

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. _____
T.A.No. 17 of

198
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DATE OF DECISION 30-6-1986

Anandiprasad Rammanohar Mishra Applicant/s.

Applicant in person Advocate for the Applicant/s.

Versus

Union of India, Min. of Rly. Respondent/s.

Advocate for the Respondent(s).

CORAM:

The Hon'ble B.C. Gadgil, Vice-Chairman.
The Hon'ble J.G. Rajadhyaaksha, Member.

1. Whether Reporters of local newspapers may be allowed to see the Judgment? *Yes.*
2. To be referred to the Reporter or not ? *No*
3. Whether to be circulated to all Benches? *No*

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

Transferred Application No.17/86.

1. Shri Anandiprasad Rammanohar Mishra,
Railway Quarter No.C-18/7,
South Eastern Railway, Itwari,
Post Bagadganj,
Nagpur.Applicant

V/s.

2. Union of India, through the
General Manager, South Eastern
Railway, Garden Reach,
Calcutta-43.

2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta-43.

3. The Divisional Railway Manager,
South Eastern Railway,
Nagpur.

.... Respondents

Coram: Vice-Chairman B.C.GADGIL
Member J.G.RAJADHYAKSHA

Appearances:

1. Applicant in person.
2. Shri R.K.Shetty and
Smt.R.R.Shetty, Advocates
for the Respondents.

Dated: 30/6/86.

Tribunal's Orders:

(Per J.G.Rajadhyaksha)
Member

Original Regular Civil Suit No.303/84 on the file
of the 2nd Joint Civil Judge, Senior Division, Nagpur, has
been transferred to this Tribunal after its establishment.
The applicant(Original Plaintiff) filed the Civil Suit for a
declaration of his age and relief in nature of postponement
of his superannuation.

....2/-

The applicant's plaint was that he was employed when he was a minor. The local Station Master simply called him and employed him; at the time of his recruitment, no declaration of birth date etc. was obtained from him, that he rose from the post of Badge Runner to that of Ticket Collector between 1946 to 1976 and was given a notice on 8.7.1983 through the Divisional Commercial Superintendent, Nagpur that he would superannuate on 30.6.1984 on the basis of his recorded date of birth as 1.7.1926. It was his claim that he was born on the 20th of August, 1931 and should superannuate in the month of August, 1989. He sought to rely upon School Leaving and School Transfer Certificates from Primary and Secondary Schools at various places. He also applied for an interim injunction, which prayer was turned down by the Learned Civil Judge, on the ground that there was no *prima facie* case made out by the applicant about his birth date being wrong.

The defendants had contested the suit on the grounds that applicant's birth date had been recorded at various times in *various* records and he had never once brought to the notice of the Administration the fact that he was born later than the recorded date of birth viz. 1.7.1926. Besides, he had failed, in terms of the Indian Railway Establishment Code, to get the birth date amended within a reasonable time which is now prescribed as 3 years of joining service. It was only in 1983 that the applicant requested for a correction of birth date on receipt of the notice of retirement and, therefore, his request was not granted.

They felt that the applicant had no case apart from, the point that the notice under Section 80 given by the applicant was invalid.

We have heard both the parties. The applicant contended that though he started service on the 22nd of May, 1946 as a Badge Runner and came to be promoted to posts of Pointsman, Waterman and Marker, for some time he was reverted as a Station Peon and was again selected as a Marker; he appealed against his being retained as a Marker only and succeeded in getting promoted as a Ticket Collector in 1976. 1st of July, 1926 recorded as his birth date in service records was not correct and according to the Primary School Leaving Certificate and the Secondary School Leaving Certificate his birth date should have been 20th August, 1931. Therefore, he argued that he had been wrongly retired in June, 1984. He requested for a reversal of that order and immediate reinstatement in service until the year 1989 when he would actually reach the age of 58. Amongst his arguments he also stated that when he was recruited, he was a minor and therefore he could not have made any declaration; and further that not once had his seniority list or service record been notified to him at his place of service; and, therefore, he would be unaware of what dates have been recorded. He also claimed that the procedure for verification of birth date and getting it corrected was not known to him and, therefore, he should now be favoured by ordering a change in his birth date and a later date of superannuation.

The Learned Counsel for Defendants Shri Shetty pointed out that there was on record an agreement dated 14.11.1946 between the then Bengal Nagpur Railway and the applicant showing his birth date as 1926.

Secondly, the service sheet showed that his birth date was recorded as 1926. In respect of Central Pay Commission options also, he had signed those in token of acceptance, where again his birth date was shown as 1.7.1926. The gradation list notified in July, 1975 and April, 1981 showed his birth date as 1.7.1926. Earlier the descriptive roll referred to the police for verification of his character also indicated the birth date as 1926. The Medical Certificate dated 8.1.1951 also showed his age as 24 years. All the evidence goes to prove that the applicant's birth date was in fact 1926 and not 1931. In face of this overwhelming evidence the application deserved to be dismissed.

In a short reply, the applicant says that the Medical Certificate at the time of joining service should have been more relevant than the certificate issued in 1951.

We have perused the records very carefully. Our conclusions are that the applicant has failed to establish his case. Our reasons, briefly are that there is on record at page 39 of the compilation an agreement in Form 'A' between Bengal Nagpur Railway Company Limited and the Applicant which is admittedly signed by him. The applicant alleges that the year 1926 is not written in his own handwriting.

Further, the Central Pay Commission Scales of Pay offered to the applicant and the option exercised by him are also on record (Page 40 & 52). The one dated 20.2.1948 signed by the applicant on 27.2.1948 has an endorsement that the date of birth is 1.7.1926. This date does not appear anywhere else on the form. Again there is at page 52, a xerox copy of a similar sheet apparently signed again by the applicant on 8.4.1948. Here again, the date of birth is recorded on top as 1.7.1926.

though it does not appear anywhere else in the form itself. There are two seniority lists on record, there is also a service sheet, a form for verification of character and a Medical Certificate. The service sheet at page 51 shows the date of birth as 1926-7-1 i.e. 1st July, 1926. The descriptive roll also indicates the date of birth as 1926 at page 53 of the compilation. The Medical Certificate of 8.1.1951 shows the age as 24 years. This is at page 54 of the compilation. At pages 55 and 41 onwards upto 46 are two gradation lists. The one dated July, 1975 in respect of Markers shows applicant at Sl.No.10 with his birth date recorded as 1.7.1926; the second dated 18.4.1981 has the applicant's name at Sl.No.103 again showing his birth date as 1.7.1926. The instructions circulating these seniority lists suggest that the lists should be circulated to the staff and they should be called upon to point out discrepancies, if any, and they should be reported to the office with representations within a month from the publication of the lists. It is evident that there was no such representation from the applicant in response to this endorsement. The documentary evidence sought to be relied upon by the applicant is at page 23, a duplicate School Transfer Certificate purporting to have been issued on 23rd of January, 1984; then at page 24 is a Primary School Certificate; and at page 25 is a School Leaving Certificate from an English School of Nagpur. The latter is dated 1.10.1983. It is only the former (page 24) which seems to have been issued on 15.4.1944 which might create some doubts about the claim of the defendants that the certificate is unreliable. There is, of course, a correction in the certificate which might be a genuine or might be spurious. The fact however, remains that most of these certificates obtained after the applicant got his notice of retirement cannot be treated as absolutely reliable as regards

the applicant's birth date as against the overwhelming evidence in the Railway Service Records about the same. How the date came to be 1.7.1926 can be explained perhaps by Rule 145(2)(a) which says that where date is not indicated but the year is known, 1st of July of that year would be entered as the birth date; if the year and month are known, the 16th of that month would be entered as the date of birth. But this only means that all along the Railways have depended upon declarations and information given by the applicant that he was born in the year 1926. The possibility that he stated the year 1926 as his birth date for the purposes of being employed in 1946 cannot be totally ignored because if he gave his birth date as 1931, he might not have then been employed being a minor. Even if the Railway Rules about getting the birth date corrected within a given time are not invoked at this time, the documents on record clearly show that the applicant was born in 1926 and not in 1931. In the circumstances, he has no case and it is to be concluded that he was correctly superannuated in the month of June, 1984. As a result, the applicant fails. The application is dismissed. There shall be no orders as to costs.

B.C.Gadgil
(B.C.GADGIL)
VICE-CHAIRMAN

Received one copy
of Judgement by the
Respondent on 30/6/88
Roshanlal

Shri R.K. Shetty
(Shri R.K. Shetty)

30/6/88
(J.G.RAJADHYAKSHA)
MEMBER