

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

Original Application No.197/86.

Shri Mahammad Maqsood,
Room No.K-41, Firemen Chawl,
Ground Floor, Opp.Platform No.14,
Central Railway,
Bombay V.T.

... Applicant

V/s.

1. The General Manager,
Central Railway,
Bombay V.T., Bombay - 1.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T., Bombay - 1.
3. Union of India, through the
Secretary Ministry of Railway,
New Delhi.

... Respondents.

Coram: Hon'ble Member(A), Shri J.G.Rajadhyaksha.

Appearance:

Miss.Nita R.Tivari,
advocate for applicant.
Mr.Pujary, Head Clerk
present for Respondents.

JUDGMENT:

¶Per Shri J.G.Rajadhyaksha, Member(A)¶ Dated: 28.1.1988.


This application filed under section 19 of the Administrative Tribunal Act, 1985 on 26.6.1986 is against applicant's alleged premature compulsory retirement on the basis of his birth date as recorded in the Service Record ignoring his correct birth date viz. 4.7.1930 as claimed by him. The application sought a declaration that replies given to the applicant on 4.10.1982 and 5.5.1984 refusing to correct his birth date are bad in law, null and void and further that he should not be held as superannuated in 1984, but should be held as being in service upto 31.7.1990 on the basis that as a Class.IV employee he can serve upto 60 years of age. Consequential reliefs are also claimed. The facts briefly are that, applicant

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joined service as a Khalasi on 9.5.1949 and at the relevant time he was working as First Class Coach Attendant in the Commercial Department, Central Railway. Applicant claims to be an illiterate person who was employed by the then Chief Medical Officer of the Central Railway Hospital and the Laboratory Clerk then prepared his service record entering 1.7.1926 as the applicant's birth date. Applicant came by proof about his correct age later in 1981, when he made attempts following his awareness that his birth date was incorrectly recorded. He brought the School Transfer Certificate and applied for correction of birth date. This request was turned down without hearing the applicant and without giving reasons. On 3.5.1984 he was finally informed that he would retire on the afternoon of 30.6.1984. He was accordingly retired and, therefore, he was also asked to vacate the quarters that were in possession. Applicant went to the City Civil Court for relief, which was refused to him. He then filed a Writ Petition in the High Court and on furnishing an undertaking that he would vacate the quarters on 31.12.1986, that petition was disposed of. Applicant also filed a Short Cause Suit No.3539/1984 in the Bombay City Civil Court, but as it was not preceded by a notice under sec.80 of the Civil Procedure Code he withdrew the suit on 14.3.1986. He was also granted liberty to file fresh proceedings. He has accordingly, filed this application.

2. The respondents have filed their reply in this Tribunal resisting the application on the ground that the application was barred by time; that applicant was not illegally superannuated, but was correctly retired

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on the basis of his recorded birth date. Applicant was not illiterate. Due procedure was followed in recording his birth date and it is only after 1980 that he started agitating about his birth date and sought to produce documentary evidence which he could have done initially. He had failed to get his birth date corrected before 31.7.1973. There is no rule whereby applicant would superannuate only at the age of 60 years, therefore, he was correctly superannuated. Applicant had given an undertaking to the High Court that he would vacate the quarters on 31.12.1986, and it was not, therefore, necessary that this aspect should be dealt with by the Tribunal. It is also stated that all action taken by the respondents was legal and proper.

3. Miss Nita R.Tiwari the Learned Advocate for the applicant has been heard. No advocate was present on behalf of the respondents but Mr.Pujary, Head Clerk of Respondents' office produced the service record for my perusal, which was seen and returned.

4. The learned advocate for the applicant says that the applicant has seven grievances, they are:

1. Pre-mature retirement in 1984 instead of in 1986, even on the basis of the recorded birth date, he should have superannuated at the age of 60 years on 30.6.1986.
2. Wrongful refusal to alter the birth date from 1.7.1926 to 4.7.1930 as the illiterate applicant is not governed by any time limit for such alteration.
3. One year's notice prior to retirement is required by rules was not given.
4. Evidence in the shape of School Transfer Certificate was wrongly discarded.
5. Eviction from quarters was not warranted.
6. Post-retirement passes should not have been withheld and should be released.
7. Since applicant has not been properly retired, he should be given the salary from the date of wrongful retirement upto the correct...4.

date of his superannuation treating him as being in service.

She contends that applicant joined as a Class.IV employee and retired in the same capacity. He is illiterate and therefore he does not know what birth date was recorded by the Laboratory Clerk who must have written the same by approximation. The respondents have not followed the procedure regarding writing and attesting the entries in the Service Book. The applicant produced at Ex.'A' a School Transfer Certificate dt. 20.8.1981 which contains an entry of his birth date as 4.7.1930. Applicant also has made an affidavit about his birth date according to rules. Produced in the course of hearing is an extract from the record of the Directorate of Economics and Statistics to the effect that on the basis of information given by the Registrar of the Municipal Council applicant's birth date was 4.7.1930. She contends that ever since joining service in 1949, applicant never saw or signed his service record and was not, therefore, aware of the position. On 29.9.1981 he applied to the Chief Personnel Officer for correction of the birth date supported by the School Transfer Certificate and his own affidavit as permitted by Rule.145 of the Indian Railway Establishment Manual. All this proved ineffective and applicant was given a negative reply in violation of all rules of natural justice, inasmuch as he was not granted a personal hearing. It is the advocate's contention that it is the responsibility of the Respondents to enter the correct date of birth in the applicant's record and they cannot take advantage of their own defaults. She argues that Railway Board's

letter dt. 25.10.1978 does not require illiterate employees to apply for correction before 31.7.1973. In other words, there is no time limit. Further Railway Board's letter of 18.12.1982 permits class.IV employees to continue till 60 years of age if they were so entitled prior to 1st December, 1962. In conclusion, she argues that applicant has fulfilled all conditions for correction of birth date, but respondents had ignored the facts. She has also cited a few decisions in support of her arguments about birth date and generally about the necessity of preceding administrative decisions by hearing granted to the affected person.

5. Mr.Pujary who produced the service record pointed out that the recorded birth date of the applicant was 9.5.1924 in the staff service register which showed applicant' as being 25 years of age at the date of appointment in 1949. The Medical Certificate of 1952 shows it as 23 years. I was also shown a "menial service register" in which applicant's birth date is shown as 1.7.1926. It is however, pertinent as pointed out by Mr.^{Pujary}~~Reojary~~ that the Service Register was attested by the A.M.O. and the applicant's thumb mark was also attested by the Malaria Officer. He also showed applicant's application for a class.III post which he has written and signed in his own hand, in English. He was also shown to have attended the supplementary test on 20.11.1981. Mr.Pujary, therefore, states that Respondents have not committed any mistakes.


6. Having heard the learned advocate for the applicant and the representative of the respondents

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and perused the entire records, I have come to the conclusion that the applicant does not have a good case. My reasons are as follows: Ex.'A' to the application is a true translation of a duplicate certificate of transfer issued by the Municipal Education Department, Tilamma. It seems to have been signed by the Principal, Shiv Primary School, Kandeli, Narsinhpur in Madhya Pradesh and is dated 20.8.1981. It contains a statement "as per School register his birth date is 4.7.1930 in words Four July (Nineteen) Thirty He is passed in the annual examination in standard second in 1938 and promoted to standard third...". Ex.'C' is affidavit made by the applicant himself to the effect that he was born on the 4th of July, 1930 at Kandeli, Narsinhpur, Madhya Pradesh. This affidavit is verified by the applicant before the Notary, Narsinhpur on 21.8.1981. The xerox copy is not legible, but there seem to be two witnesses. There is also a certificate by the Notary about this affidavit. These are in fact the only documents upon which the applicant relies. There is no other document such as extract from the birth register maintained by the Revenue/Police authorities of the Village as was the common procedure in all Districts of all states. For obvious reasons, an affidavit made by the applicant about his own birth date has no value. The duplicate certificate given by the Principal of the Shiv Primary School in 1981 cannot also be accepted by itself in the absence of any collateral proof.

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When these two documents are required to be discarded as evidence, the only thing that can be relied upon is the service record of the applicant. It appears that the applicant was employed in 1949 and at that time adequate care was not taken to record his birth date correctly. The Medical Certificates would normally be based on the applicant's own statement of his age and the Medical Officer's estimate thereof by appearance. Therefore, it can only establish the age and not the exact date of birth. My examination of the service record adequately satisfies me that applicant's birth date could not be later than 1926. The Railway rules themselves require that where there is only an approximate mention of year and equally approximate mention of the birth having taken place in the first half or the second half of the year, the first of January and the first of July would be entered as birth dates. On all counts therefore, the birth date entered as 1.7.1926 appears to be correct and, therefore, there is no question of directing the respondents to correct applicant's service record and retain him in service on that basis. My reading of the Rule.2046 of the Indian Railway Establishment Manual equivalent to FR.56 does not enable me to interpret that the applicant has to be in service until he completes 60 years of age. Further, whatever the defence about applications being written in English by the applicant there is no reason to hold that the applicant falls in the category of illiterate employees and is therefore exempted from applying for correction of age within prescribed dates. The net result therefore is

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that the applicant's birth date viz. 1.7.1926 as recorded in the Service Record maintained by the respondents is correct and, therefore, he was liable to be superannuated w.e.f. 1.7.1984. In the circumstances it is not necessary to go into other averments and contentions in the plaint or in the learned advocates arguments.

7. As for the railway quarters, applicant has given an undertaking to the High Court that he would vacate them on 31.12.1986. He has to abide by that undertaking and if he has not done so, he must face the consequences. It is significant that applicant entered into quite some litigation about the retention of these quarters before the High Court finally disposed of his Writ Petition. Therefore, if he has not vacated on 31.12.1986 legal consequences should follow.

8. On retirement on 1.7.1984, the applicant would normally be entitled to retain the quarters for two months thereafter, or for extended period if any. In the absence of any averments or documentary material in that respect it will have to be presumed that the applicant continued in unauthorised occupation of the quarters allotted to him upto 31.12.1986 and thereafter too if he has not vacated in pursuance of his undertaking to the High Court. The respondents are, therefore, entitled to withhold the complementary passes which applicant would normally have got after retirement as also to recover from him rent, even at penal rates if that is permissible. It, therefore, follows that the applicant is ^{not} entitled to any salary and allowances

after 1.6.1984 and all that he can claim will be his retiral benefits subject to recovery of legal dues by the respondents according to rules.

9. I would normally, have been inclined to award costs of this litigation to the respondents as prima facie it appears to be vexatious litigation. But considering the fact that the applicant is a class.IV employee, I would not inflict the costs on him.

10. I therefore, pass the following order:
The application is dismissed. In the circumstances of the case the parties should bear their own costs.

(J.G. RAJADHYAKSHA).
MEMBER (A).

*Delivered in open Court
today.*

[Signature] 25/11/98