

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

ORIGINAL APPLICATION NO.628 OF 1987.
CAT/BOM/STAMP NO.546/87.

Shri Hari Vithoo Mankar,
Rohidas Wada,
House No.294,
Near Khandala Railway Station,
Khandala.

... Applicant

V/s.

1. Union of India,
through The General Manager,
Central Railway,
Bombay V.T.
2. Chief Workshop Manager,
Carriage & Wagon Workshop,
Central Railway,
Matunga.

... Respondents.

Coram: Hon'ble Member(A), Shri P.Srinivasan.

Appearances:

1. Shri D.V.Gangal,
Advocate for the
applicant.
2. Shri V.G.Rege,
Advocate for the
respondents.

JUDGMENT:-

{Per Shri P.Srinivasan, Member (A)} Dated: 11.9.1987.

This is one of those cases, bristling with contradictions at every turn, in which one is tempted to resort to the desperate remedy of tossing a coin to find a solution. Was the applicant born on 29.8.1929 as the respondents, viz. the General Manager, Central Railway and the Chief Workshop Manager, Matunga contend? If that was so, the applicant should have retired on 31.8.1987 but for the interim order of stay granted

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by this Tribunal. Or was he born 8 years later on 29.8.1937, as the applicant contends, in which case he would be due for retirement only at the end of August, 1995? Disputes regarding Date of Birth are not uncommon but the magnitude of difference between two disputed dates of 8 years in this case is perhaps unprecedented. Normally one looks at the Service Book of a Government servant to ascertain his date of birth. But here when the applicant entered the service of the Railways as a Khalasi in the Matunga Workshop in 1959 his date of birth was recorded in the Service Book as 29.8.1929 in figures and as Twentyninth August Nineteen Thirtyseven in words and this is the starting point of the controversy. However, in the lists of officials brought out from time to time indicating their seniority, the applicant's date of birth was consistently shown as 29.9.1929. The learned counsel for the applicant admitted that even the applicant was under the impression that this was the only date of birth recorded in the Service Book till sometime in June, 1987. In 1986 a list of officials due to retire in 1987 was circulated and that included the applicant, again on the basis that his date of birth was 29.8.1929. According to the applicant, in June, 1987, some of his colleagues told him that his date of birth had been recorded as 29.8.1937. Before proceeding further I may mention a



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development that took place in late 1960 about which also there is controversy between the parties. A perusal of the personal file of the applicant maintained by the office of Respondent No.2 discloses that a letter was issued on 21.12.1960 by Respondent No.2 to the Department in which the applicant was working, requesting the latter ^M to either ^{to M} furnish the date of birth of the applicant or to send his medical certificate in order to determine his date of birth. This letter as well as earlier correspondence in the file suggests that till the end of 1960, the applicant's date of birth had not been noted in his service book. An alternative explanation could be that the difference in the dates of birth as recorded in figures and in words led to the issue of the said letter of 21.12.1960. It is not possible to say at this stage conclusively why this letter was issued. The personal file also contains a School Leaving Certificate dtd. 1.5.1961 in which the applicant's date of birth is recorded as 29.8.1937. Here also, learned counsel for the applicant suggests that this certificate was produced by the applicant in compliance with the aforesaid letter of Respondent No.2 dtd. 21.12.1960 but the learned counsel for the respondents has some doubt as to when and how this certificate came to be kept on the personal file. Reverting to the chronological narrative, the applicant duly filled an application for pension in May, 1987 which proceeded on the basis that he had to retire on 31.8.1987

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on completion of 58 years of age. However, on 26.6.1987 the applicant wrote to Respondent No.2 drawing attention to the School Leaving Certificate said to have been furnished by him in 1961 and requested that the date of retirement which was hitherto being shown as 31.8.1987 be postponed in accordance with the birth date shown in the School Leaving Certificate. Thereafter the matter was examined in various notes in the office of Respondent No.2 and in the course of such examination a Personal Inspector of Respondent No.2, Shri Andhalkar was deputed to the School in which the applicant had studied. Shri Andhalkar examined the original record in the School and confirmed that the applicant's date of birth had been recorded there as 29.8.1937. The Head Master of the School also wrote a letter to Respondent No.2 on 9.7.1987 to the same effect. Not satisfied with the information so gathered, the office of the respondent No.2 conducted an investigation into the matter. The details of the investigation and the material collected were not shown to the applicant. But as a result of the said investigation the respondents rejected the claim of the applicant and decided that he should retire on 31.8.1987 though no specific order seems to have been passed and communicated to the applicant in this regard.

2. Shri D.V.Gangal, learned counsel for the applicant, developed his case on the following lines:
It was true that till June, 1987 the applicant was also

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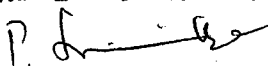
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under the impression that according to his date of birth recorded in the Service Book he was due to retire on 31.8.1987 and that was why he submitted his application for determination of pension in May, 1987. However, he had learnt from some of his colleagues in June, 1987 that according to the School Leaving Certificate found on his personal file, his date of birth was 29.8.1937 and thereafter he made an application for postponement of his retirement. Shri Gangal was permitted to go through the personal file of the applicant. He placed reliance on the report of the Personal Inspector who visited the school which the applicant had attended, and the letter of the Head Master confirming the entry in the school register. The entry in the school register had been made long ago and therefore it should have been acted upon by the respondents to determine the issue in dispute. The applicant was educated only upto IVth standard. Therefore, till somebody told him about the school certificate on his personal file he could not be expected to know about this and make a representation earlier than he did. Shri Gangal also relied on an extract from the electoral roll on 11.8.1987 which showed the applicant's age as 49. Whenever there is a discrepancy between the date of birth in figures and words, he submitted, the version in words should be preferred as is done by Banks in regard to such

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discrepancies in cheques. According to the rules of the Railway, matriculation certificate could be taken into account for recording date of birth in respect of literate employees, while in respect of others, the school leaving certificate could be relied upon. If the applicant was born in 1929, as alleged by the respondents, he would have been overaged for entry into service in 1959 when he actually joined service. He drew attention to page 91 of the Railway Establishment Rules and Labour Laws by B.S.Mainee, 16th Edition, 1986, in which it has been noted that representations for alterations of date of birth from illiterate class.IV staff could be entertained without any time limit ^{being} stipulated for submitting such claims. The applicant fell in this category and so he could apply for change in date of birth at any time even though the Railway gave a last opportunity to all its employees in 1972-73 to raise the question of date of birth as a one time measure.

3. Shri V.G.Rege, learned counsel, for the respondents strongly refuted the contentions of Shri Gangal. The applicant should have approached the authorities for alteration of his date of birth soon after he entered service. He was aware of the entries in the service record. The entry in figures in the service book should be taken as the more reliable entry. It was not as if this date was out of the figment of anybody's imagination. It must have been entered on the basis of information furnished by the applicant.

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The School Leaving Certificate which is on the personal file of the applicant might have been added to the file later, though it bears a date in 1961. In various seniority lists circulated from time to time, the applicant's date of birth was shown as 29.8.1929, but he did not protest till he was on the verge of retirement. On 17.4.1986, a list of persons due to retire in 1987 was circulated, which included the applicant. He could have protested then. He cannot be heard now at this late stage that the date of birth entered in his service book was incorrect, particularly because he himself, on his own admission, was all along under the impression that he had to retire in August, 1987. He did not avail of the opportunity given by the Railways to all employees in 1972-73 to represent about their dates of birth as a one time measure. The Railway Administration has to act on the basis of a certain date and cannot undertake frequent investigations to redetermine the date of birth from time to time. This Tribunal, therefore, should not interfere with the decision of the Railway Authorities based on very good reasons to act on the basis that the applicant's correct date of birth was indeed 29.8.1929. The applicant had not come to the Court with clean hands. In 1967, when applying for Provident Fund advance, he had represented that his eldest daughter was 18 years old and was to be married. How could a person who was born in 1937 have a daughter born in 1949? Subsequent

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enquiries revealed that the daughter was born only in 1960. Therefore, he had given a false statement in 1967 that his daughter was 18 years old and was about to be married. Shri Rege thereafter relied on the detailed investigation undertaken by the Railway authorities in 1987 after the applicant sent his representation for a change in his date of birth. The Register of Births and Deaths in the village in which the applicant was born showed his date of birth as 10.5.193^h5. The applicant had stated that his elder brother was also working in the Railways, but that brother's date of birth has been recorded in ^{his} the service book as 1.7.1940. How could the date of birth of an elder brother be later than that of the younger brother i.e. the applicant? There were ^a host of other contradictions and incorrect statements by the applicant which have come to light during the investigations. Therefore, the Railway Authorities did not consider it fit to accept the applicant's claim, and he was asked to retire on 31.8.1987.

4. I have considered the matter carefully. I have also perused the records of the investigation conducted by the Railway Authorities in 1987, the personal file of the applicant and his service card. As mentioned earlier in this order, the service record should normally be the guide for the purpose of fixing a person's date of Birth. But unfortunately the applicant's service card itself speaks in two voices. I am unable to agree with Counsel on either side that one

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entry should be preferred to the other especially when both were made simultaneously. In this situation, I would not give much value to the argument that the applicant's claim was belated, since in one sense it can be said to be based on the original record in the service book itself which was made several years ago. In a situation like this it became essential for the Railway Authorities to ascertain the correct date of birth of the applicant, and for this purpose to look for primary evidence. That the applicant made incorrect statements in regard to the age of his children may no doubt show him up as an unreliable person but that cannot be conclusive of the truth or falsity of the date of birth claimed by him which is also supported by the entry in words in the service card. The authorities could have proceeded against him for having made false declarations which is another matter; they could not conclude therefrom that the date of birth claimed ~~were~~ was incorrect. Discounting the school leaving certificate as an irrelevant document is also not justified because the correctness of the entry therein has been verified by the authorities themselves from the original school record. The fact that the applicant did not raise the issue of his date of birth earlier may have been a good argument against him but for the discrepancy in the *original* entries in the service book itself. What he is asking

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for is that the date of his retirement should be fixed with reference to what he considers the correct entry in the service book and not on the basis of any alteration of that entry to be made subsequently. In this respect this case differs from other cases that have come up before the courts and this Tribunal. Now a scrutiny of the investigation records has thrown up a new factor viz., the date of birth of the applicant in the Register of Births and Deaths is 10.5.1935. The authorities also ascertained the date of birth of his elder brother Kisan Vithoo as 1.8.1933 from the same Register. These entries should be given more value than the entries in the applicant's service card or in the service card of his elder brother showing him to be younger to the applicant. Reliance has to be placed on some record purporting to indicate the date of birth and I can think of no more authentic record than the Register of Births and Deaths. Though it is some times said that entries in this Register could be unreliable, it must be remembered that an entry therein is the first occasion on which a person's birth is recorded and subsequent entries of date of birth in school certificates, service records etc., will have to depend on this entry. In the absence of anything to show that the entry in the Register of Births and Deaths was itself fictitious -

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cannot be urged by the Respondents here because it is they who conducted the investigation and verified the said date from the Office^H of the Tahsildar & Executive Magistrate, Vadgaon Taluka that entry should be acted upon. In the peculiar circumstances of this case, therefore, I would hold that neither dates of birth mentioned in the service card can be acted upon and that the date of birth in the Register of Births and Deaths has to be taken as the most authentic information on the subject. This is a peculiar situation in which I am unable to accept the stand either of the applicant or of the Respondent but have to come to a third conclusion, but that is inevitable.

In the result the respondents are directed to change the date of birth in the applicant's service card to 10.5.1935 and regulate the date of his retirement accordingly. The application is partly allowed. Parties to bear their own costs.


(P. SRINIVASAN)
MEMBER(A).