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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 289/89
~~XXX XXX NOX~~

198

DATE OF DECISION 1st December 1989Amanulla Ekramulla PetitionerMr. S. R. Atre for Mr. R. N. Khare Advocate for the Petitioner(s)

Versus

The Divl. Rly. Manager, CR, Nagpur & Respondent

Another.

Mr. J. G. Sawant

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 ? Yes
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 ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.289/89

Amanulla Ekramulla,
Diesel Assistant,
C/o.Loco Foreman's Office,
Central Railway,
Wardha.

.. Applicant

vs.

1. The Divisional Railway
Manager,
Central Railway,
Nagpur.

2. The Chief Personnel
Manager,
GM's Officer
Central Railway,
Bombay V.T.

.. Respondents

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

Appearances:

1. Mr.S.R.Atre
Advocate for
Mr.R.N.Khare for
the applicant.

2. Mr.J.G.Sawant
Advocate for the
Respondents.

JUDGMENT:

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

Date: 1st December 1989

This application was filed on 19.4.1989 under section 19 of the Administrative Tribunals Act,1985. In it the applicant prays that the date of birth entered in his service record be corrected from 4.4.1931 to 4.4.1941 and that the retirement proceedings initiated against him be stopped.

2. In view of this prayer, in terms of this Tribunal's Chairman's order dated 21.3.1988 this application comes within the jurisdiction of a Bench consisting of a Single Member. I have accordingly proceeded to hear and decide it.

3. The facts may be briefly stated. The applicant was appointed in railway service as

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a Ladderman on 17.5.1962 under Loco Foreman, Itarsi, on Bhusaval Division. In 1966 at his request he was transferred from this Division to Nagpur Division. The applicant's service record which had been prepared by Bhusaval Division at the time of his appointment in 1962 was not received by Nagpur Division. Inspite of efforts being made to trace it out the original service record could not be located. In the circumstances a fresh service record was prepared on 8.11.1967. In this fresh service record the applicant's date of birth has been recorded as 4.4.1931. The applicant is currently working as Diesel Assistant at Wardha under the Loco Foreman, Wardha.

4. It is the applicant's case that he was not aware that his date of birth was entered in his fresh service record as 4.4.1931 and that the first time he came to know about this was when he saw the notification in the Gazette intimating that he was due to retire on superannuation on 30.4.1989. He submitted an application dtd. 30.8.1988 to respondent No.1 bringing out that his date of birth as per his school certificate was 4.4.1941 and that it was on this basis that his date of birth should have been entered in his service record. He attached a copy of the school transfer certificate issued by the Nagarpalika Purani Prathamic Shala, Sivani, Malwa dated 30.8.1961 in which his date of birth has been shown as 4.4.1941 and requested that his date of birth be checked from the school authorities. The railway authorities did check the matter with the school authorities who informed them by letter dated 29.11.1988 that the applicant's contention was correct. The applicant then sent a letter dated

22.3.1989 to respondent No.2 making a similar request and pointing out a clerical error had occurred when his service record was being prepared. In reply, by letter dated 4.4.1989 the applicant was informed as under:-

"Subject:- Alteration in recorded date of birth.

Reference:- Your representation dtd.
22.3.89

CPO(T)BB vide his letter No.HPB/302/T/D/Loco/B dated 27.3.89 has advised this office that your request for change in your recorded date of birth from 4.4.1931 to 4.4.1941 has not been agreed by the CPO.

Please note."

5. Being aggrieved, the applicant filed this application on 19.4.1989. By an interim order dated 25.4.1989 the respondents were restrained from retiring the applicant until 9.5.1985. This interim order has been extended from time to time.

6. The respondents have opposed the application by filing their written reply. I heard Mr.S.R.Atre, holding the brief of Mr.R.N.Khare, learned advocate for the applicant and Mr.J.G.Sawant, learned advocate for the respondents.

7. Mr.Atre's first submission was that the applicant was entitled to show that the entry made in his service record did not represent his true date of birth. He had done so but had not received any speaking order in reply. Mr.Sawant attempted to counter this by submitting that the applicant had been guilty of delay and laches in not raising this issue in 1967 itself when his fresh service record was prepared within his knowledge, in token of which he had given his thumb impression thereon. Mr.Sawant bolstered his argument by submitting that staff in the

category to which the applicant belonged were required to undergo periodical medical examination once in every three years upto the age of 45 years and annually thereafter. He contended that the applicant attained the age of 45 years in 1976 and that the available record showed that the applicant had been for such medical examination on 7.2.1978, 15.2.1979, 4.2.1982, 9.2.1983 and 15.2.1984. It was his contention that based on this in 1979 itself the applicant should have known that he was over 45 years of age because he was being sent for periodical medical examination after one year. Mr. Atre attempted to counter this by submitting that the applicant's going for a particular examination does not preclude him from making a representation in regard to his date of birth and cannot limit his right to get his recorded date of birth corrected. I am afraid that I do not see any force in Mr. Sawant's contention. It is now well settled that a Government servant is entitled to show that the entry made in his service record does not represent his true date of birth - see *Manek Chand Vaidya v. State of Himachal Pradesh* (1976(1)SLR 402). It is also necessary to take note of the fact that the order rejecting the applicant's representation, which I have quoted above, is not a speaking order. This taints that order as it is now well settled law that reasons should have been recorded - see *Mahabir Prasad Santosh Kumar v. State of UP and others* (AIR 1970 SC 1302, para 7 at 1304)

8. Mr. Atre's next submission was that the school certificate that he had submitted had been issued on 30.8.1961 i.e. before he joined railway service on 17.5.1962. It was his submission that he had given this school certificate when he joined service and that his initial service record would

have been prepared on that basis. Mr. Sawant submitted that since the original service record was no longer available, it could not be verified whether the certificate had been submitted at that time or whether the date of birth had been recorded on that basis. I see considerable force in Mr. Atre's submission. It has not been disputed that the school certificate is genuine. The respondents did refer the matter to the school authorities who have confirmed the correctness of the school certificate by the Head Master's letter dated 29.11.1988. The respondents have not given any reason as to why not only the school certificate issued in 1961 but also the Head Master's letter dated 29.11.1988 in support thereof have not been found to be acceptable. In Nana Aba Rajguru's case - O.A. No. 436/88 decided on 16-1-1989 - this Bench has held "the authentic documentary evidence produced by the applicant about his correct date of birth cannot be ignored or brushed aside."

9. Mr. Atre's third submission was that an alternative view of the matter was that this was not a case in which the applicant was seeking a change in the recorded date of birth. It was his contention that the original service record prepared in 1962 incorporated the correct date of birth viz. 4.4.1941. It was his contention that it was the respondents who had changed this date of birth to 4.4.1931 when they reconstructed the applicant's service record in 1967. It was his case that in terms of rule 225 of the Indian Railway Establishment Code, Vol. I they had no authority to do so. Sub-rule 4 of this rule is relevant and is reproduced below:

"(4) 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 of a Group A & B railway servant, and a General Manager in the case of a Group C & D 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 not be entertained after completion of the probation period, or three years service, whichever is earlier) 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 record amended."

10. Mr. Atre's fourth submission was that according to the date of birth recorded in the reconstructed service record the applicant would have been over 31 years of age at the time of his appointment. The upper age limit for recruitment is 25 years and the respondents had not made out any case that anyone's sanction was obtained to relax this age. It is clear that had the applicant been over 31 years at the time of his initial appointment sanction of the competent authority for relaxation of age would have been necessary. The fact that no such relaxation was ever obtained

lends credence to the view that the applicant was not overaged at the time of his recruitment in 1962.

11. Mr. Atre's final submission was that the basis on which the service record was reconstructed is not known. He cited the instructions in this regard at page 91 of "Railway Establishment Rules and Labour Laws" by B.S. Maine. The relevant extract is reproduced below :-

"Service Records should be kept in safe custody. In cases where Service Records are missing and cannot be traced even after exhaustive search, these will be reconstructed from the particulars available in personal files and other official records in consultation with Accounts Department. Where such official records are also not available, the Railway Board should be approached for their sanction to the reconstruction of Service Records on the basis of affidavits of the staff concerned. (R.B.'s.No.E(NG)60 PTN 1/3 of 28.3.60) "

There is no doubt that the procedure mentioned above has not been followed when the applicant's service record was reconstructed in 1967. Had this been done the possibility of a clerical error in regard to the recording of the date of birth would have been eliminated.

12. Based on this analysis and discussion, it is clear that the applicant's record was prepared at the time of his appointment in 1962. The date of birth that was recorded therein at that time is not known as this service record was lost. The service record was reconstructed in 1967. But there is nothing to show that, in terms of the standing instructions on the subject, this reconstruction was done in consultation with the Accounts Department. The possibility of clerical error in the reconstruction cannot therefore be ruled out.

The applicant had a school certificate showing his date of birth which was issued in 1961, i.e. before he joined the railway in 1962. There is no reason to believe that he would not have produced this certificate at the time of his initial appointment. He enclosed a copy of this certificate when he made a representation to the railway authority in 1988 about his date of birth having been recorded incorrectly. The authorities checked the veracity of this certificate and the Head Master confirmed that it was correct. Against this fact situation I have no hesitation in holding that a clerical error had occurred when the respondents caused the applicant's service record to be reconstructed in 1967. The Indian Railway Establishment Code permits a change in the recorded date of birth when the General Manager is satisfied that a clerical error had occurred.

13. In this view of the matter, the application succeeds. The respondents are directed to correct the applicant's recorded date of birth from 4.4.1931 to 4.4.1941 and to give him all consequential benefits flowing from the corrected entry in his service record.

14. In the circumstances of the case there will be no order as to costs.

P.S. Chaudhuri
(P.S.CHAUDHURI)
Member(A)
1/12/1989.