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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

O.A. No. 33 of 1988  
GAAAAA.

DATE OF DECISION 27.4.1988

Shri Narendra Nath Roy Petitioner

Shri D.V. Gangal Advocate for the Petitioner(s)

Versus

General Manager, Respondent  
South Central Railway & Others.

Shri V.G. Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice-Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? - 93
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?

MGIPRRND-12 CAT/86-3-12-86-15,000

Bch

(11)

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

Original Application No.33 of 1988

Shri Narendra Nath Roy,  
HTTE,  
Kushnalkar Kulkarni Bldg.,  
Shivajinagar,  
Miraj-416 410.

.. Applicant

V/s.

1. General Manager,  
South Central Railway,  
Secunderabad.
2. Divisional Railway Manager,  
South Central Railway,  
Hubli(Karnataka)
3. Divisional Personnel Officer,  
South Central Railway,  
Hubli(Karnataka)

.. Respondents

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

Appearance:

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

ORAL JUDGMENT:-

Date: 27.4.1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

The applicant is a Railway employee in the South Central Railway. The dispute is about the exact birth date.

2. The applicant joined Railway service on 28.11.1950. In the service record his birth date is recorded as 20.4.1930. The applicant contends that this was recorded in an incorrect manner as his actual birth date is 23.11.1933. The applicant made an application

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*Bel*

on 11.8.1987 for correction of the birth date. The application was rejected on 23.9.1987. At present the applicant is working as Head Ticket Collector and he is to retire (according to the recorded birth date) on 30.4.1988. He filed the application in question on 4.1.1988 for declaration that his birth date is 23.11.1933 with consequential relief such as continuance of service till November, 1991.

3        The respondents resisted the application by filing their reply. They contend that in the service record the birth date of applicant was correctly recorded and that the applicant has signed the said record. It is also urged that the seniority list of the Travelling Ticket Examiners and Senior Ticket Collectors was published on 16.9.1975 wherein the applicant name is at Sr.No.149 and in column No.6 his birth date is 20.4.1930. It is contended that the applicant has not made any grievance about this mention of birth date. Another contention of the Railway Administration is that the applicant would be less than 18 years of age in 1950 if birth date is assumed to be 23.11.1933 and that the applicant was not entitled to enter the service as he would have been below 18 years of age.

4.        I am not much impressed by the arguments of Mr. Rege that the applicant could not have joined service at age less than 18 years of age in 1950. my attention is drawn to Rule 2402 of the Indian Railway Establishment Code Volume-II which states that the service rendered after attaining the age of 15 years

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is only required to be counted. It was rightly submitted by Shri Gangal that such provision contemplates <sup>that</sup> an employee could have joined service when he would be less than 18 years of age. Hence this contention of Shri Rege is rejected.

5. The applicant relies upon two school leaving certificates. The first one is issued on 2.1.1946 when the applicant left E.T.Kotwalipara High School, Jaharererkand. That certificate shows that the applicant passed 6th standard examination and he left the school on 30.12.1945. The next certificate is that of Bandhabari High School, District-Faridpur. It also shows the birth date 23.11.1933. The applicant is said to have been admitted in the school on 12.4.1944 and he left the school on 20.2.1948 when he was in Matric Class. There is another certificate in Bengali issued in 1988 by the same school. No doubt a grievance was made by Shri Rege that the English certificate and the Bengali certificate <sup>were</sup> ~~was~~ issued by the different schools. However, that does not appear to be correct as reading the two certificates together makes it clear that the certificates are from the same school. Shri Rege, however, appears to be on a strong ground when he attacked this certificate. I have already observed that the applicant has left the earlier school on 30.12.1945 but he <sup>is</sup> alleged to have joined next school not after 30.12.1945 but about one and half years earlier i.e. 12.4.1944. I am at a loss <sup>to</sup> know as to how the applicant who was a student in the E.T.Kotwalipara

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High School till 1945 would have joined another school on 12.4.1944. This circumstance has not been explained by the applicant and in my opinion that circumstance <sup>creates</sup> ~~created~~ a doubt as to whether two certificates should be relied upon for the purpose of deciding his birth date.

6. The applicant has also produced refugee certificate issued in 1948 wherein his age has been shown as 15 years. However, the birth date is not mentioned. Hence that certificate would be of little use for the purpose of determining the birth date.

7. As against the above circumstances it is material to note that the service record maintained by the Railway Administration gives the birth date of the applicant as 20.4.1930. During the course of the argument the original record is shown to me. The applicant has signed the record in English. His education qualification is stated to be Matric and the birth date is 20.4.1930. It is true that the applicant would not be estopped by this entry of birth date in the service record. However, it is material to note that, the peculiar facts of the case, <sup>the</sup> ~~the~~ applicant who is literate and has studied upto matriculation has signed the service record which shows the birth date as 20.4.1930. There is one more circumstance which cannot be ignored. The seniority list of Travelling Ticket Examiners and Senior Ticket Collectors was published on 16.9.1975. In that list the name of the applicant along with his birth date 20.4.1930 has been published. The applicant has not made a

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grievance that the birth date is wrongly mentioned. One cannot lose sight of the fact that the applicant made an application to the department in August, 1987 (i.e. at the fag end of his service) making a grievance about the birth date. It was contended by Shri Gangal that it is only at that time that the applicant came to know that there was a wrong entry of the birth date in the service record. He contended that he made an application for loan to the Railway Employees' Co-operative Credit Society Ltd., In that application he has given his birth date. The society informed the applicant that the birth date as mentioned in the loan application was wrong and according to the society's record his birth date is 23.11.1933. In my opinion this letter cannot be made use for the purpose of contending that he came to know of a incorrect entry of the birth date of the service record. The society has informed that the birth date as recorded with the society office is 23.11.1933. It appears that applicant had mentioned some other date. Hence the society letter does not show that the birth date was mentioned as 20.4.1930, so as to make the applicant know for the first time that there was wrong entry in the service record. Thus here is a case, where the literate applicant ~~who~~ has signed the service record showing the birth date 20.4.1930. He did not make any grievance about this birth date even <sup>when</sup> the seniority list (with birth date of the applicant) is published in 1975. It is only at the fag end of the service that he applied to the Railway Administration alleging that

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his birth date was wrongly recorded. The school leaving certificate is not worthy of acceptance as a proof the birth date. Thus, it would be very difficult to accept the contention of the applicant that his correct date of birth is 23.11.1933.

8. The net result, therefore, is that the application is liable to be dismissed. Accordingly it is dismissed. However, there would be no orders as to cost.

*B.C. Gadgil*  
(B.C. Gadgil)  
Vice-Chairman

After the above judgment was dictated in the open court Shri Gangal submitted that the applicant may like to file Special Leave Petition in the Supreme Court and till that time his retirement on 30.4.1988 be stayed. That request <sup>for stay</sup> is rejected.

*B.C. Gadgil*  
(B.C. Gadgil)  
Vice-Chairman