

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No.	-	198
T.A. No.	1	1987.

DATE OF DECISION 21.10.1987

The Union of India through Petitioner
the General Manager, Ammunition Factory,
Pune-3. and another.

Mr. J.D. Desai (for Mr. M.I. Sethna) Advocate for the Petitioner(s)

Versus

Bapu Genu Satpute. Respondent

Mr. Ashok Bora Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A)

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Transferred Application No.1/87

1. The Union of India through
The General Manager,
Ammunition Factory,
Kirkee, Pune-3
 2. The General Manager,
Ammunition Factory,
Kirkee, Pune-3
- .. Applicants

Vs

1. Bapu Genu Satpute,
R/a. 335 Narayan Peth,
Pune (Old Kale Wada)
Pune-30
- .. Respondent.

Coram: Hon'ble Member (A) J.G.Rajadhyaksha.

Appearances:

1. Mr.J.D.Desai (for Mr.M.I.Sethna)
Counsel for the applicants.
2. Mr.Ashok Bora, Advocate for the
Respondent.

JUDGMENT:

¶ Per: Shri J.G.Rajadhyaksha, Member (A) ¶ Dated: 21.10.1987.

1. Transferred Application No.1/87 was originally Civil Appeal No.361 of 1984 on the file of the District Judge, Pune. It arose out of a decision given by the Civil Judge Senior Division Pune in Regular Civil Suit No.2446/1979.

2. The facts briefly are that the original plaintiff (hereafter referred to as respondent) filed the Civil Suit on 21.12.1979 for a declaration that his date of birth was 15.9.1923 and not 27.11.1920 as recorded in his Service Book. He amended the plaint by submitting an application for amendment on 18th August, 1982 and expanded the relief clause to include correction in the Service Record and a declaration that he is entitled to remain in service on the basis that he was born on 15.9.1923, and thereafter get the

retirement benefits. These amendments were allowed. He had also applied for an interim injunction on 11.2.1980 but the Learned Civil Judge had rejected the application on the ground that no irreparable damage would be caused to the plaintiff if an interim injunction was not granted, also observing that prima facie there was no case for the interim injunction.

3. The Learned Civil Judge however granted a declaration that respondent's birth date was 15.9.1923 and he was entitled to remain in service on that basis. Aggrieved by the decision of the Learned Civil Judge given on 17.1.1984, the original defendants hereafter referred to as applicants filed an appeal in the Court of the District Judge on the grounds that the Lower Court had erred in holding that it had jurisdiction to try the matter, that it had erred in relying upon the School Leaving Certificate which was not conclusive evidence of the date of birth and also erred in not insisting upon collateral proof in the shape of extract of the birth register. It was further mentioned that there was no reason for the Lower Court to discard the entry in the Service Record as also to discard the Rules and Regulations in this behalf and hold that the defendants should have made out a special case for the plaintiff and considered his request for change in the birth date.

4. I have heard Mr.J.D.Desai for the appellants^{applicants} and Mr.Ashok Bora for the Respondent. I have also perused the records of the case in detail. It is Mr.Desai's argument that the respondent had earlier been in service of the same factory between 1942 and 1944, and was at that time discharged. A discharge certificate had been granted to him and if that had been produced the exact birth date of the plaintiff would have been clear. It is Mr.Bora's reply that even the appli-

cants could have produced the discharge certificate if they wanted to rely upon it.

5. Mr.Desai contended that at the time of entry in the service the respondent should have produced evidence of his age and made a declaration about his age. All that is available was a mention of medical officer's opinion which showed his age only by inference and thereupon the date of birth was fixed at 1920. It is Mr.Bora's reply that at no time was the respondent called upon to declare his birth date and he had never declared it as 1920. Mr.Bora adds that the respondent was illiterate and therefore he could not have made such a declaration or signed it.

6. Mr.Desai further contends that in this particular case the respondent has not followed the rules and procedure laid down for correction of the birth date. He argues that the respondent could have applied for correction according to the factory rules within 2 to 3 years of joining service, or even within 5 years of the date prescribed for such correction some time around 1973. In any case, he should have applied for correction of the birth date more than two years before his accepted date of superannuation. To this Mr.Bora's reply is that the Learned Civil Judge had rightly disregarded the rules and regulations because in the instant case the respondent had produced good proof of his age in the shape of a School Leaving Certificate supported by the erstwhile Head Mistress Mrs.Datta who had been examined in the Lower Court. He adds that a bona fide/clerical mistake could be corrected at any time without time limit and since there was such a mistake it should have been corrected by the authorities.

7. Mr.Desai's contention then was that the only evidence on record was the School Leaving Certificate and the

/ School
Register
and both
these were
proved by
the

School Register. This is not supported by an extract from the Birth Register of the Village and in the absence of such collateral proof it was incorrect for the Learned Civil Judge to have accepted the School Leaving Certificate as evidence and based his decision thereon. Mr.Bora's reply to this was that respondent had been making every effort to trace the School to which he went and which had actually been closed down sometime later in his Village and opened elsewhere. He could succeed in doing so only on 23.8.1979 and thereupon he applied for correction of the birth date. This was rejected by the authorities. Therefore he gave a notice through an advocate and then filed the Civil Suit. Therefore, there was no delay on the part of the respondent and whatever he had produced had been adequately proved.

8. Mr.Desai added that on the basis of the birth date of the respondent being November 1920 he had already been superannuated in November, 1980 on attaining the age of 60. He pointed out that the Learned Civil Judge had rejected the prayer for interim relief as he had held that there was no case for such relief at that stage. Mr.Bora's reply to this is that the Learned Civil Judge was right finally in replying upon the School Leaving Certificate and granting the declaration that respondent had sought. He adds that the respondent was illiterate, yet he tried to get the School Leaving Certificate. He had applied to the Talati (Patwari) of the Village for an extract of the birth register. Shri Bora however, does not state what happened to that application made to the Village Officer for the birth extract. Mr.Bora's prayer was that the appeal deserved to be dismissed with costs as the respondent had established his case adequately.

9. After hearing the Learned advocates for both the sides and perusing the records of the Court of the Civil Judge, Senior Division, Pune, I have come to the conclusion that the respondent has failed to make out a case for change in his birth date. My reasons briefly are, as follows. The respondent is not illiterate inasmuch as he has signed the attestation form at page 137 of the record and signed several other forms through which he exercised options for revision of pay scale and for pensionary benefits and so on. Though the attestation form does not have the birth date of the respondent recorded therein, I find however that the date on which that attestation form was prepared is not clear from the papers that are before me. Later, however, the workman's record of service has been prepared on 27.11.1959. Here the Medical Examination Report indicates his age as 35 years from his statement and from appearance. Here again there seems to be no mention of any documentary evidence on which the entries are based. By inference, the birth date according to the workman's record of service could be around 1924 but this again is not conclusive inasmuch as it is only from the respondent's statement and appearance that the Medical Officer records the age and not the birth date. More significant are the dates recorded at various places. On the workman's record of service the birth date recorded is 17.12.1920 this is seen at page 120 of file containing the service record. On what basis this date is recorded is again not very clear. Thereafter, however, the forms of leave account of Industrial persons maintained for various years show the date of birth as 27.11.1920. Turning to the evidence, it is seen that there is a School Leaving Certificate issued on 23rd August, 1979 by the Head Mistress, one Ms.V.S.Punekar. The original of

the certificate is at ex.53, page 9 of the file of the Civil Judge, Pune. The School Leaving Certificate is issued by the Mission School, Rawde, Taluka Paud. There is at Ex. 60 a photo copy of the School Register from which the School Leaving Certificate appears to have been made. It does contain an entry of the name of the respondent and it shows the birth date as 15.9.1923. The evidence at Ex.52 is that of Mrs.Pramila Dethé who claims to have been the teacher in the school known as Athyal Practising School for 30 years past. She produced the office copy of the School Leaving Certificate and stated that the School Leaving Certificate produced by the respondent was according to that office copy, she identified the signature of Ms.Punekar and stated that the contents were correct. She also stated to be correct the entry in the general register Form No.I maintained by the School in which the name of the respondent and the birth date appeared. She added that this register was in respect of the Mission School Rawde. The Mission School was run by their Society and it had been closed down. The relevant records had therefore, been transferred to the Society. This evidence as well as the register and the School Leaving Certificate can be accepted at their face value as being authentic, but the question is how much evidentiary value should be attached to them. First of all it is a Mission School run by a Private Society. It is not clear if it was a Government recognised and a Government aided School. Secondly, it is not clear if the School Leaving Certificate issued by the Mission's Athyal Practising School can be said to be correctly issued in favour of the student who was reading at a Mission School at Ravade. Further, I am constrained to observe that this certificate has been issued on 23.8.1979 which seems to be just some days earlier to the

respondent submitting his application for correction of his birth date. The occasion for obtaining this certificate in 1979 is not very clear. The fact remains however, that the respondent submitted his first application for correction of the birth date on 29.8.1979. In the circumstances I feel that some better proof of birth date could be insisted upon by the authorities. Though I do not discard as fictitious either the School Register or the School Leaving Certificate, I do not see why these could not be supported by an extract of the birth register for which the respondent said he applied but does not seem to have pursued the matter. The birth register maintained at the village is an authentic document maintained by Government Officials and should be readily available. True that the custody of the birth register must have changed hands from the Revenue Department to the Zilla Parishad. But that is not the reason why by approaching the appropriate authority an extract of the birth register cannot be obtained, actually the effort that he put ⁱⁿ ~~on~~ _{to} to locate the Mission School could have been more fruitfully utilised for getting the Birth Extract from the appropriate authorities. In the absence of such proof in the shape of the birth extract it will be difficult to hold that the School Leaving Certificate is conclusive proof of the birth date of the respondent. It is true that the Tribunal will not feel itself bound by various regulations issued by the Factory or by Government from time to time to say that a person must get his birth date authenticated in the Service Record from time to time and that he must get it corrected within 5 years of joining service or more than 2 years prior to the date of superannuation. But these could be easily discarded only in the event of there being adequate

proof that the birth date recorded in the Service Record is wrongly recorded and there is either a clerical error or a bona fide mistake or a mistake of any other type which can be corrected on the basis of conclusive evidence of the birth date of the respondent in the shape of a birth certificate from the authorities who maintained the birth register. There is no such evidence on record. In the circumstances I feel that the Learned Civil Judge has erred in relying solely on the School Leaving Certificate. Though by itself that School Leaving Certificate is proved to be a document issued by a Mission School, I cannot hold that the entries in the School Leaving Certificate are correctly and conclusively proved. As such I cannot accept the respondent's case that his birth date was wrongly recorded in the Service Register and that it deserves to be corrected from 1920 to 1923. In the circumstances I uphold the appeal filed by the Union of India and the General Manager Ammunition Factory and hold that the judgment and the decree passed by the Learned Civil Judge, Senior Division, Pune deserves to be quashed and set aside. In the circumstances I pass the following orders:

O R D E R

1. The Appeal filed by the applicants (appellants) above named is allowed.
2. The Judgment and decree passed by the Learned Civil Judge Senior Division Pune on 17.1.1984 is hereby quashed and set aside.
3. It is declared that the birth date recorded viz. 27.11.1920 had been correctly recorded in the Service Record of the respondent.
4. It is further declared that the respondent had been correctly superannuated on 30th November, 1980.

5. The respondent is not, therefore, entitled to any declaration of change in his birth date or of his being in continuous service after 1980 up to 1983. That prayer is also rejected.
6. In the circumstances of the case, however, the parties may bear their own costs.

(J.G. RAJADHYAKSHA)
MEMBER (A)

Announced in
open Court today

[Signature]
21/09/88