

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ERNAKULAM

DATE OF DECISION: 24 th JANUARY, 1990.

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.35/89

T. Vasu .. Applicant

Vs.

1. Union of India represented by General Manager, Southern Railway, Madras.
2. Chief Personnel Officer, Southern Railway, Madras.
3. Divisional Personnel Officer, Southern Railway, Trivandrum.
4. Divisional Railway Manager, Southern Railway, Trivandrum.

.. Respondents

Counsel for the applicant .. M/s K.Ramakumar, VR.
Ramachandran Nair &
Roy Abraham

Counsel for the respondents.. Mrs. Sumati Dandapani
Rly.Counsel

ORDER

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 15th January, 1989 under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a Gate Keeper in the Southern Railway, Trichur has prayed for the correction of his Date of Birth from 1.7.32 as entered in the service records to 24.8.34 claimed by him. His case is that he came to know of the erroneous Date of Birth

..2..

entered in the service record only by the order dated 29.12.60 at Annexure-A in which he along with others were confirmed and in which his Date of Birth at item No.112 was shown as 1.7.32. According to him, he represented for correction orally but nothing came out of it. Later when one of his colleagues got his Date of Birth corrected the applicant also represented on 27.6.87 for correction of his Date of Birth. This representation was rejected by the impugned order at Annexures E & F dated 4.3.88 and 3.11.88 respectively. The applicant claims that his Date of Birth was wrongly entered by the concerned official without his knowledge ^{contrary to} ~~and that~~ ^{of} the Date of Birth as entered in the School Register as also in the Birth and Death Register of the Corporation of Calicut. His grievance is that his request for correction of the Date of Birth based on ~~this~~ ⁶ conclusive documents had been summarily rejected by the respondents who did not apply their mind. He is also aggrieved by the facts ⁶ that he was not given an opportunity to substantiate his claim and that the Chief Personnel Officer who rejected his claim was not competent to do so.

2. The respondents have indicated that the applicant having kept silent for about 30 years cannot

....3

at this late stage claim any right to get his Date of Birth corrected. It has further been indicated that whereas in the service records along with the Date of Birth as 1.7.32 the applicant's father's name was recorded as Pappukutty, the certificate obtained from the Corporation authorities which did not specify the name of the child did indicate the name of the father as Bapputty. The extracts of the School Register indicate the name of the student as Vasu T.V. The applicant's name as entered in the service register as T.Vasu. They have further ^{indicated} ~~conceded~~ that the Tahsildar Certificate produced by the applicant which states that Shri Pappukutty alias Bapputty^{kutty} are one and the same person. They have, however, indicated that the names Pappukutty and Bapputty^{kutty} are not the same as ~~Bappukutty~~^{Bapputty}. The Date of Birth entered in the service records is also shown as 15.8.34 whereas the applicant's representation dated 27.6.87 bears the date 24.8.34 claimed by him.

3. We have heard the learned counsel for both the parties and have gone through the documents carefully. It is true that there are certain obvious discrepancies in the names of the father and the applicant and the correct Date of Birth as claimed by him and as indicated

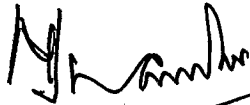
in the School Certificate. However, the fact remains that the applicant had produced substantial evidence which was rejected by the respondents by a non-speaking order through an enquiry during which he was not given any opportunity to adduce his defence. The Supreme Court in State of Orissa Vs. Dr(Miss) Binapani Dei and others, AIR 1967 SC 1269 and Sarjoo Prasad Vs. The General Manager and another, AIR 1981 SC 1481 observed that the change of Date of Birth of an employee involves ^{and} civil consequences. Such an order to the prejudice of the employee can be made only after an inquiry is made in which the employee is given adequate opportunity to set up his defence and to correct or controvert the evidence which is being relied upon against him. If a unilateral determination of the age of the employee is made to the prejudice of the employee, such an order is likely to be quashed by the Courts of law. This Tribunal also has been taking the view that no hard and fast deadlines can be fixed by the employers for correcting the Date of Birth and where the employee is able to produce any ^{incontrovertible} ~~identical~~ proof of the correct Date of Birth the employers have the duty to go into the whole matter

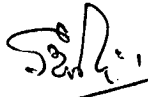
^{if called for}
and ^{change} the Date of Birth. The Supreme Court in
ⁱⁿ
R.S.Kallolimath Vs. The State of Mysore and another,
AIR 1977 SC 1980 went to the extent of observing that
an enquiry about correction of the Date of Birth can
be made even after the employee has retired.

4. In the instant case before us, we find that
a non-speaking order of rejection has been issued by
the respondents and the applicant was not afforded
sufficient opportunity during the enquiry held by the
respondents to adduce his defence. The fact that there
have been minor discrepancies in the names and Date of
Birth itself may indicate that the applicant has not
tried to manoeuvre the entries on the basis of which
he is claiming the correction. If there had been any
manoeuvring he would have seen ^{if that} to these obvious discre-
^{arise}pancies, should not ~~be upheld~~ ^{be} ~~be~~ ^{be} upheld.

5. In the facts and circumstances, we allow this
application to the extent of directing the respondents to
enquire de-novo into the claim of the applicant by refer-
ence to the originals of the documents and after giving
an opportunity to the applicant to adduce his evidence
in support of his claim and ^{to} take a decision about the
^{to} correction of the Date of Birth and pass a speaking order.

The applicant is directed to submit a representation to the competent authority with all supporting documents and materials within a period of one month from today and the respondents are directed to dispose of the representation after an enquiry on the lines indicated above and pass a speaking order within a period of three months from the date of receipt of the representation. The application is disposed of on the above lines without any order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

24-1-1990

Ksn