

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1147/96

Date of Decision: 4.9.97

Shri Baburao Deoram Patil

Applicant.

Applicant in person.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri S.C.Dhawan.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R. Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not? X
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY: 1

Original Application No. 1147/96

Thursday the 4th day of September 1997

CORAM: Hon'ble Shri M.R. Kolhatkar, Member (A)

Baburao Deoram Patil
R/at B/3, Vinayak Darshan
Co-op Housing Society
Navpada, Subhash Raod,
Dombivli (West)
Dist. Thane.

... Applicant.

Applicant in person.

V/s.

Union of India through
General Manager,
Central Railway,
Chatrapati Shivaji Terminus
Mumbai.

The Chief Personnel Officer
Central Railway
General Manager's Office
C.S.T. Mumbai.

Divisional Railway Manager,
Central Railway, C.S.T.
Mumbai.

Chief Mechanical Engineer
Central Railway,
C.S.T. Mumbai.

... Respondents.

By Advocate Shri S.C.Dhawan.

ORDER (ORAL)

¶ Per Shri M.R. Kolhatkar, Member (A) ¶

In this O.A. the applicant has challenged the impugned order dated 19.7.96 (Exhibit 1), rejecting his representation for change in recorded date of birth namely from 25.7.38 to 17.2.1940 which according to the applicant is the correct date of birth as per the Register of Birth and Death maintained in the

Village Panchayat Gate, Taluka Raver, Dist Jalgaon
at page 29.

2. The applicant entered the service as Group 'D' employee on 12.12.55. He was not highly qualified and it is alleged that Railway administration had not asked him to produce any authentic record while entering the date of birth on 25.7.38. In the year 1995 he required a passport. The passport issuing authority had directed the applicant to produce the certificate as to place of birth and in connection with this he had applied to the Thasildar, Jalgaon for issue of certificate regarding place of birth and date of birth and the same was issued to him by the Tahasildar on 2.6.95. On perusal of the certificate on record at page 25 (b) it is seen that it is not a certificate of Tahasildar but it is an extract of Birth and Death Register of Village Gate, Taluka Rever, Dist. Jalgaon for the month of February 1940 as authenticated by the Tahasildar. According to the applicant the respondents while rejecting his representation have not at all cared to consider the weightage of the said certificate and have disposed of the representation without passing a speaking order. According to the applicant it is well settled position that when variation in date of birth is to be considered the most authentic certificate has to be given weight. So far as the recorded date of birth 25.7.1938 is concerned it is not based on the

declaration made by the applicant when he was entered in the service of the Railways. Applicant has relied upon the judgement of this Tribunal in the case of Nivarti Ranoo Gaikwad V/s. Union of India and others (OA 1205/92) decided on 25.2.97 in which the relief of change of date of birth from 4.9.1932 to 4.2.1940 (variation of almost 8 years) was granted.

3. The respondents have opposed the O.A. Counsel has challenged firstly the authenticity of the extract of Birth and Death Register at page 25(b) of the O.A. According to the counsel for respondents no serial number has been given in the extract of Birth and Death Register and thus there is a doubt as to the authenticity of the extract. Secondly the certificate is in the name of Pandharinath Deoram Patil whereas the applicant's name recorded in the O.A. and elsewhere is Baburao Deoram Patil. Therefore the certificate does not appear to pertain to the applicant. According to the applicant however he had changed the name from Baburao to Pandharinath while in school. It is a known practice in the State from which he hails.

4. The learned counsel for the respondents further contended that even apart from the authenticity of the certificate, the O.A. does not fulfil the condition of Rule 225 of Indian Railway Establishment Code No.I. According to this Rule

" The date of birth as recorded in accordance with these rules shall be held to be binding

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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."

5. Under this Rule power is given to the Railway Authorities to change the date of birth. The contention of the respondents is that if the date of birth as claimed by the applicant viz. 17.2.40 is accepted the applicant would not have been eligible to enter the Railway service in 1955. This however is a different proposition and does not appear to be covered by Rule 225(4)(i) quoted above.

6. Even otherwise the applicant states that he entered the service in 1955 and since he was under age in terms of recorded date of birth his pay was reduced and in this connection attention is invited to the entry made in the Service Book page 3.

" Based on his correct date of birth (viz) 25.7.1938 and date of appointment (viz) 12.12.1955 Shri B.D. Patel's pay has been refixed as under:

Rs. 26/- in scale of Rs. 30 - $\frac{1}{2}$ - 35 from 12.12.55
Rs. 35/- in scale of Rs. 35 - 60 from 21.4.56. "

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7. From this it is clear that as per recorded date of birth the applicant was under age and accordingly his pay was fixed at a lower level but the basic contention of respondents appears to be that in terms of recorded date of birth the applicant was marginally under age and in terms of claimed date of birth i.e. 17.2.40 he would not have employed at all, because he would have under age for over more than two years. What is stated by the learned counsel for the respondents may be correct but it does not lead to a definite conclusion.

8. The learned counsel for the respondents next argued that even assuming the authenticity of the document namely the extract of Birth and Death Register the applicant does not have any case because it is now well settled that change of date of birth is permissible only within the extended period as interpreted by the Hon'ble Supreme Court in the case of Harnam Singh V/s. Union of India AIR 1993 SC 1367. According to the respondents the last date for change of date of birth, so far as Railway Administration is concerned was 4.8.72 and in terms of the ratio laid down in the case of Harnam Singh, the applicant ought to have applied for change of date of birth latest in 1977 whereas he has applied in 1995. The applicant has failed to apply for change of date of birth within the period of limitation. Therefore the request of the applicant cannot be considered.

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9. The learned counsel for the respondents has relied on several judgements of the Supreme Court. The Tribunal in the case of Bhikhalal Jethalal Rawadka V/s. Union of India and others (OA 701/96) decided on 27.2.97 reported in 1997 1 CAT MAT 513 has reviewed all the case law. The learned counsel for the respondents states that in that O.A. the applicant was a Railway employee and his case was similar to the present case.

10. I have considered the matter. It appears to me that the record produced by the applicant is authentic but the applicant cannot succeed on the ground of limitation and this position was summarised by the Tribunal in the case of Bhikhalal Jethalal Rawadka V/s. Union of India in para 24 of the judgement is as under:

" it therefore, appears to me that although as a matter of fact the appkicant may have a good case, viz, that his correct date of birth is as recorded in Municipal Birth Certificate rather than as recorded in Secondary School Certificate, the date of birth recorded in service record based on the date of birth in SSC certificate has become final and he cannot cross the bar of limitation which is the ratio of Supreme Court decision in Harnam Singh."

11. The learned counsel for the applicant has relied on the judgement in the case of Nivarti Ranoo Gaikwad V/s. Union of India. The learned counsel for the respondents has pointed out that that case was decided on the ground that the applicant had applied within the statutory limitation period. I have perused the judgement. That judgement does not help the case of the applicant. In the circumstances O.A. has no merit. Accordingly O.A. is dismissed with no order as to costs.

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M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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