

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCHO.A. No. 529
~~XXXXXX~~

1988

DATE OF DECISION 30.5.1989

Shri Namdeo Keshav Naik. Petitioner

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

Versus

Union of India & Another. Respondent

Shri J.G.Sawant. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.Chaudhuri, 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?
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?



(10)

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

Original Application No. 529/88

Shri Namdeo Keshav Naik,
Catheri Niwas,
Chulna Road,
Behind Hanuman Temple,
Manikpur,
4th Vasai Road,
Thana-(District)

.. Applicant

V/s.

1. The Union of India
through General Manager,
Central Railway,
Bombay V.T.
2. The Chief Workshop Manager,
Carriage and Wagon Workshop,
Central Railway,
Matunga. .. Respondents.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearance:

1. Shri D.V.Gangal,
Advocate
for the applicant.
2. Shri J.G.Sawant,
Advocate
for the respondents.

JUDGMENT:-

Dated: 30.5.1989

(PER:Shri P.S.Chaudhuri, Member(A))

This application was filed on 11.7.1988 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant seeks a declaration that his correct date of birth is 15.9.1932 & that this date should be recorded in the Railway records in lieu of the existing recorded date of 23.12.1930 and other connected and consequential reliefs.

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2. The applicant was sent by the Employment Exchange to Matunga Workshop of Central Railway with an introduction card dated 31.7.1952 against their request for a Polisher(French). He was appointed against such a post on 23.12.1952. The above mentioned introductory card stated that the applicant's age was 22 years and therefore his date of birth was recorded as 23.12.1930.

3. The Rules regarding recording the date of birth of persons in railway service were then contained in Rule 145 of the Indian Railway Establishment Code, Volume-I. This rule is reproduced below;

"145. Date of birth-(1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior Class-III railway servant and witnessed by another railway servant.

(2) (a) When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 1st January, 1938, and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1920.

(c) Where the person concerned is unable to state his age, it should be assessed by a Railwau Medical Officer and the age so assessed entered in his record of service in the manner prescribed above, the railway servant being informed of the age so recorded and his confirmation obtained thereto.

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(3) 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 a gazetted railway servant, and a General Manager in the case of a non-gazetted 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 ordinarily be submitted within a reasonable time after joining service) 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 records amended."

4. It is the applicant's case that he passed the primary vernacular examination in February, 1950 and that the certificate issued in this regard on 15.4.1950 recorded his date of birth as 15.9.1932. It is also his case that the School Leaving Certificate dated 7.7.1988 issued by the Currey Road Upper Primary Municipal Marathi School recorded his date of birth as 15.9.1932. It is his further contention that the first time that he came to know that his date of birth had been incorrectly recorded was in December, 1987 when he saw a notice indicating that he was due to retire on superannuation on 31.12.1988. He submitted a representation dated 8.2.1988 to the Chief Workshop Manager, Matunga seeking an alteration in his date of

birth as recorded in the Railway records so as to make it conform with his school certificates. By a reply dated 19.3.1988 the Chief Workshop Manager, Matunga informed him that his request could not be agreed to as no opportunity was to be given to a railway servant to represent against his recorded date of birth after 31.7.1973 and, further, that he had accepted vide a declaration dated 17.2.1959 signed by him that his correct date of birth was 23.12.1930. Being aggrieved at this reply he filed this application on 11.7.1988. Thereafter he sent an application to the General Manager on 20.12.1988 to which he has not yet received any reply. The applicant finally retired on superannuation on 31.12.1988.

5. The respondents have opposed this application by filing their written reply. I also heard Mr.D.V.Gangal, learned advocate for the applicant and Mr.J.G.Sawant, learned advocate for the respondents.

6. At the initial stages of the hearing of this application, the applicant had filed Misc.Petition No.29/89 praying for summoning the Head Master of Currey Road Upper Primary Municipal Marathi School as a witness. On this the respondents were directed by me to send a competent official to contact the school concerned and check the veracity of the record and report to the Tribunal. One Shri V.G.Andhalkar was accordingly sent to this School by the respondents and submitted his report dated 4.2.1989 to the Tribunal. This report confirms that the school exists and that the applicant's date of birth was shown as 15.9.1932 in the school record.

Mr. Gangal vehemently objected to this report on the ground that it also said that "I am of the opinion that ~~the~~ date of birth recorded in school by the oral statement of parents cannot be taken as authentic". Shri Namdeo Keshav was born in Bombay as per school record and his parents easily could have produced his date of birth in Municipal records." I do not see any merit whatsoever in Mr. Gangal's objection because the report established ~~is~~ that there is such a school and that the applicant's date of birth was recorded there as 15.9.1932 and that is all that I am taking note of from it.

7. Mr. Gangal's first submission was that the applicant's school certificate showed that he was studying in 7th standard and that he should, therefore, have been treated as literate staff. It was his contention that Rule 145 mentioned above says that in the case of literate staff the date of birth shall be entered in the record of service in the railway servant's own handwriting. Mr. Sawant countered this by showing the applicant's service card which shows that the applicant has signed a statement written on it by someone else which says "I declare that my age is 22 years and I agree to the same." It was Mr. Sawant's submission that though there has been a technical departure, inasmuch as the statement was not entered by the applicant in his own handwriting, the requirements of the rule have been substantially met. Besides, if it is submitted that the applicant is literate, it must follow that he was fully aware of what he was

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signing for. I, therefore, do not see any merit in this submission of Mr. Gangal.

8. Mr. Gangal's second submission was that the applicant had not been asked to produce any evidence regarding his date of birth and had he been so asked he would willingly have produced his Primary School Certificate. Mr. Sawant countered this by submitting that the rule quoted above does not require a person entering railway service to produce such evidence. It required him to declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. I, therefore, do not see any merit in this submission of the applicant.

9. Mr. Gangal's third submission was that the above mentioned Rule 145 empowered only the General Manager to cause the date of birth of a non-gazetted railway servant to be altered. It was his submission that provisions regarding delegation of powers had been made in Rules 2003(5) and 2282 & 2283 of the Indian Railway Establishment Code, Volume-II but these rules made no mention of this power of the General Manager in regard to alteration of date of birth being delegated to any other authority. It was his further submission that both volumes of the Indian Railway Establishment Code form one composite whole and have to be read together. But this Code clearly says that Rules 2003(5) and 2282 & 2283 apply only to Chapters XX and XXII respectively of the Indian Railway Establishment Code, Volume-II.

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These rules do not apply to Volume-I. Mr.Gangal then submitted that Rule 134 of the Indian Establishment Code, Volume-I which designated the authorities who were competent to make first appointment also clearly provided for the General Manager delegating his power in this regard to a lower authority. It was his contention that on this analogy, in the absence of such a specific provision in Rule 145, the General Manager could not delegate his power under Rule 145. Mr.Sawant countered this by submitting that whereas Rule 145 empowers the General Manager to cause the date of birth to be altered it does not stand in the way of a lower authority declining to alter the date of birth. If a non-gazetted railway servant is dis-satisfied with such a decision of a lower authority he can apply to the General Manager requesting him to use his powers under Rule 145. The applicant only did so after he had filed this application. I, therefore, do not see any merit in this submission of Mr.Gangal.

10. Mr.Gangal's then cited some case law. He cited *P.L.Dhingra v. Union of India* (AIR 1958 SC 36, Para-12 at page 42) which laid down that the applicant had a right to hold his post until, under the rules, he attains the age of superannuation. He also cited *State of Orissa v. Binapani Dei* (AIR 1967 SC, 1269, Para-9 at page 1271) which laid down that a Government servant has a right to continue in service according to the rules framed under Article 309. But the situations in these two cases are quite different and so I do not see how these help the applicant. It is no one's case that the

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applicant is to retire or has been retired before attaining the age of 58 years as per his recorded date of birth.

11. Mr. Gangal then sought to rely on Hiralal v. Union of India (ATR 1987 (1) CAT 414) and R.R.Yadav v. Union of India (ATR 1987 (2) CAT 506). But the situations in these two cases are also quite different. His request dated 8.2.1988 was not rejected solely because he had not applied in time. The request was considered even though it was not submitted within the time period that had been prescribed but it was rejected because the applicant had himself signed a declaration on 17.2.1959 accepting that his date of birth was 23.12.1930. Besides it is not as if at the time of his appointment the applicant did not know that his Primary School Certificate showed his date of birth as 15.9.1932. This certificate was in his possession and, what is more, had been shown by him to the Employment Exchange for some other registration for employment. In spite of this, he signed a statement on 23.12.1952 accepting that his age was 22 years. I, therefore, do not see how these cases can help the applicant.

12. Mr. Gangal's final contention was that he did give his Primary School Certificate to the Employment Exchange and that it was the Employment Exchange that had made a clerical error when showing his age. Mr. Sawant countered this by submitting that the stamp of the Employment Exchange on the original Primary School Certificate shows that it pertains to registration number 3268/51 whereas the registration number against which the applicant had been recommended to Matunga Workshop of Central Railway was what appears to be

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registration number D279W/52. The applicant then clarified that the registration number on the back of the school certificate pertained to a registration for the post of Peon and not the registration for the post which the applicant secured on Central Railway. The applicant had submitted Misc.Petition No.310/89 during the final stages of the hearing seeking an amendment so as to implead Employment Exchange Officer also as respondent No.3. In view of the above discussion, however, I see no merit in the submissions of the applicant. I also do not see any reason to allow Misc.Petition No.310/89 seeking to implead the Employment Exchange Officer as respondent No.3, this Misc.Petition is accordingly rejected.

13. It was Mr.Sawant's submission that the applicant was literate and that at the time of his appointment he had signed a statement declaring his age to be 22 years. Besides, on 17.2.1959 he had accepted that his date of birth had been correctly recorded as 23.12.1930. It was his contention that, therefore, it could not be denied that the applicant knew right from 1952 onwards that his date of birth had been recorded as 23.12.1930. It was his submission that neither had there been any clerical error nor was there any satisfactory explanation of the circumstances in which an allegedly wrong date came to be entered. It was his submission that there were, therefore, no grounds on which any one was competent to cause the recorded date of birth to be altered. He contended that, therefore, the Chief Workshop Manager was right in rejecting the request of the

applicant. I see considerable force in these submissions.

14. Based on this analysis and discussion, I do not see any merit in this application and am of the view that it deserves to be dismissed.

15. The application is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.



(P.S. Chaudhuri)
Member (A)