

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 315/91 & 318/91
T. A. No.

DATE OF DECISION 7.6.91

N. P. Gopalan _____ Applicant (s) in O.A. 318/91
P. Kelanda Vel _____ Applicant in O.A. 315/91
Mr. P. Sivan Pillai _____ Advocate for the Applicant (s)

Versus
Union of India through Gnl. Manager, Southern Rly, Madras-3 _____ Respondent (s)
and another

Mr. M. C. Cherian _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

The Hon'ble Mr. ---

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? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Common order is challenged in similar set of facts.

Hence, on consent of parties these cases are heard and

disposed of by this common judgment.

2. The question involved in these cases pertains to the correction of date of birth. The applicants approached this Tribunal on the earlier occasion by filing O.A. 194/91 and O.A. 187/91 with some evidence based on horoscope with stating that their date of birth as entered in the Service

Records does not reflect the correct position and it requires correction. This Tribunal disposed of these applications with the direction to the General Manager to consider the respective claims of the applicants and pass appropriate orders. Thereafter, a common order, Annexure A-7 in both cases, has been passed by the General Manager and communicated to the applicants through the Sr. Divisional Personnel Officer. The operative portion of the order reads as follows:

"I have carefully considered the cases of Shri N.P. Gopalan, SS/PTJ and of Shri P. Kolandaivelu, CTTI/CBE for making a change in the dates of birth. I find that these requests are made at about their fag end of service, that they have been in service long enough to have their applications well in time when they had opportunities to do so. They are not illiterates - in fact are senior Supervisors. I regret that I am unable to agree to their requests. I am sure if these are considered favourably, almost everyone in the Railway would, ask for these to get "longer service."

2. The reasons stated in the order that the request for correction of age is belated and that if the case of the applicants are entertained almost all the Railway servants may approach with such claims, cannot be appreciated. I am not very much impressed by the manner in which the General Manager dealt with the matter particularly when there is direction by this Tribunal. He has not considered the case set up by the applicants. He should have examined the claim of the applicants in the light of the evidence produced by

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them and entered a finding thereon.

3. The learned counsel for the applicants relied on the Full Bench decision reported in Mallela Sreenama Murthy and another Vs. Union of India and others, 1990, Lab IC, 547 V.N. Chavan V. Union of India & ors.,^b and another decision/1991 2 CAT 30 SLJ and requested for a remand to the General Manager since the reasons given in the impugned order are not satisfactory. According to the learned counsel xxxxxxxxxxxxxxxxx the applicants have produced Annexure A-1, an order from the First Class Judicial Magistrate, Kangayam directing the Thahsildar to enter the petitioner's date of birth as 19.10.1933 in the Register kept under the Registration of Birth and Death Act and Annexure A-2, a certificate by the Revenue Department to prove his case, in O.A. 315/91, and Annexure A-1, in O.A. 318/91, a certificate from Trippur Municipality stating that the date of birth of the applicant therein as entered in the Register kept under Registration of Birth and Death is 15.2.1934, and the G.M. should have considered these documents.

41 I am not inclined to remit the matter again for further consideration firstly because the decisions cited by the learned counsel are not applicable to the facts of this case and secondly because I am not satisfied on the facts narrated in the application that the applicants have

made out a case for further examination by the General Manager.

5. Now I will examine the facts of these cases. The applicants have entered the service, after making the declaration of their date of birth, (in O.A. 315/91), on 10.10.1955 and (in O.A. 318/91) on 2.10.1953. After due verification of the records, the Railway authorities entered in the Service Records the date of birth of the applicants as 9.2.1933 (applicant in O.A. 315/91) and as 15.2.1933 (applicant in O.A. 318/91). The first attempt for correction of the date of birth was made by the applicants only in 1991 just few months before their retirement. The basic document relied on by both applicants for the correction of their date of birth is the horoscope, which they discovered only [a year], before their retirement. The reason for the long delay stated by the applicants cannot be appreciated. The applicant in O.A. 351/91 has stated that in January, 1989 when the applicant's mother expired, the applicant's brothers and other members of the family assembled in the old residence at the applicant's native place. Since all the brothers joined together, they

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casually verified a number of old records kept in the family house. While verifying them they came across some horoscope in which the applicant's date of birth has been referred to as 19.10.1933. Then alone he found that the entry in the School Records i.e. date of birth as 9.2.1933 is a wrong declaration made by his father at the time when he was admitted in the School. Thereafter, the applicant approached the Thaksildar and the Judicial First Class Magistrate, Kangayam and obtained the Annexure A-1 and A-2 Certificates. The applicant in O.A. 318/91 has also given a similar reason. He has stated that when the applicant visited his aunt in September, 1990 she informed the applicant that the date of birth of the applicant as recorded in the horoscope is 15.2.1934 and not 15.2.1933. Thereafter, the applicant obtained the birth certificate from the Municipal authorities which is produced as Annexure A-1. It is difficult to accept the above reasons as valid explanation for the long delay in this case. According to me, these are only flimsy explanations which will never be accepted for excusing the long delay of about thirty five years. It is unbelievable that the applicants

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never knew about the existence of their horoscope till 1990 which is now relied on as the basic document for effecting the correction of the date of birth. So on these facts I am not prepared to direct a further enquiry into the matter.

6. The learned counsel for the respondents submitted that the applicants have no case either on the basis of the amended provision or on the unamended provision of Rule 145 of the Indian Railway Establishment Code Vol. I because they have not filed the application for correction of date of birth within three years from the date of their entry into service as provided under the amended Rule or submitted with ⁱⁿ a reasonable time after his original appointment in the Railway Service.

7. The relevant provision of the Rule 145 reads as follows:

"(3) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a gazetted railway servant, and a General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered-

(i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the Railway servant being retained in service longer than if the alteration had not been made, or

(ii) Where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(iii) where a satisfactory explanation (which should ordinarily be submitted within a reasonable time after joining service) of the circumstances in which the wrong date came to be entered is furnished by the Railway servant concerned, together with the statement of any previous attempts made to have the records amended."

This provision states that when the employee gives a satisfactory and convincing reason for the mistake in the entry of the date of birth in the Service Records within a reasonable time of his joining in service, the General Manager has power to consider the same. In this case, according to the learned counsel for the respondents the applicants have not approached the Railway within a reasonable time. He has cited the following decisions in support:

1. State of Assam and another Vs. Deksha Prasad Daka and others, AIR 1971 SC 173
2. Kesar Singh Vs. Union of India, (1991) 15 ATC 527.
3. State of Kerala Vs. Ulahannan and another, 1977 KLT 620
4. Kunhi Krishnan Vs. State of Kerala, 1982 KLT 13 (FB)

He submitted that the applications should be dismissed relying on these decisions taking into consideration the long delay.

7. I have gone through the decisions cited by the learned counsel. They do not deal with the real issue arising in this case. According to me the question



arising for consideration on the basis of the interpretation
of Rule 145(3)(iii) of the Indian Railway Establishment

^{as to b}
Manual, Vol. I is what is reasonable period for a Railway

employee to approach the authorities for the correction of
date of birth in the Service Records and whether the applicants

have approached the Railways within a reasonable period after
they joined the services. The Supreme Court in Municipal

Corporation of Delhi Vs. M/s. Jagan Nath Ashok Kumar &
another (1987) 4 SCC 497, said "It is difficult to give an
exact definition of the word 'reasonable'. Reason varies in

its conclusions according to the idiosyncrasy of the
individual and the time and circumstances in which he thinks.

In cases not covered by authority, the verdict of a Jury or
a decision of a Judge usually determines what is 'reasonable'
in each particular case. The word 'reasonable' has in law
prima facie meaning of reasonable in regard to those

circumstances of which the actor, called on to act
reasonably, knows or ought to know." Strord's Judicial

Dictionary Fourth Edition, page 2258 states " that it would
be unreasonable to expect an exact definition of the word
"reasonable." Reasons may vary from persons to person and

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situation to situation. In Bhavan's Tea and Produce Co. Vs

Ag ITC (1972) 2 Taxation Law Reports 2413 the Kerala High

Court held "Though section 34 of the Income Tax Act does not

prescribe any period of limitation, any variation of the

assessment can be done only subject to the provisions of the

Act. It may be permissible to exercise that jurisdiction to

the benefit of the assessee at any time, but there should be

some reasonableness regarding the time limit; and nine years

after the assessments have become final is not certainly

a reasonable period within which jurisdiction can be

invoked" In Narayanan Vs. Rent Controller Ernakulam,

1988 (1)KLN 216, the Kerala High Court while considering

the scope of power of the District Court under Section 20

of the BRC Act 1965 held " It is axiomatic that any

authority exercising discretionary power should act

reasonably. Reasonableness is the touchstone of all judicial

and and quasi judicial actions (See in this connection;

Secretary of State Vs. Metropolitan Borough of Jameside

1976 (3)All.E.R. 665). The District Court functioning under

section 20 should therefore, exercise its power in a

reasonable manner. Any delay in invoking the power makes

its exercise oppressive, arbitrary and unreasonable. Since

ninety days has all along been accepted as a reasonable

period for invoking the power of revision, the District Court should act only if approached by the aggrieved party within ninety days. That is not to say that it will not, in appropriate cases, where the delay is properly and satisfactorily explained, interfere, or exercise its discretion, even if approached beyond this period. Sufficient cause should be established in all such cases."

8. Having regard to the facts and circumstances, a Railway employee if approaches the authorities for correction of his date of birth in the Service Records within a period of at least five years xx xxxxxxxxx from the original date of his joining the service, it may be reckoned as reasonable period because the amended provisions of Rule 145 fixes a period of three years for approaching for correction of date of birth from the date of original joining the service. But in appropriate cases the authorities can entertain requests for correction of the date of births even if the authorities are approached beyond this reasonable period with satisfactory explanation.

9. In the cases on hand, the applicants have approached the authorities after a lapse of about thirty five years. In no stretch of imagination this period

can be taken as reasonable for entertaining the

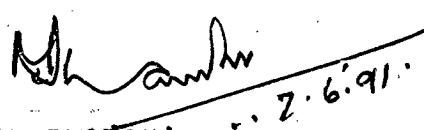
under Rule 145. ^b grievances of the applicants. As indicated above the

reasons given by the applicants for the delay are

unacceptable.

10. In these cases according ^b me, there is no clear and clinching evidence to disprove the statements in the Service Records of the applicants. The position available is two entries in Service Records based on ^{now proved are} School certificates and the other a certificate based on the declaration alleged to have been made by relatives and the entries in ~~xxxxxxxxxxxx~~ the horoscope of the applicants. There is no other documents to substantiate the case of the applicants that the date of birth given ^{Records b} at the time of entry in the school ^b are unacceptable. In and other evidence ^b the absence of such materials, ^b it is not possible for me to doubt the correctness of the service records and remand the matter for fresh enquiry.

11. Having regard to the facts and circumstances of the cases I am of the view that the applicants have not succeeded in establishing a prima facie case for remand. The applications are only to be rejected. Accordingly I dismiss them but without any orders as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

7.6.91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
R.A. 39/91 in O.A. 315/91
R.A. 40/91XXXX in O.A. 318/91 ¹⁰⁹
T.A. No.

DATE OF DECISION 2-8-91

Mr. Kolandavel in R.A. 39/91
Mr. N. P. Gopalan in RA 40/91

Applicant (s)

Mr. P. Sivan Pillai

Advocate for the Applicant (s)

Versus

Union of India represented by
General Manager, Southern Rly Respondent (s)
Madras and others

Mr. M C Cherian

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
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

MR. N. DHARMADAN, JUDICIAL MEMBER

These two Review Applications have been filed by applicants in O.A. 315/91 and O.A. 318/91 for review of the common order rendered by me on 7.6.91 dismissing the applications.

2. The learned counsel Shri P. Sivan Pillai appearing on behalf of the review applicants in these cases submitted that application of Full Bench decision quoted in 1990 Lab. I.C. 547 was not examined at the time of disposal of these cases. He has further argued that the applications were dismissed on the ground that the applicants did not seek *and this is wrong.* *He* correction within a reasonable time. He has also argued

that the findings in the judgment about the evidence produced by the applicants in the case are erroneous and hence there is an error apparent on the face of the records warranting review and re-hearing of the applications.

3. I have heard arguments of the learned counsel on both sides. Even according to the applicant the question referred in the full bench is as follows:

"(1) whether the statutory R.145(3)(iii) (now 225(4)(iii) permits filing of applications by railway servants to get their date of birth corrected and if so whether the amendment of the rule by the letter dated 31.2.71 prescribing a limitation takes away the right of Railway Servants who have joined Railway Service before that date to get their date of birth corrected.
(2) whether it is open to the Railway Board to impose a time limit for railway servants who entered service prior to 3.12.71 for getting their date of birth corrected."

4. I have considered the Full Bench decision and other decisions cited by the learned counsel for the applicant in the course of the argument and in para 4 of the judgment I have held as follows:

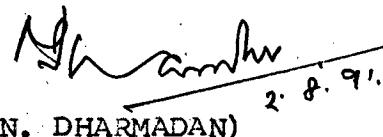
"I am not inclined to remit the matter again for further consideration firstly because the decisions cited by the learned counsel are not applicable to the facts of this case and secondly because I am not satisfied on the facts narrated in the applications that the applicants have made out a case for further examination by the General Manager."

5. According to me the question that arose for consideration in the cases on hand is one of the interpretation of the amended provision of Rule 145 of the Railway Establishment Code Vol.I. After considering the matter in detail in the light of the decisions, I have

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held that the applicants have not approached the authorities within a reasonable time as provided in the aforesaid rules. Considering the evidences produced by the applicants I have further held that there is no bonafide in their case because the applicants have approached the authorities after a lapse of about 35 years. In this view of the matter the full bench charan is not applicable to the facts of this case. 6. All the points raised at the time of hearing were considered and I see no error apparent on the face of the records in the judgment warranting interference ~~in~~ to invoke jurisdiction and power under review. In the result, the review applications are devoid of any merits. They are dismissed without any order as to costs.


2.8.91

(N. DHARMADAN)
JUDICIAL MEMBER
2.8.91

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