

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~O.A. No.~~
T.A. No.

63/88

198

DATE OF DECISION 19.4.1991

Shri Y.S.Shersat

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner(s)

Versus

Union of India & Another.

Respondent

Shri P.R.Pai

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
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 ? *No*

Yes

(22)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Application No. 63/88

Yeshvant Shivram Shersat
V/s.

.. Applicant.

The Secretary,
Union of India,
General Manager,
Central Railway,
Bombay -V.T.

The Divisional Railway
Manager, Cen. Railway
Bhusawal.

The Divisional Railway
Manager, SE Railway
Secunderabad.

.. Respondents.

CORAM: Hon'ble Vice Chairman Shri U.C. Srivastava.
Hon'ble Member (A) Shri M.Y. Priolkar.

Appearance.

Applicant by Mr.D.V.Gangal.
Respondents by Mr.P.R.Pai.

JUDGEMENT:

Dated: 19-4-1991

(Per Shri U.C. Srivastava, Vice Chairman.)

Against his retirement which according to the applicant is not based on his correct age of superannuation the applicant has approached this Tribunal for relief against the same. The applicant was appointed as a Carpenter in the Central Railway through Employment Exchange on 6.5.1950. At the time of his appointment it appears that in the service record which was meant for menial service staff he put his thumb impression in which his date of birth was shown as 16th July, 1925. According to the applicant his correct date of birth is 16th July, 1930 and in fact he was forced to put his thumb impression although he was literate. But it is not the case of the applicant nor the service ^{record} indicates that in ^{any} his certificate of his having received education was filed by him while

entering service. After his employment he was medically examined by the Doctor concerned in the month of November 1950. ^{The doctor} estimated ~~that~~ the age of the applicant to be 25 years and on that document also the applicant put his thumb impression.

2. The applicant has come forward with the case that it was only in the year 1968 he learnt that his age has not been correctly recorded. He made a representation against the same, though his assertion has been denied and no document whatsoever has been filed to indicate that any such representation was filed in the year 1968. According to the Railway Administration the first representation in this behalf was filed in the year 1975 only. In the representation which was given by him in the year 1975 he specifically mentioned that he had passed VII th Class in Marathi medium from Marathi Middle School, Babhulgaon, Distt. Akola and his date of birth was recorded as 16th July 1930 and in the Employment Exchange this was the date which was recorded. This date was also mentioned in his trade certificate which he obtained before entering into service as a Carpenter. The Applicant has been making representations thereafter and documents referred to above were also filed by him. In his own application ^{to} the Railway Employees Cooperative Bank also in the year 1968, as per allegation of the applicant, he had mentioned this date. Although he states that he had produced the original school Leaving Certificate at the time of entering of the service, ^{d birth} ~~but~~ his date was wrongly entered in the service record. The representation filed by the applicant was rejected and he was retired from service. Admittedly, during the pendency of this application he has attained the age of superannuation. The case of the Railway

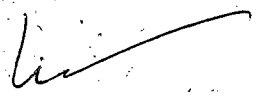
Administration is that he having given his age as 1925 he is bound by the same and cannot wriggle out of and further if he had given any other age or he would have filed any certificate the same would have been entered and his signature would have been obtained. There would not have been any such occasion for medical certificate and he would not have been required to put his thumb impression below the certificate. Even if it is accepted that he was not aware of the entry made in the service register initially then it would be difficult to accept that the age given by the Doctor to be 25 years was not known to him and he put his thumb impression without telling the Doctor that his age is 20 years. It appears that subsequently the applicant has filed the report of the Inspector who in turn obtained report of Welfare Inspector who made inquiry from the Principal of the Institution where he studied, that his date of birth was recorded to be 1.7.30. Of course, the School Leaving Certificate though not conclusive but it is a piece of evidence and a presumption as to the correctness of the entry mentioned therein arises cannot be conclusive as the age is given by some one else. While admitting a child in an institution why a particular age was given can best be known to the person who gave out such age. The learned counsel for the applicant made reference to certain cases and contended that the Carpentry School Certificate should have been taken to be conclusive and as such his representation should have been allowed and the Tribunal may set aside the retirement order.

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3. References to certain cases were also made, but every case depend on its own facts. In this case it appears that the Railway administration considered the fact that he had put his thumb impression on the service record which fully indicates that he gave out a particular age which was put in and he did not tell that he was literate or filed a certificate conclusively puts a bar on him to say anything to be contrary as the same would be taken to be final and further more there cannot be difference of 5 year in the appearance of a person. The plea that representation was made at a very late stage in the year 1975 will also not be material as it was made at least some 6 years prior ^{to} his retirement. But the fact remains that the applicant's documents which were filed by him were not considered. The authority concerned should have taken into consideration the evidence of both the sides and only thereafter it could have arrived at a particular conclusion. His conclusion could have been proved either in his favour or against him. The School Leaving Certificate, the Technical School Certificate though not conclusive so far date of birth is concerned, is not without evidentiary value. If he was literate which is obvious, as to how he was taken as illiterate remains unexplained. Railway Establishment code para 145(5) requires consideration in real perspective. In these circumstances the application is allowed to the extent that the order rejecting his representation is set aside and the authority concerned is directed ^{re} to consider his representation in the light of the documents which were before the

before the authority concerned as per the observations made in this judgment. There will be no order as to costs.


(M.Y. PRIOLKAR.)
MEMBER(A)


(U.C. SRIVASTAVA.)
Vice Chairman.