

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
NEW BOMBAY BENCH

O.A. No. 126/89

198

~~XXXXXX~~DATE OF DECISION 31.3.1989Shri Velji Ramji Chamudiya PetitionerMr. D.V. Gangal Advocate for the Petitioner(s)

Versus

Union of India & another RespondentMr. V.S. Masurkar 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?
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?

Yes

No



(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.126/89

Shri Velji Ramji Chamudiya,
Motilal Nagar, Part-I,
Chawl No.243, Room No.1937,
Goregaon(West),
Bombay - 400 062.

.. Applicant

vs.

1. Union of India
through
The Flag Officer Commanding-in-Chief,
Western Naval Command,
Bombay - 400 023.

2. The Admiral Superintendent,
Naval Dockyard,
Lion Gate,
Bombay - 400 023.

.. Respondents

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

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.

2. Mr.V.S.Masurkar
Advocate for the
Respondents.

JUDGMENT
(Per P.S.Chaudhuri, Member(A))

Date: 31-3-1989

This application was filed on 6.2.1989 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays for directions to the effect that his date of birth is 2.8.1934 and that his recorded date of birth viz. 19.3.1929 is wrong and also prays for other connected and ancilliary reliefs.

2. The applicant was appointed as an unskilled labourer in the Naval Dockyard, Bombay on 16.3.1955. It is his submission that "At the time of his appointment, the applicant did submit the School Leaving Certificate". He was subsequently promoted in that organisation and is presently working in it as Highly Skilled Mechanic Gr.I.

3. It is the applicant's submission that

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sometime between about August and October, 1988 he was called by the authorities to complete the papers pertaining to his retirement. It is his contention that this was the first time that he came to know that his date of birth had been wrongly recorded at the time of his appointment as 19.3.1929 and that thus he was to retire on superannuation on 31.3.1989 on attaining the age of 60 years.

4. It is the applicant's further submission that "Thereupon, he approached the School Authorities and got the School Leaving Certificate." This School Leaving Certificate is dtd. 25.4.1948 and is issued by the Municipal Chandanwadi Gujarati Primary School and states that one Velji Ramji studied in that school from 1942 to 1948 and that his date of birth is 25.8.1934.

5. The applicant has also filed a certificate of birth issued by the Bombay Municipal Corporation on 20.4.1988. This states that one Velji was born on 2.8.1934 at Albless Hospital and that this birth was registered on 22.8.1934. It gives the name of the father as Ramji Kanji Chamuria and of the mother as Kanibai.

6. Thereafter the applicant submitted an application dtd. 4.8.1988 to the Admiral Superintendent, Naval Dockyard, Bombay requesting for removal of errors committed by the clerk while recording his date of birth. He enclosed the above mentioned school leaving and birth certificates with this application. This request was rejected by a letter dtd. 16.8.1988 which stated that "In this connection no action can be taken at this belated stage."

7. The applicant was thereafter sent a letter dtd. 28.10.1988 which informed him that he would be placed on the retired list with effect from the afternoon of 31.3.1989

on attaining the age of superannuation i.e. 60 years of age.

8. The applicant then sent a petition dtd.16.11.1988 to the Chief of Naval Staff, New Delhi. In this petition he has stated that "At the time of my appointment since I did not have my Birth certificate or any other document in regard to the same I gave the date of birth according to my memory as existing at that time. The date of birth given at the time was somewhere in March 1989"(sic, should be 1929). He further added that "I had a doubt that the birth date given by me at the time of the employment was not correct and hence I have made inquiries with the Bombay Municipal Corporation and the school in which I studied". He mentioned that the little discrepancy in the dates in the certificates given by these two authorities might have occurred due to an error on the part of his parents but it was sure that he was born in August,1934. He therefore requested for passing orders for correction of his date of birth in his service record as per his birth certificate. This application also was rejected on 4.2.1989 with the following remarks:

"In accordance with existing orders, the date of Birth once declared by a government servant at the time of his initial appointment and accepted by the authorities concerned, cannot be changed unless there is overwhelming evidence to show that the date of birth recorded in the service records is incorrect. Unless such requests are not made within a reasonable period from the commencement of service, they shall not be entertained. No,requests made about the time of superannuation shall be entertained. In view of the above, it is regretted that the request for change of date of birth cannot be entertained at this belated stage."

9. Being aggrieved with this reply the applicant filed this application on 6.2.1989. The respondents have opposed it by filing the affidavit of Shri M.S.Kadam, Assistant Personnel Manager, Naval Dockyard, Bombay. I heard the oral

submissions of Mr.D.V.Gangal, learned advocate for the applicant and Mr. V.S.Masurkar, learned advocate for the respondents. I have also perused the relevant record.

10. It is Mr.Gangal's first submission that the applicant had submitted his school leaving certificate at the time of his appointment and hence in accordance with Rule 79(1) of the General Financial Rules his date of birth should have been recorded on that basis. It was the respondents' submission that the applicant had not produced any school leaving certificate at the time of his appointment. They contended that this was supported by the applicant's own admission in his petition dtd. 16.11.1988 to the Chief of Naval Staff, a copy of which is attached to the application before me. In it, the applicant has clearly stated that he did not have his birth certificate or any other documents in regard to the same at the time of his appointment and hence he gave his date of birth according to his memory. It was the respondents' contention that, therefore, in accordance with the provisions of Rule 80(2) of the General Financial Rules the date of birth of the applicant had been computed from his approximate age. The applicant was medically examined on 16.3.1955 and his age, as nearly as could be ascertained from this examination, was 26 years. Therefore, in accordance with the provision of Rule 80(2) the date of birth of the applicant should have been recorded as 16.3.1929. The respondents' fairly conceded that it had, however, been incorrectly recorded as 19.3.1929 but it was their submission that this had no effect on the applicant's date of retirement on superannuation. After considering these rival submissions, I see considerable force in the respondents' submissions.

11. Mr.Gangal's next submission was that the reply to the applicant's representation dtd. 4.8.1988 was not a

reasoned speaking order. It merely stated that no action could be taken at this belated stage. This contention is no doubt correct. But this was not the only representation that the applicant submitted. He submitted another representation on 16.11.1988 and to that he received a speaking reply dtd. 4.2.1989. Mr. Gangal did contend that before replying proper enquiries should have been made and the reply should have examined the validity of the documents enclosed with the petition and resolved the conflict, if any, with the documents in the respondent's possession. I do not see any force in this submission as there is no doubt that the reply dtd. 4.2.1989 is a speaking reply.

12. Mr. Gangal then submitted that the basic thrust of the reply dated 4.2.1989 was to the effect that as the request for change of date of birth had not been made within a reasonable period, it could not be entertained. He cited Hiralal v. Union of India (ATR 1987(1)CAT 414) in support of his contention. The respondents countered this by submitting that it was not as if the applicant's request had not been considered. It had been considered but it had been held that there was no overwhelming evidence to show that the date of birth recorded in the service records was incorrect. It was the respondents' contention that, therefore, the ratio of the case cited, was not applicable in this case. I see considerable merit in the respondents' submissions.

13. Mr. Gangal then cited R.R. Yadav v. Union of India & Ors. (ATR 1987(2)CAT 506) in support of his contentions. The respondents countered that by submitting that in that case some of the documents submitted in support of the case had been held to be unimpeachable. The respondents countered this by submitting that no such conclusion had been

reached in this case and that it was not as if the applicant's request had not been considered. Mr. Gangal then took the stand that enquiries should have been made to establish the validity of the documents and only thereafter should a final view have been taken. It was his contention that there was nothing on record to show that any enquiries had been made and, even if enquiries had in fact been made, what was the manner and result of the enquiries. The respondents contended that the procedure was not relevant and that what was relevant was the conclusion that there was no overwhelming evidence to show that the date of birth had been recorded incorrectly. It was their contention that the school leaving certificate is dated 25.4.1948 and thus should have been available with the applicant in 1955 when he joined service. But he thought fit not to use it then. It was only after over 40 years that he made use of it when he sent his application dtd. 4.8.1988 to the Admiral Superintendent, Naval Dockyard, Bombay. It was the respondents' contention that this did not constitute unimpeachable evidence. I see considerable force in the respondents' submission and am of the view that Yadav's case is not on all fours with that of the applicant.

14. It was the submission of the respondents that Subsidiary Rule 202 prescribed that action be taken to show a Government servant's Service Book to him every year and to obtain his signature therein in token of his having inspected the Service Book. Even though the applicant's Service Book had been shown to him on numerous occasions from 12.4.1963 to 24.9.1983 in pursuance of this rule, the applicant had at no time questioned his recorded date of birth. It was the respondents' submission that

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he had even signed on the first page of the Service Book on which his date of birth was entered on three distinct occasions; of course, two of the signatures are undated and one is dated 17.3.1970. The respondents went on to add that, in accordance with their practice, a list had been issued on 31.12.1986 detailing the persons who were due to retire between 31.1.1989 and 31.12.1989. The name of the applicant had been included in this list and he was shown as due to retire on 31.3.1989. The respondents tried to establish that therefore, the applicant knew about this on at least 31.12.1986 if not earlier. Mr. Gangal strongly refuted this and asserted that the applicant came to know about his date of birth being recorded incorrectly ~~was~~ sometime between about August and October, 1988. I do not, see any force whatsoever in this submission of the respondents based on the list dated 31.12.1986 because there was nothing either on record or in their written submissions to show that the applicant was aware of or informed about this retirement list prepared on 31.12.1986. Be that as it may, however, I do see considerable force in the respondents' submission that the applicant had been seeing his Service Book regularly but had at no time earlier than 1988 questioned his recorded date of birth even though there was no impediment in his way to do so. Besides, the birth certificate issued by the Bombay Municipal Corporation is dated 20.4.1988 and hence I am of the view that it was long before August, 1988 that the applicant knew about his impending retirement and had started to collect documentation to assemble his case for change of date of birth.

15. The respondents' final submission was that action had been taken in terms of Note 5 below Fundamental Rule 56. This note is reproduced below:

"The date on which a Government servant attains the age of fifty eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note.

An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller & Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an administrator of a Union Territory under which the Government servant is serving, if -

- (a) a request in this regard within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

It was the submission of the respondents that the date of birth of the applicant had been recorded on the basis of his age as ascertained at the time of his appointment.


It was their submission that this assessment had been correctly done. It was their further submission that this note prohibited any alteration of this recorded date of birth except in certain specified circumstances. There had been no material clerical error in this recording.

It was the respondents' contention that it had not been

clearly established that a genuine bonafide mistake had occurred and therefore no change in the date of birth was permissible under the rules.

16. Based on this discussion I am of the view that the application should be dismissed.

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

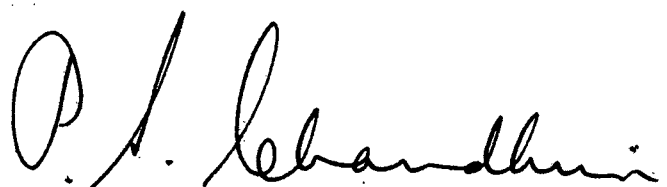

(P.S. CHAUDHURI)
Member(A)

Date: 31st March 1989.

After this judgment was pronounced in the open Court today, Mr. D.V. Gangal prayed first, that the operation of the judgment and order be stayed for a period of four weeks to enable him to move an S.L.P. in the Supreme Court and, secondly, that the applicant, who was due to retire on superannuation today, be allowed to continue in service for a period of four weeks.

2. Even if the operation of the judgment and order is not stayed, the applicant will become entitled to all the benefits that he is getting while in service even though he will not be at work should he succeed in the S.L.P. that he proposes to file in the Supreme Court.

3. In the circumstances, I see no merit in both the prayers and reject both summarily.


(P.S. CHAUDHURI)
MEMBER(A).