

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 178/89.

198

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DATE OF DECISION 29.6.1989.

Shri Dwarkanath K. Mhatre Petitioner

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

Versus

Central Railway & Another Respondent

Shri P.R. Pai Advocate for the Respondent(s)

CORAM :

(The Hon'ble Mr. M.Y. Priolkar, 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? *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*

(6)

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

Original Application No. 178/89.

Shri Dwarkanath K. Mhatre,
Zopda No. 85 2/2, Sion Koliwada,
Near Rupam Theater,
BOMBAY - 400 022.

... Applicant.

V/S

- 1) Union of India,
Through the General Manager,
Central Railway,
BOMBAY V.T.
- 2) The Chief Workshop Manager,
Carriage & Wagon Workshop,
Central Railway, Matunga,
BOMBAY - 400 019.

... Respondents.

Coram: The Hon'ble Member(A), Shri M.Y. Priolkar.

Appearance:

Mr. D.V. Gangal, Learned
Advocate, for the applicant.

Mr. P.R. Pai, Learned
Advocate for the respondents.

ORAL JUDGMENT:-

Date: 29.6.1989.

(Per Shri M.Y. Priolkar,
Hon'ble Member(A))

The grievance of the applicant, who is presently serving as Master Craftsman in the Central Railway Workshop, at Matunga is that his correct date of birth is 19.12.1931 whereas it has been recorded in his service book as 16.6.1931. The applicant states that at the time of his initial appointment as Fitter (Skilled), he was not required to produce any documentary proof regarding his date of birth. It was probably on his declaration that he was at that time 22 years old, that

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his date of birth came to be recorded as 16.6.1931 in the service book without any documentary proof and his signature was obtained for the first time on 26.11.1959 regarding his date of birth as 16.6.1931. According to the applicant, he was informed only in March-1988 about his retirement on 30.6.1989 and when he mentioned this to his family members, one old uncle informed him that he was infact born sometime in December 1931. The applicant, thereafter, approached his old school as also the Bombay Municipal Corporation and obtained ^{two} certificates of his date of birth - one from the Matunga-Kings Circle Upper Primary Municipal School showing the date of birth as 15.11.1931 and the other, the birth certificate by the Bombay Municipal Corporation showing that the applicant was born on 19.12.1931, also stating that this birth was registered on 14.2.1932.

2. The applicant, thereafter, submitted a representation on 21.12.1988 to the Railway Administration requesting for correcting his date of birth on the basis of the Municipal birth certificate but since this was rejected on 7.1.1989, on the ground that it should have been made before 31.7.1973 in terms of Railway Board's letter dated 4.8.1972, the applicant has approached this Tribunal on 6.3.1989 with the prayer that the respondents may be directed to correct his date of birth as 19.12.1931.

3. The respondents have opposed this application primarily on the ground that the application is not within the limitation prescribed by law. During the hearing today, Mr. P.R. Pai, Learned Advocate for the respondents stated that the rejection of the application as indicated in the letter dated 7.1.1989 from the Office of the Chief Workshop Manager to the applicant was apart from limitation, also based on the grounds that at

the time of initial appointment, the applicant had declared his age as 22 years without producing any certificate, and that he had also confirmed the declaration of age and accepted the date of birth on the service record on 26.11.1959. Mr. Pai contended that 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 Railway 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.
- (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 will be observed that this rule stipulates that the date of birth as recorded in accordance with these rules shall be held ~~no alteration~~ ^{no alteration of} to be binding and such date shall ordinarily be permitted subsequently. The General Manager was, however, competent to permit an alteration in the date of birth provided satisfactory explanation of the circumstances in which the wrong date came to be entered was ordinarily submitted by the railway servant concerned within a reasonable time after joining service.

5. Shri D.V. Gangal, Learned Advocate for the applicant contended that the date of birth has not been recorded in accordance with this rule as clause(1) of the rule prescribes that the date of birth has to be entered by the applicant in the service record in his own handwriting. Admittedly, the applicant has studied upto IInd standard English. I have perused his service card and also the personal file. From the style of his full signature in English therein, the applicant cannot be considered to be an illiterate person. Since the date of birth was not recorded by the applicant in his own handwriting, on entering railway service, it must be held that the date of birth has not been recorded in accordance with the relevant rule in the Railway Establishment Manual Volume I.


6. Apparently, the respondent have no reservations about the genuineness of the two birth certificates produced by the applicant (Annexures 'A' & 'B') nor it is the respondents' case that the applicant has derived any benefit or advantage as regards the entry into government service by declaring an earlier date of birth. The Railway Administration should have, therefore, examined the merits of the authentic documents produced by the applicant and should not have rejected his representation merely on the ground that he had delayed it considerably and also because he had confirmed the declaration of age and accepted his date of birth earlier on 26.11.1959.

7. Shri D.V. Gangal cited in this regard the Judgment of the C.A.T., Principal Bench [ATR 87(i) C.A.T. 41494] in which it has ^{been} held that the period of limitation would not be applicable to those who entered service prior to 15.12.1979, that an employee is entitled to claim correction of date of birth in service record and that mere signing the service record on a number of occasions does not operate as an estoppel to get an erroneous entry as to the date of birth corrected in the light of F.R. 56 note V. Although this Judgment was not with reference to a railway servant, the principles enunciated would seem to hold good for all Central Government employees.

8. Mr. P.R. Pai cited two recent judgments of a Single Bench of this Tribunal ^(New Bombay), wherein on identical facts, according to him, the applications for correction of date of birth have been dismissed by this Tribunal. On a scrutiny, however, the facts are easily distinguishable. In the case of N.K. Naik V/S Union of India (O.A. 529/88), the school certificate alleged ~~by~~ giving the correct date of birth was available with the applicant at the time of his initial appointment and also he had never made any attempts to produce the Municipal Birth Certificate, although he was born in and continued to be a

resident of Bombay. In the second case of R.M. Salunke V/S Union of India (O.A. 940/88) the Birth Certificate produced by the applicant was of a birth of 1935 but registered in 1983 on the strength of an affidavit by the maternal uncle of the applicant. In the present case, however, it is clearly stated in the Bombay Municipal Corporation's Birth Certificate that the birth was registered on 4.2.1932 i.e. within a couple of months of the date of birth which was 19.12.1931. On the facts and circumstances of this case, therefore, I am satisfied that there was no deliberate delay on the part of the applicant in procuring authentic documentary proof of his date of birth, which should have been considered on merits by the respondents. Evidently, any date of birth based on authentic documentary evidence has to be preferred to one, which is based on the applicant's own declaration without any documentary proof.

9. On the basis of the foregoing discussions, the applicant must succeed. I, therefore, direct that the date of birth of the applicant should be corrected as 19.12.1931 in his service record instead of 16.6.1931, and that his date of superannuation should be determined on the basis of this corrected date of birth. The parties will bear their respective costs.


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