

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW BOMBAY BENCH~~
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T.A. No. 442/87

DATE OF DECISION 12.4.1988Shri B.T.Khandagale

Petitioner

Mr.B.N.Singhvi

Advocate for the Petitioner(s)

Versus

Union of India and two others

Respondents

Mr.V.G.Rege

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. L.H.A.Rego, Member (A)

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? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

CENTRAL ADMINISTRATIVE TRIBUNAL
New Bombay Bench, New Bombay.

T.A.No. 442 of 1987.

Bhavrao Tatyerao Kandagale,
Bombay Inhabitant, working
as Dy. Chief Engineer,
Central Railway,
Bombay V.T.

....Applicant.

vs.

1. UNION OF INDIA.
2. The General Manager,
Central Railway,
Bombay V.T.
3. The Chief Personnel Officer,
Central Railway,
H.Q. Office,
Bombay V.T.

Coram:

Honourable Shri L.H.A. Rego, Member (A).

Appearance:

1. Mr. B.N. Singhvi,
Advocate for the applicant.
2. Mr. V.G. Rege,
Advocate for the respondents.

JUDGMENT:

DATE: 12-4-1988.

[Per Shri L.H.A. Rego, Member (A)]

This is a writ petition filed in the High Court of
Judicature, Bombay, which is transferred to this Tribunal
under Section 29 of the Administrative Tribunals Act, 1985,
and is registered anew, as an application under that Act,
wherein the applicant prays, that a direction be issued to

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the respondents, to correct his date of birth (DOB, for short) to 6.4.1936, in his service record and to treat this corrected DOB for all purposes of his service career. When the application came up for admission on 13.11.1987, the learned counsel (Shri B.N. Singhvi) for the applicant, affirmed, that the applicant was confining his prayer only in regard to his claim for determination of his DOB as 6.4.1986, which he reconfirmed, when the matter was taken up for hearing on 6.4.1988. Consequently, the applicant withdraws the prayer at para 18(a) of his application, challenging the provisions of Article 323 A of the Constitution and the vires of the Administrative Tribunals Act, 1985.

2. The following is the salient background to this case, bringing **into** perspective the questions that need to be resolved. The applicant who belongs to the scheduled caste ^{he was initially} (Mahar) appointed in the State Service of the Government of Maharashtra, in the Irrigation Department, in November, 1959. Later, in March, 1960, he came to be appointed as Design Assistant (Computer), under the Union Ministry of Railways. Thereafter, in October, 1962, he came to be appointed as a probationery Assistant Engineer, in the Northern Railway.

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3. The applicant passed out as a Civil Engineering Graduate [BE (Civil)] in 1960, from the Osmania University in Hyderabad, Andhra Pradesh and thus his literacy was of a high order at the time of his initial appointment. He was transferred to the Central Railway, in October, 1968 and was promoted as Executive Engineer in 1972. In 1980, he came to be promoted as Deputy Chief Engineer, Central Railway, which post he is currently holding.

4. The applicant states, that his actual DOB is 6.4.1936, which is the date entered in his Primary School Certificate, as indicated by his parents. He avers, that his DOB was inadvertently shown ^{as} 6.4.1930, instead of as 6.4.1936, in his School Leaving Certificate (SLC, for short), and this error continued throughout his service career, till 1983, when he noticed ^{the} ~~this~~ ^{error}. Thereafter, he states, that he applied to the Railway Board, as also to the Divisional Board of Secondary and Higher Secondary Education, Marathwada, Aurangabad, for correction of his DOB.

5. According to the applicant, he accomplished his primary and secondary education in Vaijapur, in the erstwhile Andhra Pradesh and consequent to linguistic reorganisation of States, the Marathwada region, in which Vaijapur was

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situated, became part of the new State of Maharashtra. He states, that he passed the IVth Standard Vernacular, in ⁴³the Primary School at Vaijapur, in June, 1946 and entered High School thereafter.

6. The applicant avers, that his DOB entered erroneously as 6.4.1930 instead of 6.4.1936, in his SLC, remained unnoticed, as he was just a child and his parents were illiterate⁴³ and this error continued, while he sought admission to the Engineering College in Osmania University, to study for BE(Civil). It also recurred, he says, in his service record, when he entered service first in the State Irrigation Department of Maharashtra in November, 1959, and later in the Railways in the Government of India in March, 1960.

7. The applicant states, that in 1983, a seniority list of officers of the IRSE was published, wherein his DOB was shown as 6.4.1930. As he noticed flagrant disparity in his age therein, for the first time, as compared to his colleagues, who had graduated in Engineering along with him, he states that he initiated enquiry as to the correctness of his DOB and undertook a thorough scrutiny in this respect.

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8. According to him, his parents were married in 1931 and his elder sister was born on 12.5.1934. He is said to have checked his primary school record at Vaijapur, which revealed, that his DOB was entered as 6.4.1936 and not as 6.4.1930. He, therefore, states, that by his letter dated 21.12.1983 (Exhibit-A), he promptly requested the Secretary, Railway Board, New Delhi, through the Chief Personnel Officer (Gazetted), Central Railway, Bombay (CPO, for short), to correct his DOB as 6.4.1936^{stating} and that the requisite certificates and detailed clarification in this regard would soon follow.

9. In the meanwhile, the applicant is said to have addressed a letter to the Divisional Board of Secondary and Higher Secondary Education, requesting for correction of his DOB, but a copy of this letter does not seem to have been furnished by the applicant. The applicant states, that in pursuance, the Divisional Secretary, Divisional Board, Aurangabad, addressed a letter dated 26.4.1985 (Exhibit-B), to the Additional Joint Secretary, Office of the Commissioner for Government Examinations, Hyderabad, Andhra Pradesh, requesting for correction of DOB of the applicant as 6.4.1936. Strange enough, this letter does not make mention of communication, if any, addressed by the applicant to the Divisional Board, Aurangabad, in this behalf.

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10. The applicant alleges, that his letter dated 21.12.1983 (Exhibit-A), was not forwarded by the CPO to the Railway Board, New Delhi, but the CPO directly informed him by his letter dated 5.1.1984 (Exhibit-C), that his representation in regard to correction of his DOB, was duly examined and that there was no question of correcting his DOB from 6.4.1930 to 6.4.1936, as the applicant himself had recorded his DOB as 6.4.1930 in his bio-data form, as also in his leave applications from time to time, and that this DOB corroborated with that entered in his original service record, received from the Northern Railway and maintained by the Sr.DAO, Bhusaval, Central Railway.

11. The applicant states, that he made several representations to the Railway Board, through proper channel, for correction of his DOB and one of them was dated 14.10.1985 (Exhibit-D). The CPO, however, without forwarding the above representation to the Railway Board, is said to have informed the applicant, by his letter dated 18.11.1985 (Exhibit-E), that the reply already given to him earlier on 5.1.1984 (Exhibit-C), stood and that there was no reason to correct his DOB ^{as} ~~to~~ 6.4.1936. The applicant states, that he wrote to the CPO again, on

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16.12.1985 (Exhibit-F), requesting him to forward his representation dated 14.10.1985 (Exhibit-D), to the Railway Board, but he negatived this request as not tenable, by his letter dated 6.3.1986 (Exhibit-G), reiterating the reasons stated earlier, in his letter dated 5.1.1984 (Exhibit-C). In addition, the CPO informed the applicant, that the Railway Board by its letter (duly published in the Railway Gazette and given wide publicity amongst officers and staff), extended an opportunity to all literate employees, to represent on or before 31.7.1973, if they so desired, for change in their recorded DOB, by adducing supporting documentary evidence, but the applicant had not availed of this opportunity, to change his DOB. The applicant was warned at the end, to desist from making such untenable representations.

12. The applicant avers, that in the meanwhile (i.e., between 1985 and 1986), he received from the Education Board, Aurangabad, copies of the SLCs (both in English and Marathi), in respect of both the ^PPrimary and High schools at Vaijapur (Exhibits H and H-1 respectively). In exhibit-H, some of the particulars are blank and the DOB seems to have been entered in manuscript, while all other entries seem to be typed.

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13. It is alleged by the applicant, that the CPO (R4) and the General Manager, Central Railway (R3) could not have, on their own, taken a decision on his representation, regarding correction of DOB and the matter ought to have been necessarily referred to the Railway Board (R2) for orders, but both R3 and R4, did not forward his representations in this behalf, to R2. The applicant further alleges, that the very tone of the letter dated 6.3.1986 (Exhibit-G) addressed to him, by R4, betrayed his animus towards him. The rejection of his representations by R4 in particular, without forwarding them to R2, was, according to the applicant, arbitrary, unjust and unreasonable. He has therefore approached this Tribunal, through his present transferred application, for redress.

14. Shri B.N. Singhvi, learned counsel for the applicant, asserted, that the most reliable and crucial documentary evidence in support of the DOB, was the SLC. He reiterated the facts stated in para 7 supra, that the applicant became aware for the first time in 1983, that his DOB was erroneously shown as 6.4.1930 instead of as 6.4.1936, in connection with publication of the seniority list of the officers of the IRSE and that it was only then that he bestirred himself, to get his DOB corrected, by approaching the Divisional Board.

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of Secondary and Higher Secondary Education, Marathwada, Aurangabad, ~~for correction of his DOB~~ 46

15. Shri Singhvi submitted, that Exhibits H-1 (the SLC), read with the Form of Declaration dated 30.3.1984 (Exhibit-I) by the Head Master, Zilla Parishad High School, Vaijapur, clearly testified to the fact, that the correct DOB of his client was 6.4.1936 and that this was corroborated by the communication addressed on 26.4.1985 (Exhibit-B), by the Divisional Secretary, Divisional Board, Aurangabad, to the Additional Joint Secretary, Office of the Commissioner of Government Examinations, Hyderabad, Andhra Pradesh, requesting the latter, to correct the DOB of the applicant accordingly.

16. He laboured to bolster the case of his client, by producing during the course of the hearing, the affidavits of the following persons, as ancilliary evidence, to testify to the correctness of the DOB of his client, as 6.4.1936.

- (1) Affidavit of Shri Kisan Shakuji Jadhav of Gangapur, affirmed on 23.11.1987, to the effect, that he solemnised the marriage of the parents of the applicant in 1931 AD, corresponding to Samvat Year 1988.
- (2) Affidavit by Shri Gopinath Khanduji Zhalte (semi-literate), the uncle of the applicant, affirmed on 4.12.1987, confirming that the year of marriage of the parents of the applicant, was 1931 AD.



6. (3) Affidavit of Smt. Sonabai Damodar Kirtikar, elder married sister of the applicant, affirmed on 11.1.1988, stating that the applicant was younger than her, by $1\frac{1}{2}$ to 2 years.

17. In the course of the hearing, Shri Singhvi also produced an affidavit (of 1987), of Shri Trimbak R. Deshpande, one of the school teachers, who is said to have taught the applicant (affirmed on 14.12.1987), who had stated therein, that he could recall, that the applicant who was studying in Standard IV Vernacular, under him (in 1956 or so), was not more than 11 years of age. This implies that the birth year of the applicant was 1935, which is discrepant from the birth year 1936 claimed now by the applicant as correct and testified to by others - vide para 16 supra. When the disparity was pointedly brought to the notice of Shri Singhvi, he was not in a position to reconcile the same. Strange enough, this affidavit of the school teacher was found missing from among the affidavits, handed over by Shri Singhvi at the end of the hearing of the case.

18. Shri V.G. Rege, learned counsel for the respondents, filed a detailed reply to the application, on behalf of the respondents, resisting the same and furnished a copy thereof

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to Shri Singhvi. Rebutting each of the contentions of Shri Singhvi, he contended, that the applicant was not illiterate, as to have remained silent about the correctness of his DOB, for inordinately so long, till about the verge of his retirement, but had ⁴²high academic qualification, in that, he was an **Engineering** graduate. The very conduct of the applicant, at the crucial stages, when he had an opportunity much earlier, at different times, to represent to the competent authority, to correct his DOB, if at all it was erroneous, he said, betrayed his mind . . Shri Rege averred, that it was incredible, that at the very first stage, when the applicant obtained his SLC (High School), as long back as in 1953, he should not have demurred about the DOB, if at all it was incorrect, as he was quite literate, and grown up at that time. Shri Rege stated, that for reasons best known to him, the applicant failed to avail of the first available opportunity to correct his DOB, if there was a bona fide and genuine error therein. The explanation given by the applicant, that it was not possible for him to make an application before 1983, to correct his DOB, as he was moved from place to place, he said, was make-believe and unconvincing.

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20. He next pointed out, that the railway administration had, by their letter dated 10.1.1978, called for the bio-data of its employees, to help update their service record and ensure its completeness and correctness. Even then, he said, the applicant by his letter dated 16.1.1978 (signed by him), in reply to the above letter dated 10.1.1978 of the railway administration, indicated his DOB as 6.4.1930. This apart, Shri Rege pointed out, that even in his leave application, of as late as 6.5.1978, he had explicitly shown against ~~the~~ specific items, that he would attain the age of 55 years on 5.4.1985 and 60 years on 5.4.1990.

21. Shri Rege then assailed the veracity of the documents, a copy of which was furnished by the applicant at exhibit H-1 (corrected SLC dated 10-1-1985) and Exhibit-I (Form of Declaration, made by the Head Master of the school in Form No.2, on 30.3.1984). A conjoint reading of both these documents, Shri Rege, contended, would bring to light vital and irreconcilable disparities. Substantiating his contention, he referred to the pertinent entries in paras 1 to 4 ~~therein~~ in Exhibit-I, which are reproduced below:

- "1. That I have been Head Master/Head Mistress of the Z.P.H.S. Vaijpaur School since 1982.
2. That I have examined the school register and have found that the original entry of the name/ date of birth of the candidates Shri Bhavrao-Tatya Road Khandagle 06/04/1936 as recorded therein is Six April Nineteen Hundred Thirty Si.A.D.

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3. That the said entry has not, to the best of my knowledge and belief, been erased, altered or corrected since it was originally made.
4. That an incorrect name/date of birth was recorded in the application of the said candidate for admission to the S.S.C. Examination March 1953 by clerical mistake as stated below:

06/04/1930 Six April Ninteen Hundred Thirty A.D."

22. If there was no mistake in regard to the DOB of the applicant, as originally entered in his pertinent school register, Shri Rege ^{WA} asserted, that the correction of his DOB on 10.1.1985 as 6.4.1936 in his SLC, should not have arisen at all.

23. Shri Rege pointed out, that the Divisional Secretary, Divisional Board, Aurangabad, had taken recourse to an unusual practice, in despatching his letter dated 26.4.1985 (Exhibit-B) to the Additional Joint Secretary, Office of the Commissioner for Government Examinations, Hyderabad, through the applicant, which was revealing.

24. Shri Rege confirmed, that the Chief Personnel Officer of a Zonal Railway, was competent to alter the DOB, at the request of an employee, after necessary enquiry and that it was not obligatory for the CPO, to refer the matter to the Railway Board, for this purpose. Nevertheless, he pointed out, that the request of the applicant to correct

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his DOB, was ultimately examined by the Railway Board, which by its letter dated 9.10.1986, addressed to the General Manager, Central Railway (R.3) (a copy of which was endorsed to the applicant), had informed, that the request of the applicant to correct his DOB, could not be acceded to. The applicant, he said, had suppressed these facts in his application and had misrepresented that his representation was not forwarded to the Railway Board. There was no evidence to prove, he said, that the CPO bore animus towards the applicant, on account of which he was not sympathetic, as alleged by the applicant.

25. The affidavits referred to in para 16 supra, Shri Rege contended, have been produced after the representation ^{of} ~~the~~ on the subject ~~of~~ of the applicant/was disposed of and therefore, lack credibility, and should not be brought on record.

26. Shri Rege furnished additional material to show, that the applicant was aware, that his DOB was entered in his service record as 6.4.1930, as far back as in 1973 (in the Half-Yearly Statement of Gazetted Establishment in the Central Railway as on 1.10.1973) and in 1977 (in the Classified List of Gazetted Establishment, of the Indian Railways corrected upto 1.1.1977). Both these were printed publications

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he said, and were accessible to the concerned employees. Yet it was strange, Shri Rege argued, that the applicant should not have bestirred himself to correct his DOB, if he had a genuine grievance and should have awakened much later in 1983, when a seniority list of officers of the IRSE, is said to have been published, wherein his DOB was shown as 6.4.1930 - vide para 7 supra.

27. Shri Rege next relied on Rule 225 (4), relating to DOB, in the Indian Railway Establishment Code Vol.I (1985 Edition). For ~~2~~⁴ sake of reference, this rule is extracted below:

"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 Group A & B railway servant, and a General Manager in the case of a Group C & D 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 not be entertained after completion of the probation period, or three years service, whichever is earlier) 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 record amended."

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28. Shri Rege urged, that according to the above Rule, explanation for change of DOB, is not to be entertained, after completion of the probationary period or three years of service, whichever was earlier. He said, that in the case of the applicant, this period was over long back, i.e., prior to 1963, Notwithstanding this, Shri Rege submitted, that even when the Railway Board by its Circular dated 4.8.1972, gave a second opportunity to the railway employees, to represent about correction of their DOB, in accordance with the instructions contained therein, within 31.7.1973, the applicant failed to avail of this opportunity, for reasons best known to him.

29. At the end, Shri Rege submitted, that it was evident from the foregoing, that the applicant had not approached this Tribunal with clean hands and therefore, the present application deserved to be summarily rejected.

30. I have given the utmost attention to the rival pleadings and have examined carefully, the record and other material placed before me. The sheet-anchor of Shri Singhvi's proposition is, that the SLC is the pivotal documentary evidence, which should be the basis to decide, the correctness or otherwise, of the DOB of his client, and in this respect, he laid great stress on Exhibits H,

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H-1, and I. Exhibits H and H-1, are the versions of the SLCs both in English and Marathi. A minute scrutiny of these exhibits reveals the following discrepancies, omissions and oddities:

(1) Ex-H / pages 47 (Marathi version) and 47-A (English version) = 7

- (a) The particulars against S.No. 4, in the Marathi and English versions, in regard to DOB are discrepant.
- (b) Against S.NO. 6, the date of admission in school is shown as 2.1.1956 and against S.No. 10, the date of leaving school is shown as 18.9.1956, while in para 3 (page 4) of the application, it is shown that the applicant passed the IVth Standard Vernacular, in June 1946, from the Primary School, Vaijapur. Ex.H-1 shows the date of admission to school as 22.6.1946.
- (c) S.No.14, regarding marks of identification is blank.
- (d) The Marathi version of Ex.H, bears the date of issue as 11.8.1986, while the English version bears no such date.

(2) Ex.H-1 / page 48 (Marathi version) and 48-A (English version) = 7

- (a) Against S.No.10 on page 48, the date of application for SLC, is shown as 10.1.1985, while on page 48-A, it is shown as 10.1.1986.
- (b) S.No.12 regarding place of birth is blank.
- (c) The endorsement on page 48-B, on the English version by the Head Master, Zilla Parishad Prashala (Z.P.H.S. for short), Vaijapur (Boys), which bears no date, is as follows :

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" On the basis of the orders bearing No. G.P.O. Education, F 4/84 Office Zilla Parishad, Auranga bad, dated 29.12.1984.

This is to certify that the date of birth of Shri Bhaurao S/o Tatyabao Khandagale, which was incorrectly shown in the School record as 6-4-1930, has now been rectified as 6-4-1936. This change in the school register has been effected as per the instructions and orders contained in the orders of the competent authority."

(3) Exhibit-I (page 49).

(a) The contents of paras 2 and 3 (reproduced in para 21 supra) do not accord with the endorsement on page 48-B extracted above.

31. Prima facie, therefore, the very veracity of the above exhibits H, H-1 and I, is suspect. Shri Rege ^{he} ~~has~~ contended, that if there was no error in the school register, in regard to the DOB of the applicant, originally entered therein as 6.4.1930, and it was neither altered nor erased, as stated in Exhibit-I (para 3), the question of its correction, as endorsed on page 48-B, should not at all arise. I find there is merit in this contention.

32. Further, the Head Master, of the ZPHS, Vaijapur, came on the scene, in that capacity, as late as in 1982, In the Form of Declaration (Exhibit-I) or as a prelude to it, he has nowhere given the background, as to what occasioned

his discovery all at once, that the DOB of the applicant was recorded through clerical mistake as 6.4.1930, in the application of Shri B.T. Khandagale, for admission to the SSC exam, as long back as in March 1953, i.e., more than three decades ago. The whole thing, thus, seems to be mysterious.

33. Shri Singhvi has not been able to explain satisfactorily, as to why his client could not avail of the very first opportunity to correct his DOB, if there was a genuine error therein, particularly when he was sufficiently grown up and had achieved a high standard of literacy. Such opportunity came to him prominently, more than once on the following occasions:

- (i) When he secured his SLC, on completing his High School studies, at Vaijapur in 1953;
- (ii) When he applied for the Engineering Course in Osmania University, Hyderabad, and passed out therefrom, i.e., in 1960 and thereabout.
- (iii) When by Railway ^{& Board} Circular dated 4.8.1972, he was given an opportunity to represent about the correction of his DOB, if there was any error therein. He had this opportunity upto 31.7.1973.
- (iv) When the railway administration had printed and published the Half-yearly Statement of

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Gazetted Establishment on 1.10.1973 and the Classified list of Gazetted Establishment in 1977, wherein the DOB of the applicant, wherein the DOB of the applicant was clearly indicated as 6.4.1930, vide para 26 supra.

- (v) When the railway administration, by its letter dated 10.1.1978, called for the bio-data of its employees, in the prescribed proforma (in which there was a specific item provided for DOB), for the purpose of correcting and updating the service record of the employees.

In fact, it is apparent from the representation dated 14.10.1985 (Exhibit-D) of the applicant to the Secretary, Railway Board, New Delhi - vide the concluding part of bearing the caption "REQUEST", that he was aware of the so-called error in his DOB, as long back as in 1961, when he is said to have attempted to appear for the IRSE.

34. In spite of opportunities galore as above, the applicant seems to have been glibly complacent and inert, in regard to his claim for correction of his DOB, which he is putting forward, far too belatedly, almost towards the end of his career. That he should have bestirred himself as late, as in



1983 in this regard, and that too, when he saw the publication of the seniority list of officers in the IRSE and his DOB entered therein as 6.4.1930, seems a mystery, specially when he did not act likewise, when similar printed lists were published in 1973 and 1977 (vide para 33(4) above). The explanation of the applicant, that he could not represent earlier, about correction of his DOB as he had no time, as he was required to move from place to place, seems like fatuous juvenalia.

35. ~~As against~~ As against the above background, the applicant had specifically indicated his DOB as 6.4.1930, in his various leave applications and even in the bio-data furnished by him as late as in 1978. His explanation, that he could not deviate from the original DOB, namely 6.4.1930, entered in his service record, until it was corrected under proper procedure and authority, is manifestly make-believe and does not ring true. Nothing prevented the applicant, from making a representation to the competent authority to correct his DOB, when the railway administration provided him a golden opportunity to do so, according to their aforementioned Circular dated 4.8.1972. Clearly, there is more than what meets the eye in this episode. The Tribunal cannot assist those

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who are tardy, indolent, acquiescent or lethargic. The applicant has now suddenly awakened from his long slumber, a la Rip Van Winkle, and one fine morning, come up before this Tribunal, with a plea, to correct his DOB, at almost at the end of the tether of his service career and that too, with evidence, that is prima facie not unimpeachable, reliable and irrefutable. It is a well known maxim, that one who keeps silent, consents - qui tacet consentit.

36. Shri Singhvi, placing reliance on a judgment of the Madras Bench of the Central Administrative Tribunal, pronounced in P.B. JAGADEESAN v. UNION OF INDIA & OTHERS, sought to counter the argument of Shri Rege, that his client was barred by time, according to Rule 225 (4) of the Indian Railway Establishment Code Vol.I (vide para 27 supra), to get his DOB corrected. He contended strenuously, that according to the above judgment, "if a person chose to go before a Court of Law and establishes his case, that his DOB was given wrongly at the time of entry into service, or that the DOB was entered incorrectly in the SSLC Book and was able to convince the Court, the Court could correct the mistake and order at any time, correction to be made in the SSLC Book, in regard to the DOB". The facts and circumstances of the case before me, are not alike to that of JAGADEESAN's case, apart from the fact, that the applicant

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has not been able to prove by unimpeachable evidence, that his original DOB shown as 6.4.1930, in his school record is wrong, particularly in the context of his inertia and acquiescence, over an inordinately long period, in the light of the facts outlined in para 3⁴² above. The above judgment in JAGADEESAN's case therefore, is scarcely of any avail to the applicant.

37. An abrupt reference by the Divisional Secretary, Divisional Board of Education, Aurangabad on 26.4.1985 (Exhibit-B), to the Additional Joint Secretary, Office of the Commissioner for Government Examinations, Hyderabad, without giving any background to it and the unusual manner, in which this communication was hastily sent personally, along with the applicant himself, with the relevant documents, is revealing. Shri Singhvi could not show me a copy of the representation, if any, his client had addressed to the above Divisional Board to occasion this reference. The genesis of and the warrant for the above reference, are thus shrouded in mystery.

38. Shri Rege ⁴²has clarified, that the Railway Board too, had duly examined the representation of the applicant in regard to correction of his DOB and only thereafter, negatived his request in this behalf, by

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their letter dated 9.10.1986, addressed to R-3 - vide para 24 supra. I have examined the relevant papers placed before me by Shri Rege and I am satisfied that this clarification by Shri Rege is factual. There is no evidence to sustain the allegation of the applicant, that the CPO was biased against him.

39. The affidavits produced by the applicant - vide para 16 supra - to advance his contention about the correction of his DOB, prima facie, do not inspire confidence and therefore lack credibility. Glaring facts such as : that an illiterate elder sister of the applicant, should so belatedly enlighten her highly literate younger brother about his age; that a school teacher can prodigiously recall the age of the applicant, who is said to have studied under him, in Standard IV, more than four decades ago, when hundreds of such pupils, must have passed through his hands every year, during this long period, cannot but raise serious doubts about the veracity of these documents.

40. The arguments in this case were concluded on 6.4.1988 and both sides were informed that the judgment was reserved to be pronounced on 12.4.1988. Neither the applicant nor his counsel then submitted, that some more documents or material, will be produced before the Tribunal, to support the claim of the applicant for changing his DOB from 6.4.1930 to 6.4.1936. However, the applicant

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filed on the evening of 11.4.1988, a letter, along with certain additional documents, in the Registry, to advance his claim to change his DOB, as above. As these documents have been produced far too belatedly and as neither the applicant nor his counsel had indicated on 6.4.1988 i.e. the date when the arguments of both sides had concluded, that they would produce additional documents/material, I see no warrant to take on record, the letter dated 11.4.1988 filed by the applicant, along with the additional documents, late in the evening. ^{to} of that date.

41. From an in-depth discussion and analysis of this case as above, it is apparent, that it reeks of "false in one thing; false in all" - falsus in uno, falsus in omnibus, and that the applicant has come to this Tribunal with tainted hands. Besides, the sequence of his conduct and the preponderance of evidence based on probabilities, all go to show, that he is less than truthful in his claim, for correction of his DOB.

42. The application is thus, devoid of merit and is liable to be dismissed. The same is, dismissed accordingly, but with no order as to costs.

(L.H.A. Rego)
Member (A)

12.4.1988

CENTRAL ADMINISTRATIVE TRIBUNAL,
New Bombay Bench, New Bombay.

Misc.A.No. 238 /88

in

Tr. A.No. 442/87.

Bhavrao T. Khandagale

...Applicant.

vs.

Union of India and others.

...Respondents.

Coram: Honourable Shri L.H.A. Rego, Member (A).

ORDER:

Date: 13.4.1988.

In this miscellaneous petition, the applicant has prayed that pending filing of an appeal in the Supreme Court against my Judgment pronounced on 12.4.1988 in Tr.A.No. 442/87, superannuation of the applicant according to his date of birth, viz., 6.4.1930, be stayed till 12.6.1988.

Shri D.V. Gangel, learned counsel, appears for the applicant. He submits that his client is due to superannuate on 30.4.1988 in accordance with my Judgment and prays for time upto 12.6.1988 to enable him to file an SLP in the Supreme Court against the above Judgment.

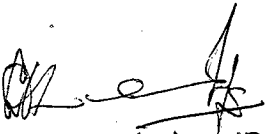
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I see no justification to grant this request, as the applicant has come before the Tribunal far too belatedly, almost on the verge of his retirement.

The miscellaneous petition is, therefore, dismissed.

No order as to costs.


MEMBER (A) 13.4.1988

dms.