

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
XXXXXX No.

109

198 8

DATE OF DECISION 21.6.1988

Shri Tukaram R. Pawar

Petitioner

SHri V.B. Raikar

Advocate for the Petitioner(s)

Versus

Union of India & Others.

Respondent

Shri S.R. Atre (for P.M. Pradhan)

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
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?

(6)

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

Original Application No.109/1988

Shri Tukaram Raosaheb Pawar,
Sopan Maharaj Sahakari Society,
S.No.585/3,
Gultekadi,
Pune-411 001.

.. Applicant

V/s.

1. Union of India
through
Post Master General,
Bombay.
2. Director of Postal Services,
Pune-411 001.
3. Post Master General,
Bombay.

.. Respondents

Coram: Hon'ble Member(J), Shri M.B.Mujumdar

Appearance:

1. Shri V.B.Rairkar,
Advocate
for the applicant
2. Shri S.R.Atre(for P.M.Pradhan)
Advocate
for the respondents.

ORAL JUDGMENT:

Date: 21.6.1988

(PER: M.B.Mujumdar, Member(J))

The applicant, Tukaram Raosaheb Pawar, has filed this application on 3.2.1988 requesting that the birth date recorded in the service record, viz., 30.6.1930 be corrected as 30.9.1934.

2. From 15.6.1949 to 24.10.1951 during different periods the applicant had worked as Outsider Packer, Telegram Messenger and Letter Box Peon during leave

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vacancies. However on 23.11.1951 he was appointed as Letter Box Peoh. According to the respondents in the appointment letter the date of birth was mentioned as 30.6.1930, but this was denied by the applicant. In 1958 he was promoted as Lower Division Clerk. On 7.1.1966 when he had an occasion to see the Service Roll he found that 30.6.1930 was mentioned as the date of birth. Hence on 10.1.1966 he made a representation for correcting the birth date as 30.9.1934. Along with that representation he had submitted a copy of the school leaving certificate which showed his birth date as 30.9.1934. As that representation was not favourably considered he made two more representations dtd. 6.8.1966 and 15.12.1966. However, by his letter dtd. 5.1.1967 the Senior Superintendent of Post Offices, Pune Division informed the applicant that his representation was carefully scrutinised but the desired change could not be made at that stage. The applicant was further informed that he was taken up in the department on the strength of the birth date furnished by him viz., 30.6.1930 and the same had been taken as correct. However, if 30.9.1934 was taken to be the correct date of birth then he had entered the department when he was underage. Still the applicant continued making repeated representations. According to him he had submitted representations dtd. 21.6.67, 29.9.1975, 6.7.1987 and 10.12.1987. But he received reply dtd. 22.12.1987 to the final representation dtd. 10.12.1987 only.

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The reply deserves to be quoted here, because the wording is material in this case.

"Sub: Change in date of birth. Your application dated 6.7.1987.

Ref: Your application dtd. 10.12.87

The Director of Postal Services Pune vide letter No.PR/Staff/III/30/37/87 dated 15.12.87 has intimated that your case regarding change in date of birth has been - considered carefully and that the request made by you cannot be acceded to.

This is for your information please."

3. Being aggrieved by the above reply the applicant has filed this application on 3.2.1988 under Section 19 of the Administrative Tribunals Act, 1985. The respondents have opposed the application by filing the written statement dtd. 28.4.1988. They have not stated in their written statement that the primary school leaving certificate and the certificate issued by the Secondary School Certificate Examination Board showing the birth date as 30.9.1934 are not genuine or incorrect. However, after stating the facts they have submitted that the present application is barred by limitation as the applicant's representation dtd. 15.12.1966 was rejected as long back as on 5.1.1967.

4. I have heard Shri V.B.Raikar, advocate for the applicant and Shri S.R.Atre (for Shri P.M.Pradhan) advocate for the respondents. I have also seen the relevant service record.

5. The Service Book shows that the applicant was examined by the Medical Officer on 19.12.1951. According to the certificate issued by him, on the statement of the applicant as well as from his appearance he appeared to be 20 years old. Probably on this basis his birth date was recorded as 30.6.1930 in the service roll. The applicant has alleged that he had produced a school leaving certificate showing that he was born on 30.9.1934, but there is no evidence whatsoever in support of it. It should also be noted that according to Doctor's Certificate the applicant was 20 years when he was examined on 19.12.1951 and on that basis his birth date should have been noted as 19.12.1931. It is, therefore, not clear how the birth date was recorded as 30.6.1930. What is important is that the applicant has signed the service roll on 7.1.1966. It is within three days thereafter that he made a representation along with copies of primary school leaving certificate and the Secondary School certificate for correcting his birth date as 30.9.1934. It may be pointed out here that when the applicant joined service he had passed 7th standard examination only. But while serving he completed his further education and passed the SSC examination in 1956. But the respondents refused to correct the birth date mostly on the ground that if that birth date was correct then he could not have entered the service as he would have been underage i.e. below 18 years. But this view does not appear

to be so correct because for appointment as Boy Peon the prescribed age is between 14 to 16 years. Mr. Atre submitted that different age limit was prescribed for appointment as Letter Box Peon which was then a Class IV post and according to that age limit the appointee could not be less than 18 years. Assuming this to be true and assuming also that was the reason why the applicant had given his age as 20 years at the time of the appointment, in my view when the applicant has produced genuine and satisfactory evidence about his birth date there is no reason why that should not be accepted. The applicant is agitating his grievance since 1966 but his request was turned down not on the ground that his grievance was not genuine but because of some extraneous ground, viz., that if 30.9.1934 is to be taken as correct birth date then he could not have entered the service on November, 1951 as he was underage then. I, therefore, hold that the birth date recorded in the service book viz. 30.6.1930 is not correct and 30.9.1934 is the correct birth date as alleged by him and mentioned in the school leaving certificate and the certificate issued by the Secondary School Certificate Examination Board.

6. The next question is whether the application is within time. Shri S.R. Atre submitted that the applicant's previous representation was rejected as long back as on 5.1.1967 and hence the present application is hopelessly time barred. In support of his submission he relied on a judgment of this Tribunal

in Bachan Singh V. Union of India and Others (O.A.93/88) decided on 17.6.1988. In that case the applicant's representation for correcting the birth date was rejected 13 years back and his next representation was also rejected 10 years back. Hence the Vice-Chairman held that the application was liable to be dismissed for delay and laches and also on the ground of limitation. In that case the learned advocate for the applicant had relied on a decision of the Principal Bench of this Tribunal in B.Kumar V. Union of India and Others (ATR 1988(1) CAT 1). It was a case of dispute about seniority. The applicants' representation was rejected in 1979. His another representation was considered and he was informed that it would not be possible to accept the representation. The wording of the reply about the rejection was as follows:

"Representation dtd. 8.2.1985 submitted by Shri B.Kumar, Photo Artist, AFFPD have been examined at the level of Raksha Mantri. It is regretted that it is not possible to antedate Shri Kumar's seniority."

The Principal Bench held that a further examination of the representation on its own merits would enable the applicant to move the Tribunal within the requisite time from the rejection of that representation. However, the Principal Bench clarified the position in paragraph 13 of the judgment as follows:

"From the above, it is clear that the representations made by the applicant in February and June, 1985 had again been examined at the level of Raksha Mantri. This is not a case where a decision regarding rejection of the earlier representations disposed of at a lower level had merely been reiterated."

In Bachan Singh's case the final reply was a different one, viz. "The request for change in date of birth of Shri Bachan Singh, Foreman Fitter, Bombay Branch has been once again carefully examined but it is regretted that his request cannot be conceded. The position stated in this office letter No.33/9/1975-Est. dated 13.9.1975 still holds good". Relying on this wording the Vice-Chairman pointed out that the applicant's representation of 1987 was rejected by subsequently informing him that the earlier decision of 13.9.1975 still holds good. As that was not the case in Bachan Singh's case the Vice-Chairman dismissed the application on the ground of delay, laches and limitation. In other words if Bachan Singh's representation of 1987 would have been rejected on the basis of fresh careful examination but not relying on 13.9.1975 letter the Principal Bench judgment would have come to the rescue of Bachan Singh.

7. Coming to the facts of this case, I have already quoted the final reply of the respondents dtd. 22.12.1987 to the applicant's representation dtd. 10.12.1987. According to the reply the case of the applicant regarding change in date of birth had been carefully considered but still his request could not be acceded to. In this reply the respondents have not referred to the earlier rejection of the applicant's request for change of birth date dtd. 5.1.1967 at all. I, therefore, hold that the judgment in Bachan Singh's case can be distinguished from the facts of this case. Hence

relying on the judgment of the Principal Bench in B. Kumar's case I hold that the present application is within time as it is filed within 1½ months from the final reply.

8. I, therefore, allow the application and direct the respondents to correct the birth date of the applicant in his service book from 30.6.1930 to 30.9.1934. Respondents are directed not to retire the applicant from service on 30.6.1988 A/N on the basis of his birth date, viz., 30.6.1930 recorded in the service record. There will be no order as to costs.



(M.B. Mujumdar)
Member(J)