

- open Court -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 154
~~XXXXXX~~

1990

DATE OF DECISION 10-12-1990

M.P. Saramma Applicant (s)

M/s. K.P. Haridas & KG Sarath Advocate for the Applicant (s)
Kumar

Versus

Permanent Way Inspector, Respondent (s)
Southern Railway, Kottayam & 2 others

Ms. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman,

The Hon'ble Mr. N. Dharmadan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

N. Dharmadan, Judicial Member

A retired Khalasi is the applicant. She approached this Tribunal invoking our jurisdiction under Section 19 of the Administrative Tribunals Act for quashing an order at Annexure A-1 indicating her retirement on 28-2-1990. The correct date of birth according to her, is 25-2-1935 and not 1-3-1932 as entered in the service records and relied on by the respondents. The applicant came to know of the mistake when she received Annexure A-1 from the Permanent Way Inspector, Southern Railway, on 23-1-1990.

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2. The question involved is the correction of date of birth. A certificate obtained from the St. George's Jacobite Syrian Church, Karingathira dated 30-8-1988 has been produced for establishing her correct date of birth as 25-2-1935. She is an illiterate woman and the only document which can be produced, according to the applicant, is the certificate from the Church where she was baptised and her marriage was conducted.

3. The respondents have filed a statement on 28-5-1990 and a reply dated 9-7-90. They are relying on Exhibit R-1 memorandum dated 12-12-1988/15-12-1988 containing details of empanelment of casual labourers including the applicant in which the date of birth of the applicant is shown as 1-3-1932. There is also an endoresement in Column 9 of Exhibit R.1 that the applicant is overaged at the time of the initial engagement and she is due to retire on 28-2-1990. Annexure R-2 is the certificate issued by Vicar of St. Thomas Church, Mulanthuruty in which it is stated that the applicant's date of birth is 1-3-1932. Further document relied on by the respondents is Exhibit R-3, pages 4 and 5 of Service Records, wherein the applicant affixed her thumb impression accepting her date of birth as 1-3-1932. In the light of these documents the respondents strenuously contended that the applicant's

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correct date of birth is 1-3-1932 and not 25-2-1935 as contended by the applicant in this application.

4. Having heard the matter we are faced with the difficult task of deciding the issue on the basis of disputed certificates, one issued by the Church Authorities at Karingachira dated 30-5-1988 produced by the applicant and another certificate issued by the Vicar of St. Thomas Church, Mulanthuruthy on 20-4-1988 which was also produced by the applicant herself before the respondents when her service book was opened.

5. The plea of the respondents is that when an entry had been made in the service records, on the basis of Exhibit R-2 certificate and it was accepted as correct by the applicant by affixing her thumb impression she cannot be allowed to resile from it and take a different stand at this belated hour on the verge of her retirement. The applicant on the other hand contended that her service records cannot be relied on because it is not prepared and kept by them as per the rules.

6. In almost all cases where a request is being made by the public servant for correction of date of birth there would necessarily be the difficulty for him to face the fact that at the time of opening the service

book he would have signed such register confirming the correctness of the entry therein. When this fact is put against such public servant his burden is very heavy to counter the contentions by producing authenticated and reliable documents for acceptance by the government. Under such circumstances, when more documents on the question of age come to light it is incumbent on the government to conduct a detailed investigation and enquiry to find out the correct position, and come to a fair conclusion for rendering justice to the public servant. Any such conclusion can legitimately be arrived at only after giving opportunity to the affected party as well. No such enquiry or investigation seems to have been conducted by the respondents in the instant case.

7. Nevertheless, having regard to the facts and circumstances of the case we are not prepared to accept the contention of the applicant that Exhibit R-3 copy of service record is not a correct record prepared and kept by the Railways. The respondents have produced before us the original service register. On going through the same we are satisfied that this is a genuine record kept in the ordinary course. This is not a concocted document as alleged by the applicant though it has not been strictly filled up and prepared in accordance with the relevant rules. We notice the

the importance of preparing and maintaining the service records of public servants scrupulously according to rules. It is incumbent upon the Railways to get the service records written through the employees and in vernacular if the employee is illiterate person with the signature or thumb impression as the case may be in the presence of witnesses. In the instant case it is written in English and this irregularity pointed out in the preparation of the document is not so glaring as to vitiate this document and we cannot come to the conclusion that this is a document which cannot be accepted as contended by the applicant.

8. In the matter of correction of date of birth the principles generally followed is that once the service record is signed indicating the admission of the concerned employee that the contents therein are correct, ^{altered or at a subsequent stage} it can be ~~corrected~~ only on the basis of some authentic records like entries in School records or birth register. Invariably this is being done only to mete out justice in deserving cases. Kerala High Court in Eapen V. Union of India and others, ILR 1977(2) Kerala 436, held as follows:

"9. While it is perfectly understandable that once the date of birth of a Government servant has been recorded in the service book, requests for correction of such entry should not generally

be encouraged, especially when such requests are made at a belated stage, even Note 5 to Rule 56 indicates that in exercising due strictness in regard to the grant of such requests for correction, the attitude is not to be one of wooden rigidity but it should, on the other hand, be one susceptible of sufficient flexibility so as to mete out justice in truly deserving cases where it is proved beyond doubt that the existing entry is vitiated by a clerical mistake....."

9. After analysing Supreme Court decisions in State of Orissa V. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269 and State of Assam V. Daksha Prasad Deka, AIR 1971 SC 173, the Orissa High Court laid down the following principles in Laxman Swain V. M.D. of Steel Authority of India Ltd; Rourkela, 1985(2) SLR 225.

"....On analysis of both the aforesaid decisions of the Supreme Court, the following principles emerge.

- (i) Both the employer and the employee can dispute the date of birth available on the service record of an employee maintained by the employer.
- (ii) The employer is to resolve the dispute
- (iii) Where the employer seeks to change the date of birth advancing the same resulting in the employee reaching of the age of Superannuation earlier, the employee concerned must be informed of the case of the employer and the evidence in support of the same and the employee must be given fair opportunity by the employer to meet the evidence and such a case before an adverse decision is taken by the employer.
- (iv) Where the employee seeks to change the date of birth to gain advantage of a date of superannuation later than the date available from the service record, ordinarily the employer should give the employee proper opportunity to prove his case and should give due consideration to the evidence brought before it.
- (v) The date of reaching the age of superannuation must be determined on the basis of service

record and not on what the employee claims unless the service record is first correct."

10. Recently the Supreme Court considering the question of alteration of date of birth in the light of the provisions of AP Public Employment (Recording and Alteration of date of birth) Rules 1984 held as follows:

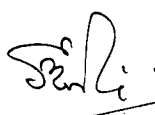
"....In substance Rule 5 lays down that the pending applications of the employees for alterations of date of birth shall be decided on the basis of age as recorded in the School and College records. Thus if on the date of entry into service the date of birth of an employee was recorded in his service book on the basis of his age and recorded in the School and College certificates in that event, the date so recorded shall be treated to be correct date of birth. However, if the date of birth recorded in the service book at the time of entry of an employee is not based on school or college records the Rule 5 does not operate as a bar to consideration of other relevant materials in determining the date of birth of the employee.." (Govt. of Andhra Pradesh and another V. M. Haya greev Sarma, (1990) 2 SCC 682).

11. In the instant case, the applicant has not produced a copy of the relevant extract from the Registrar maintained under Births, Deaths and Marriage Registration Act 1886 to prove her correct date of birth nor did she produce any certificate from other authorities which can be equated with school certificate. However, she being an illiterate woman, produced certificates from the Church. She had produced two certificates from the

authorities of two Churches. Thus the documents before us give contradictory dates. Since the applicant herself had produced both the certificates she cannot be allowed to choose between the two. The earlier certificate Exhibit R-2 produced by the applicant alone can be accepted as a document giving correct details regarding the date of birth of the applicant. If as a matter of fact this was not correct the applicant would have objected to the statements in memorandum when it was published in 1988. In the light of the above facts and circumstances of this case, we accept the certificate at Exhibit R-2 as correct.

12. In the result, we are of the view that there is no merit in this application. Accordingly we dismiss the same. There will be no order as to costs.


(N. Dharmadan) 10.12.90
Judicial Member


(S.P. Mukerji)
Vice Chairman

10-12-1990