In the absence of these two certificates School Leaving Certificate has to be produced and horoscope should not be accepted as an evidence in respect of declaration of date of birth.

With these averments respondents pray for dismissal of this Original Application.

3. In the rejoinder though the applicant admitted production of School Leaving Certificate before Respondent No.6, at the time of entry into railway service, takes the plea that he was not aware of the date of birth which was entered in that certificate. He had filed the same before the authority concerned in a hurry without verifying the contents mentioned in the certificate. Further, he being not a literate staff but a semi-literate, he did not <sup>personally</sup> enter the particulars in the attestation form which was filled in by another person in the Office of Respondent No.6, and he had only signed the attestation form and records. He is not completely literate, but semi-literate, because he is a failed matriculate. As such the requirement under Para-225 of the Railway Manual (Annexure-4) that a literate



staff shall enter the date of birth in the record of service in his own hand-writing is not applicable in his case. In other words, he did not enter the date of birth in the record of his service.

4. The Department filed reply to this rejoinder stating that in the railway service there is no category of employee styled as semi-literate. The fact that the applicant had read upto Class-X and a failed matriculate and was held suitable for Group C category of post in the scale of Rs.260-400/- in the recruitment is a sufficient proof that he is not an illiterate person. In fact a person is illiterate when he is not able to read and write. In fact the applicant had attended for personal hearing on 1.12.2000 for redressal of his grievance, when called upon. He recognised his signature in the attestation form as well as in the service record. Thereafter his grievance was disposed of under Annexure-A/7 dated 4.12.2000.

5. We have heard Shri C.Behera, the learned counsel for the applicant and Ms.S.L.Pattnaik, the learned Addl. Standing Counsel for the respondents.

6. The applicant bases his claim for correction of date of birth on the basis of two documents, viz., one is horoscope under Annexure-6 and the other is a certificate issued by the Headmaster, Pankajal High School (Annexure-5/A). As per Railway Service Code, as mentioned above, horoscope cannot be accepted as documentary evidence in support of proof of date of birth. The Madras High Court in L.I.C. of India vs. S.M.Margasalyam reported in 1998 (L&S) 2343 held that horoscope is not reliable when the other materials

are available in proof of date of birth. Hence, we are not inclined to place any reliance on the horoscope, i.e. Annexure-6. Annexure-5/A is not a School Leaving Certificate. It is only a certificate issued by an Headmaster. Hence its authenticity is open to doubt, more so when his S.L.C. issued by the Headmaster of that High School in <sup>during</sup> the year 1963 (Annexure-R/5) and admittedly produced by the applicant before the railway authorities at the time of his entry in service is available on record. This certificate clearly reveals the date of birth of the applicant as 28.5.1942, being written both in words and figures. Hence this Annexure-5/A will not be of any help to the applicant.

7. Then comes the attestation form (Annexure-R/6) which was filled in and signed at the time of his entry in railway service. This form contains several columns. It is admitted by the applicant that ~~at least~~ <sup>only</sup> he has signed in this form and at the time of preparation of this form he had produced the SLC (Annexure-R/5). His plea that he hurriedly obtained the S.L.C. (Annexure-R/5) and thereafter produced the same before the railway authorities and as such he could not be able to go through the contents therein, particularly the date of birth, cannot at all be believed because Annexure-R/5 was issued in the year 1963, i.e., 20 years prior to his initial entry in railway service. It is <sup>improbable</sup> ~~improper~~ that in all these 20 years the applicant would not have the curiosity to go through the contents of the School Leaving Certificate. Of course his plea is that he is not literate and he is only semi-literate. He advanced this plea apparently to build up a case that even if he had

attempted to read the contents in Annexure-R/5, he could not have understood the same. The contents in Annexure-R/5 are in English. The most relevant information under Annexure-R/5 is the date of birth, which as earlier mentioned, stands mention in figures as well as in words. It is not the case of the applicant that he is not illiterate even to read the figures numbered in English. Even assuming the date of birth mentioned in the attestation form has been filled in by some one else in the office of Res.6 with reference to the date of birth mentioned under Annexure-R/5, it is not understood nor clarified by the applicant <sup>as to how</sup> the so called someone in the office of Res.6 at Waltair which is far away from the native village of the applicant at Tritol and who is noway related to the applicant could enter the full address of the village, place of posting of the applicant in casual service, names of mother, wife, brother and sister of the applicant and the place of birth of the applicant and so on without the help of the applicant. These particulars in the attestation form would undoubtedly reveal that either the applicant himself filled in attestation form or with <sup>him</sup> the prompting and in presence of the applicant someone else had filled in attestation form.

We are, therefore, convinced that the date of birth of the applicant has been correctly recorded in the service record as 28.5.1942.

In the result O.A. is held to be without any merit and the same is dismissed, but without any order as to costs.

(SOMNATH SOM)  
VICE-CHAIRMAN

21-6-02  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.SAHOO//