

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

Original Application No.662/87.

Deochand Hiranman Kose,
r/o Bhandar Mohalla,
Near Sheo Jowde's House,
Indora, Nagpur (M.S.)

... Applicant.

V/s

1. Union of India,
Ministry of Railways,
'Rail Bhawan',
New Delhi, through its
Secretary.

2. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 700 043.

3. The Divisional Railway Manager,
South Eastern Railway,
Nagpur Division,
Kings Way,
Nagpur - 440 001

... Respondents.

Coram: Hon'ble Vice Chairman, B.C. Gadgil

Appearance:

1. Mr.D.K. Rao, Advocate
for the Applicant.

2. Mr.N.R. Bhausar
(for Mr.D.S.Chopra),
Advocate for the Respondents.

ORAL JUDGMENT

(Per: B.C. Gadgil, Vice Chairman)

Dated: 30-11-1987.

The applicant who is a Railway employee has a dispute about his birth date. In the Service Record the birth date is entered as 7-11-1929 while the applicant claims that it should be 1-7-1932.

2. The applicant joined Railway service as a Cooli on 8-8-1948. In due course he was promoted to higher posts and to-day he is working as Passenger Driver. The applicant has made a representation in about 1973 contending that his birth date as recorded in the

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service record should be altered from 7-11-1929 to 1-7-1932. The Divisional Personnel Officer has given his reply rejecting the claim of the applicant and the same is dated 10-7-1973 (Annexure 'D', page 19 of the compilation to the application). The applicant has made another application in that respect and on 24-3-1975 the Senior Divisional Personnel Officer, vide Annexure 'E', the applicant was informed that the decision as already communicated by letter of 10-7-1973 stands good and that no further representation on this subject would be entertained. It appears that the applicant remained silent for about 11 years and on 19-11-1986 he made another representation to the Divisional Railway Manager and the applicant was informed on 16-1-1987 (vide annexure 'G') that the decision already taken stands and that no further correspondence would be entertained. Thereafter the applicant filed the present application on 9-10-1987 claiming that his date of birth be corrected from 7-11-1929 to 1-7-1932. He has also prayed for an interim relief as he has been ordered to retire to-day i.e., on 30-11-1987. The respondents have filed their reply. It was contended that the application is barred by time. On merits it was submitted that the applicant would have been minor on 8-8-1948, if his birth date is to be taken as 1-7-1932 and that he could not have been employed in service on account of minority. It was also contended that the Railway record contains documents showing the birth date as 7-11-1929. The applicant filed an application for condonation of delay stating therein that he has good case on merits and that therefore the delay be condoned.

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3. The first point that would arise is as to whether the application is barred by time, as in 1973 as also in 1975 the applicant was already informed rejecting his claim that his birth date was 1-7-1932. Mr. Rao for the applicant relied upon the communication dated 16-1-1987 (Annexure 'G') for the purpose of contending that the limitation should be counted from that date. According to him he has filed an appeal in 1986 against the decision of 1975 and that this appeal has been decided in 1987. It is however material to note that what was filed by the applicant on 19-11-1986 (Annexure 'F') is not by way of an appeal, but it was only a representation and the authority concerned has stated that the decision already taken stands. It was urged by Mr. Rao that this reply (that the decision previously taken stands) would inure for the benefit of the applicant so that he can count the limitation from that date. In my opinion this would not be a correct position. It is material to note that in 1987 the representation has not been considered on merits because the matter was already decided in 1975 and what was communicated to the applicant was that the decision already taken stands. There is much substance in the contention of the respondents that stale matters cannot be made fresh by making representation and that too after a long period of about eleven years. If what Mr. Rao argues is correct, it would mean that the claimant should make a representation in a matter which is closed many many years ago and then apply to the tribunal after such representation is rejected not on merits but on the grounds that the decision is already taken. This would not be permissible. Hence it will not be possible for Mr. Rao to urge that the application is in time because

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of the reply dated 16-1-1987. It was then urged by Mr. Rao that the delay should be condoned. In the application all that is stated is that he has a good case on merits and that therefore the delay should be condoned. I am afraid that the merits of the case would not always be conclusive for the purposes of considering the question of delay.

4. Mr. Rao relied upon the decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag Vs. Mst. Katiji, reported in AIR 1987 SC 1353. In a land acquisition matter the Collector filed an appeal in the High Court which was barred by four days. The High Court dismissed the appeal as time barred. The Supreme Court, in the peculiar facts of the case, held that there was sufficient cause for condoning the delay and in the background of that sufficient cause the Supreme Court has observed that ordinarily a litigant does not stand to benefit by lodging an appeal late, and that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. However, what is important is that there must be some sufficient cause for condoning the delay. It will not be possible for Mr. Rao to contend that the delay should be condoned even if there is no sufficient cause and simply because the matter has some merits.

5. I am, therefore, of the opinion that no sufficient cause has been shown by the applicant for condoning delay. It is not necessary to repeat that the matter which was concluded in 1973 and 1975 was sought to be reopened by making a sort of representation in 1986. Thus the application deserved to be dismissed on the ground of limitation as there is no cause for condoning


the delay.

6. On merits the respondents have contended that the applicant could not have been employed in the Railway service if it is assumed that his birth date was 1-7-1932. On such hypothesis he would have been about 16 years of age. The respondents' contention is that the applicant was not entitled to such employment on account of minority. It was urged by Mr.Rao that the employment of Children Act 1938 permits certain employment between limit of 15 and 18th years of age and that the applicant got this appointment as a Cooli though he had not completed 18 years of age. Mr.Bhausar contended that under the rules Locoshed Cooli cannot be employed unless he has completed 18 years of age. However, all this aspect is not very much relevant in view of the fact that the application is barred by time.

7. My attention is drawn to certain rules which enable the Railway employee to apply for correction of dates before 1973. It was contended by Mr.Rao that this date is arbitrary. However, that aspect really is not relevant in view of the fact that the applicant applied in 1973 and his claim is rejected. Mr.Bhausar relied on rule 145 of the Indian Railway Establishment Code, Vol.I, but that rule is also not relevant.

ORDER

The application is therefore dismissed with no orders as to costs.


(B.C. GADGIL)
VICE-CHAIRMAN.