

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO.: 889 OF 1996.

Date of Decision : 25.3.97

Shripad Chandradao Shinde

Petitioner.

In Person

Advocate for the
Petitioner.

VERSUS

Union Of India & Others

Respondents.

Shri V. S. Masurkar,

Advocate for the
Respondents.

CORAM :

HON'BLE SHRI B. S. HEGDE, MEMBER (J).

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to
other Benches of the Tribunal ? x


(B. S. HEGDE)
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 889 OF 1996.

Dated this 25/2, the first day of March, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

Shripad Chandradao Shinde,
Resident of : Shinde Niwas, 317,
Kasturba Cross Road No. 6,
Borivli East, Bombay 400 066.

... Applicant

(In Person)

VERSUS

1. Union Of India
through the General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.

3. The Head Master,
I.B. Patel,
Municipal Upper Primary,
Marathi School,
Goregaon (W),
Bombay - 400 062.

... Respondents

(By Advocate Shri V.S. Masurkar)

: ORDER :

I PER.: SHRI B. S. HEGDE, MEMBER (J) I

Heard the applicant in person and Shri V.S.
Masurkar for the respondents.

2. The short point for consideration is whether the applicant's date of birth is 08.04.1936 or 08.05.1934. The applicant retired from service as on 01.06.1992. In this O.A., the applicant challenged the impugned order dated 18.03.1993 which has been passed pursuant to the consideration of the representation made by the applicant vide dated 03.02.1993 and 09.02.1993 respectively, stating that the request for change in date of birth has been examined by the

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Competent Authority and has been rejected by passing a speaking order. The applicant joined the department in the year 1957. While joining the service, the applicant furnished the School Leaving Certificate and the S.S.C. Certificate, wherein the date of birth is recorded as 08.05.1934 and the same has been recorded in the service record. This case has got a chequered history. The applicant initially filed O.A. No. 408/92 for alteration of his date of birth in the service record from 08.05.1934 to 08.04.1936. The Bombay Bench of C.A.T. vide its order dated 21.01.1993 directed the respondents to take into account the Tahasildar's certificate and pass a fresh order. However, at the same time it is stated that it is open to the applicant to apply to the officer concerned to hold such enquiry as he considers necessary for ascertaining the correctness of the contents of the certificate and its genuinness. It is also open to the applicant to lead such evidence in support of his case, as advised. The officer concerned shall pass a fresh order within a period of three months from the date of the receipt of a certified copy of the order. Pursuant to the order of the Tribunal, the competent authority examined the case once again and he was given a personal hearing on 01.03.1993. During the personal hearing, the employee furnished a true copy of an extract from the register of birth which has been examined by the competent authority and the same has been obtained by the applicant in the year 1963. Though he joined the Railway service in the year 1957, he states that he made representations in the year 1964 but he was orally told by his superior staff that unless he furnished a documentary evidence to that effect, the change in the date of birth cannot be considered.

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Though he obtained the extract from the register of birth in the year 1963, he produced that certificate to the competent authority in the year 1991, after a lapse of 28 years and no efforts were made by him to represent for change in the date of birth. He is not only a graduate but a graduate in Law also, which he completed after joining the service. This clearly shows that he had accepted the date of birth as recorded in the service sheet inspite of being in possession of birth certificate giving the date of birth as different from what has been recorded. The birth certificate is normally taken as base for recording the date of birth while entering the School and once the date of birth is recorded in the school, the S.S.C. certificate is taken as authentic document because the name of the child is not given in the birth certificate which only indicates "Son or Daughter" of so and so, etc. Therefore, the competent authority did not accept the contention of the applicant and his request for change in the date of birth has been rejected.

3. The learned counsel for the respondents, Shri Mesurkar, urged that this is the fourth time the applicant is approaching the Tribunal for the very same relief without there being any cause of action. Firstly, the respondents raised the plea that the application filed by the applicant is barred by the principle of res-judicatta since the applicant had earlier filed O.As. on the very same issue. The O.A. No. 306/93 was dismissed by the Tribunal vide dated 09.02.1994. Thereafter, the applicant filed a Review Petition No. 51/94 which also came to be rejected on 04.04.1994. Inspite of the principles of res-judicatta, the applicant had filed another O.A. No. 694/94 and the same was also again dismissed on 27.6.1994

It is further submitted that the applicant had applied for the post of Officer Clerk in the pay scale of Rs. 55-130 (P) through the Railway Service Commission, Bombay. In the said application dated 27.10.1955 the date of birth has been shown as 08.05.1934 and the applicant produced an attested copy of the School Leaving Certificate in support of his date of birth. The Service Sheet was prepared at the time of his appointment and in that also the date of birth is mentioned as and signed 08.05.1934, which is written by the applicant and counter signed by the competent authority, etc. The learned counsel for the respondents, therefore, submits that the present application filed by the applicant is nothing but misuse of the process of law and the same is required to be dismissed with heavy cost.

4. In sofar as the principles of res-judicata is concerned, that the judgement of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court. Secondly, that the judgement of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same parties coming incidentally in question in another court for a different purpose. Therefore, the doctrine of resjudicata is not a technical doctrine applicable only to records; it is a fundamental doctrine of all courts that there must be an end of litigation. In the instant case, there is no dispute that in all the earlier O.As. the claim of the applicant is only for change in the date of birth, which has been dismissed by the Tribunal. Despite the same, the applicant has again filed this O.A. seeking change in the date of birth. Therefore, it is

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beyond doubt that the principle of res-judicata would squarely apply to the facts of this case.

5. Regarding change in the date of birth, the Apex Court in the case of Union Of India V/s. Harnam Singh held that the application for correction of date of birth, entered in the service book, if it had not been made within a period of 5 years from the date of entry into service or within the period of five years from the date of coming into force of note 5 to FR 56 (m) in 1979, it is not within the purview of the Tribunal to change the date of birth as entered in the service records. Further, it is also held in some other decision that entertainment of applications made by the employees of the Government at the fag end of their services and when they are due for retirement is unwarranted. In the instant case, admittedly, though the applicant retired from service in the year 1992, he had obtained the alleged certificate from the Tehsildar in the year 1963, and submitted to the competent authority only in the year 1991 after a lapse of 28 years, which has been considered and rejected by the competent authority. Despite the same, he consistently persisted the same plea again and again with the department knowing fully well that it is not within the purview of the respondents department to change the date of birth in the absence of any irrefutable evidence. Though he has been given an opportunity to furnish a relevant evidence in support of his contention, he did not do so, thereby, he again assailed the order of the respondents under some pretext. As stated earlier, the petition is barred by the principles of resjudicata, limitation and there is no merit in the contention of the applicant in view of the ratio laid down in Harnam Singh's case. Therefore, no compassion can be

show to the applicant in this matter, but for his retirement, we would have awarded heavy cost on the applicant. By this application, the applicant has misused the process of law knowingly and therefore, the petition does not merit any consideration.

6. In the facts and circumstances of the case, the O.A. is dismissed as the same is devoid of merit and also hit by the principles of res-judicata. Normally, we are not awarding any costs but in the instant case, the way in which the applicant misused the process of law consistently, and considering the fact of his retirement, the applicant is directed to pay a cost of Rs. 500/- (Rupees : Five Hundred only) which is to be paid to C.A.T. Bar Association, Mumbai, within a period of two months from the date of receipt of a copy of this order.


(B. S. HEGDE)
MEMBER (J).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, MUMBAI 400001

REVIEW PETITION No. 53 OF 1997
IN
✓ ORIGINAL APPLICATION No.889/96

DATED: 19TH JUNE 1997
CORAM: Hon'ble Shri B S Hegde, Member(J)

Shripad Chandrarao Shinde
Shinde Nivas, 317
Kasturba Cross Road No.6
Borivali(E), Mumbai 400066 ..Applicant

v/s.

Union of India through
General Manager
Western Railway
Churchgate
Mumbai 400020 & 2 ors. ..Respondents

ORDER (By circulation)
(Per: B S Hegde, Member(J))

1. The Applicant has filed this Review Petition No. 53/97 seeking review of the judgment/order dated 25.3.97. The short question involved for consideration in the O.A. was regarding the change in the date of birth. In the service record his date of birth has been recorded as 8.5.1934 based on the S.S.C. School Leaving Certificate. The applicant wanted his date of birth to be corrected as 8.4.1936. The applicant had filed OA No.408/92 for altering his date of birth which was disposed of by the Tribunal vide order dated 21.1.93 with the direction to the respondents to take into account the Tahasildar's certificate and pass a fresh order. In 1991 the competent authority gave the applicant a personal hearing and examined the extract from the register of birth which the applicant had obtained in the year 1963 i.e., after a lapse of 28 years. The applicant alleged that he was

[Signature]

orally told by his superior staff that unless he furnished a documentary evidence to that effect, the change in the date of birth cannot be considered. Thereafter the applicant had filed OA No.306/93 which was dismissed by the Tribunal vide its order dated 9.2.94. The applicant had filed a Review Petition No.51/94 which also was rejected on 4.4.94. Further the applicant filed yet one more O.A. No.694/94 on the same issue which was dismissed on 27.6.1994. The Applicant onceagain filed O.A. No. 889/96 for change of Date of Birth. The Tribunal after considering various aspects held that the OA has no merit and also hit by the principles of resjudicata and while dismissing the OA awarded the cost of Rs.500/=. The order of the Tribunal was dispatched on 10.4.97 and the present Review Petition is filed on 10.6.97. Thus there is a delay of 30 days. The applicant has filed an Miscellaneous Petition No.328/97 for condonation of delay.

2. The only ground stated in the M.P. for condonation of delay is that during summer vacation he could not file the petition and hence the delay in filing the Review Petition should be condoned. Even during summer vacation Registry of the Tribunal is open and it was open for him to file the Review Petition within the stipulated period, which he did not do.

3. I have carefully considered the Review Petition filed by the applicant and I find that no new point has been

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made out by the applicant and he is re-agitating the same grounds which he has urged in the OA. It is therefore not open to the applicant to reargue the same grounds. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or grave error has crept in earlier by judicial fallibility.

4. I find that neither any error apparent on the face of the record has been pointed out nor any new fact has been brought to my notice calling for a review of the original judgment. The grounds raised in the Review Petition are more germane for an appeal against the judgment and not for review.

5. In the light of above M.P.No. 328/97 for condonation of delay in filing the Review Petition and Review Petition No. 53/97 are dismissed firstly on the ground of delay and secondly on the ground that it is devoid of merit. No order as to costs.


(B.S. Hegde)

Member(J)

trk

dd. 19/6/97
order/Judgement despatched
to Applicant/Respondent(s)
on 22/6/97

30/6/97