

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1139 /1996

Date of Decision: JUNE 25th, 1998.

S. R. Shetti,

Petitioner/s

Shri G. S. Walia,

Advocate for the
Petitioner/s

V/s.

Union Of India & 2 Others,

Respondent/s

Shri Suresh Kumar.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

~~Non-Bench~~

- (1) To be referred to the Reporter or not ? no
- (2) Whether it needs to be circulated to no other Benches of the Tribunal ?

Resigned
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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

O.A.No. 1139/96

DATED : THIS 25th DAY OF JUNE, 1998

CORAM : Hon.Shri Justice R.G.Vaidyanatha, Vice Chairman

S.R.Shetti
Ex.Junior Engineer/
Foreman, Central Railway
(By Adv. Mr. G S Walia) ..Applicant

V/s.

1. Union of India through
General Manager
Central Railway
Headquarters Office
Mumbai CST & 2 ors.
(By Adv. Mr. Suresh Kumar) ..Respondents

ORDER

[PER: R.G.VAIDYANATHA, VICE CHAIRMAN]

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. I have heard the learned counsel appearing on both sides.

2. The applicant's case is as follows:

The applicant joined Railway service in the year 1957 and at that time his date of birth came to be recorded in the records as 9.5.1938 instead of 9.5.1941. Then in 1972 the applicant made a representation to the Railway Administration for change of date of birth from 9.5.1938 to 9.5.1941. There was no reply from the administration. Then the applicant made number of subsequent representations in the year 1973, 1975, 1977, 1979, 1982, 1984 and again subsequently in 1995 and 1996. But there

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was no response from the respondents. The applicant also made a number of oral requests to the concerned officers but in vain. It was also stated that the respondents rejected the request of the applicant for change of date of birth by order dated 6.9.1996. On the basis of the date of birth recorded in the service record the applicant came to be retired from service on 31.5.1996. The applicant has produced the date of birth certificate issued by the Tahsildar which clearly shows that his correct date of birth was 9.5.1941. On these allegations the applicant has approached this Tribunal praying for a declaration that his date of birth is 9.5.1941 and is entitled to continue in service till superannuation on the basis of the said date of birth and entitled to all back wages and other monetary benefits. He has also prayed for quashing the order dated 6.9.96.

3. The respondents in their reply have disputed the validity and the correctness of the recent birth certificate produced by the applicant. It is stated that the applicant has got a birth extract on the basis of ^{that} information furnished by himself. It is also pleaded on the basis of the school certificate produced by the applicant the date of birth was entered in the service records as 9.5.1938. The applicant did not produce any document regarding the correct date of birth prior to 1996. The applicant has already retired from service and has drawn all the retirement benefits and is even drawing pension on the basis of the date of birth as 9.5.1938

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recorded in the service records. It is also stated that the application is barred by limitation and also by the principles of delay and latches.

4. The learned counsel for the applicant contended that the applicant's correct date of birth is 9.5.1941 and placed reliance on the birth extract and also on the school leaving certificate. While refuting this argument on merits the learned counsel for the respondents has also contended that the application is barred by limitation, delay and latches.

5. In the light of the arguments addressed before me, two points points fall for determination:

- (i) Whether the applicant has proved that his correct date of birth is 9.5.1941 and the same has to be entered in the service records and entitled to all consequential benefits like change in the date of superannuation, monetary benefits etc.?
- (ii) Whether the application is barred by limitation, delay and latches ?

POINT No. (i) :

6. The applicant is placing strong reliance on the birth register extract which is ^{at} page 10 of the paper book and marked as Annexure B. It no doubt shows the date of birth of the applicant as 9.5.1941. Had it been from the original register of births and deaths then we could have

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given the maximum value to the same and accepted it as conclusive, but it is seen that it is not an extract from the original birth register of 1941. We may take judicial notice that entries of birth are made in the register by an officer as and when birth takes place and within a few days of the birth the same is brought to his notice by the parents etc. Therefore, if an entry had been made in May 1941 about the applicant's birth in the Birth Register then we could have accepted it as conclusive. But, however, the birth extract produced was as per the entry dated 27.1.1996. That means the applicant's birth is entered in the Register of Births and Deaths as late as 27.1.1996, just four months prior to the retirement. This is an entry got made by the applicant by making an application to the Tahsildar in January 1996 and got his name entered. How can any value be given to a recent entry made in 1996 about the date of birth which took place about 55 years ago? We cannot. Therefore, the applicant has not produced any material to show as to on what basis this belated entry of date of birth was made in 1996 about 55 years after the date of birth. It may be possible that the applicant might have filed an affidavit ^{of} to himself or of his parents and gave an application to the Tahsildar and got the date of birth entered. Such an entry cannot be given any value particularly ^{when} which has serious consequences. If this date of birth is now accepted the applicant would be entitled to get three years more service. Now that he has already retired that means we would have to direct

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the Railways to make payment of three years salary and allowances without any work being done by the applicant. If the applicant was still in service the change of date of birth would affect the promotion of his juniors. ^{in respect of} Therefore courts must be slow to interfere in an entry regarding date of birth particularly when the matter has come to the court either on the eve of retirement or after the retirement. In my view belated entry in the birth extract register cannot ^{be given} gain any weight and on that basis we cannot give any direction to the respondents to change his date of birth and give him all the monetary benefits.

7. Then the learned counsel for the applicant placed reliance on one more document viz., zerox copy of the School Leaving Certificate. As rightly pointed out by the learned counsel for the respondents, this document was not produced along with the O.A. It is not referred to in any of the applications given by the applicant to the department for change of date of birth. This document has seen the light of the date for the first time when it was produced along with the rejoinder dated 27.10.1997. The original school leaving certificate is not produced and just a zerox copy is produced. The learned counsel for the respondents seriously questioned the genuineness of this document. The document showed that it was prepared on 18.6.1956. That may be the original date on which the school leaving certificate was issued. But we do not know why this xerox copy was



produced and the original document is not produced. We have to view the matter with great concern and seriousness, since we are deciding the question of date of birth after retirement of the applicant as he has approached this Tribunal after his retirement. The consequences of accepting the applicant's case is granting him salary and allowances for three years without doing any work. According to the applicant he came to know about the mistake in the date of birth for the first time in 1972. No doubt he has made several representations to the department for change of date of birth but they did not respond. The applicant should have approached the court at that time or even he could have approached this Tribunal after this Tribunal was constituted in 1985. I am not for the moment concerned with the question of limitation, but the delay in approaching the court or Tribunal also assumes importance and due to this the position will have to be examined cautiously based on the material on record. The matriculation certificate is not produced. We can take a judicial notice that in India for all service matters the date of birth recorded in the matriculation certificate is taken as foundation. The learned counsel for the respondents produced the relevant records before me including the service register. Service register shows that the applicant has passed S.S.L.C. Therefore we can presume that on the basis of certificate produced by the applicant the date of birth has been entered in the service register as 9.5.1938. The school leaving

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certificate cannot show a different date of birth and that too showing a difference of three years. The applicant has nowhere explained as to why he has not produced ^{the} matriculation certificate. He could have even applied to the School and got a duplicate matriculation certificate.

8. In these circumstances we cannot place any reliance on this belatedly produced school leaving certificate along with the rejoinder and that itself is not original but only a zerox copy. The applicant has not given any explanation as to why he is not producing the matriculation certificate.

9. The applicant joined the service in 1956. According to him the first application he gave for change of date of birth in 1972 which is 16 years after his entering the service. Ultimately legal action is taken in the year 1996 by approaching this Tribunal through this O.A. that too after retirement. In the peculiar facts and circumstances of the case and in view of the long delay in approaching this Tribunal and in the absence of matriculation certificate and the original school leaving certificate it would have adverse consequences in directing the railway administration to correct the date of birth and consequently pay the salary for a person who has not done any work. In the circumstances I am constrained to state that the applicant would not be entitled ^{to} the benefits claimed for and for a change in his date of birth.



10. I hold the applicant has failed to prove that his correct date of birth as 9.5.1941. In view of this finding he is not entitled to any consequential reliefs like payment of salary, allowances etc. Point No.(i) is answered accordingly.

POINT No.(ii) :

11. As already pointed out the applicant made the first representation for change of date of birth in 1972, 16 years after joining the service. Then he approached this Tribunal in 1996 after the date of retirement. Both the counsel referred to some authorities on the question of limitation. Even for a moment we accept applicant's that he has approached this court within one year from the date of retirement and has impugned the order dated 6.9.96, he should still explain the delay and latches on his part in approaching this Tribunal at this late stage and that too after retirement. On the face of it there is sufficient scope in the argument of the learned counsel based on principles of delay and latches. However, I need not go into this question in detail and give a positive finding since the application has to fail on merits in view of my finding on Point No. (i).

12. In the result the O.A. fails and is dismissed. In the circumstances of the case there would be no order as to costs.

(R.G.Vaidyanatha)

R.G.Vaidyanatha
Vice Chairman 25/6/98

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