

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:540/99

DATE OF DECISION: 23rd March 2000

Shri Gopal Ramprasad Trivedi Applicant.

Shri C.M. Jha Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S. Masurkar Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to ~~to~~ other Benches of the Tribunal?

(3) Library. yes

S.L. Jain
(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:540/99

the 23rd day of MARCH 2000

CORAM: Hon'ble Shri S.L.Jain, Member(J)

Gopal Ramprasad Trivedi
Residing at
Ms/R/B/I/III/4
New Colony,
Central Railway,
Kurla (E), Mumbai.

...Applicant.

By Advocate Shri C.M.Jha.

v/s

1. Union of India through
General Manager Central
C.S.T.
2. Divisional Railway Manager (P)
(Engn.) Central Railway,
CST.
3. Inspector of work (M) PR
Central Railway, Parel.
...Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985, seeking a direction to the respondents to consider the evidence produced by the applicant and rectify the date of birth of the applicant. After the rectification the applicant be reinstated in service with back wages and with all consequential relief thereof and quash and set aside, the premature retirement of the applicant and accountability be fixed upon the erroneous employee.

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2. The applicant was appointed as Artisan class II services on 4.12.1960 on Central Railway and was posted to work under IOW Kalyan. At the time of appointment, the applicant had submitted his School leaving Certificate wherein his date of birth is shown as 4.6.1942. The applicant ought to have attained superannuation on 30.6.2000 at the age of 58 years as per old rules of retirement ~~and~~ after the implementation of Vth Pay Commission his date of retirement enhanced to 30.6.2002. On 13.5.1995 when he was working as Sub-Overseer (Maintenance) Grade I, respondent No.3 informed him vide letter No. PR/Staff/No/1/XX that he was due to retire from service with effect from 30.6.1995. The applicant immediately made a representation to respondent No.2 stating that his correct date of birth is 4.6.1942 as per School records alongwith copy of the School leaving certificate issued by Headmaster,Upper Igatpuri, "Male No.1, District Nasik, wherein it is stated that the applicant had studied in the said institution and submitted the same which was also submitted at the time of appointment. L.I.C policy against proposal No. 6063, 6064961 on 7.1.1968 on which he has also disclosed the same date of birth. Due to some clerical error his date of birth might have been wrongly recorded. He was not informed before six months of retirement. Thus this retirement is premature one. His representation was forwarded but no review was made. He further represented the matter on 24.4.1996, 13.4.1997, 25.4.1997, 3.7.1997, 30.7.1998 and 6.8.1998 vide Exhibit 'G' to 'L' respectively. The Hon'ble State Minister of Railways responded and informed him vide letter dated 26.8.1998 that he is looking into the matter vide Exhibit 'M'. Officer on Special Duty to Minister of State Railways informed in his letter dated

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11.8.1998 that his case was examined by the Railway and replied on 3.7.1998 Exhibit A-2 which was not received by him. Hence this OA for the above said relief.

3. The respondents have resisted the claim of the applicant and stated that the applicant has retired on superannuation with effect from 30.6.1995, the OA is filed in April 1999 to correct date of birth, after his retirement, as such the application is ~~delay and~~ not only barred by time but also suffers from latches. The date of birth recorded in the service record is 1.7.1937, at the time of appointment of the Applicant in the employment of the respondents. If 4.6.1942 is taken as date of birth of the applicant, then at the time of appointment his age comes to 16 years and 10 months. As such he was not entitled for appointment and thus the applicant who is benefited by giving wrong date of birth on his own and enjoyed all the benefits cannot turn to re-agitate about his date of birth. The applicant has been paid all the legal entitled settlement dues. The service record is signed by him which shows the date of birth is 1.7.1937. The applicant is making the grievance after three decades. The Railway board had given option to submit the claims alongwith documents for the change of date of birth prior to 31.7.1993. The applicant failed to apply for the same. Hence his request cannot be considered at a belated stage. The retirement age in the year was 58 years. Hence the applicant is not entitled to take advantage of 5th Pay Commission report. Hence prayed for dismissal of the OA alongwith costs.

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4. The date of retirement of the applicant is 30.6.1995. The OA has been filed on 26.4.1999. It ought to have been filed within one year of the receipt of notice of retirement i.e. 13.5.1996 as the cause of action accrues on the same date. There is no provision to the effect that regarding such notice a representation in view of some service law is available as to redressal of the grievance. Hence the period spent by the applicant by representing the matter by one after the another representation is of no avail.

5. The notice of retirement gives cause of action to the applicant. Hence when once period of limitation commence to run it cannot be said that any representation or reply to the same, which is not in accordance with Section 20(1) the Administrative Tribunals Act 1985 extends the period of limitation.

6. The respondents have submitted the service records of the applicant which is kept in the ordinary course of business and on perusal of the same I find that the date of birth is 1.7.1937. The service record shows the thumb impression of the applicant. As the applicant claims to be 6th standard passed for which there cannot be any dispute. Not only this the applicant has also shown the same date of birth i.e. 1.7.1937 to the Central Railway Employees Co-operative Society, 65-A, N.M. Joshi Marg., Byculla, Bombay, which is borne out by letter of the said Society dated 14.6.1995 (Exhibit R III) (page 52 of the OA.)

7. It is true that the applicant has filed a certificate from the School concerned and the identity card issued in recent past which shows the date of birth as 4.6.1942. In LIC policy he has given the same date of birth. Thus this is a case where the applicant was claiming two different dates for different purposes.

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8. The learned counsel for the applicant relied on 1979 AISLJ 660 Shri Surendra Singh v/s Divisional Engineer, Telegraphs, Allahabad and another which laid down the proposition as under:

We do not consider it necessary to remand the matter to the respondents for reconsidering the matter as in the next two months period the petitioner is to retire from service even on the basis of his date of birth mentioned in the High School Examination certificate. The opposite parties have failed to place any material before the court to doubt the authenticity of the date as mentioned in the aforesaid certificate and they have further failed to show any valid reason for rejecting the petitioner's claim. The petitioner has during the pendency of the writ petition continued in service under interim order of the court. In view of these special facts and circumstances of this case, we do not consider it expedient to direct the opposite parties to re-determine the issue as it would further delay the matter. We, therefore, hold that the petitioner is entitled to continue in service and to receive benefits of service on the basis of his date of birth as mentioned in his High School certificate and we further direct the respondents to act accordingly.

It is suffice to state that the said proposition of law was laid down on 3.7.1979. It is in respect of Telegraphs department while the applicant is a Railway employee.

S.C. Sankar

9. The learned counsel for the applicant relied on (1987) 3 ATC 639 Vinayak Ram Chandra V/s Union of India and others which laid down as under:

Where the facts show that the employee was given reasonable and adequate opportunity to represent his case before the authorities and get the date corrected, the principles of natural justice have been complied with. The decision to correct the date of birth in such circumstances does not call for any interference. But when the authorities fail to apply their mind objectively to the documents and other evidence in support of such claim even the notice for retirement given to the employee is not sustainable in law.

10. Thus the said authority laid down two different proposition of law. In the present case as stated above the Railway Board afforded an opportunity to the applicant, long back in the year 1973 to correct the date of birth. The applicant failed to apply for the same. In such circumstances it can be held that the applicant was given opportunity to represent his case before the authority and get the date of birth corrected. Thus principles of natural justice have been complied with. Thereby the date birth given at the time of appointment which continued till 1995 does not call for any interference.

11. Hence the said proposition of law laid down by the said authority even applied does not help the applicant for the reason that the applicant failed to avail the remedy provided by law. Not only this, the applicant also gave the date of birth as 1.7.1937 before the Central Railway Employees Co-operative

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Society. This fact cannot be ignored that while giving a wrong date of birth the applicant also benefited as before completion of 18 years he was appointed. Hence the applicant is estopped to challenge the same.

12. In (1987) 3 ATC 639 Vinayak Ram Chandra V/s Union of India and others, (1982) 3 SLR 776 Shri S.S.Shanbhu V/s Union of India and others, AIR 1977 SCC 1980 R.S.Kallolimath V/s State of Mysore and another were also referred. It is true that in case of R.S. Kallolimath V/s State of Mysore it is laid down by the Apex Court that in view of memorandum dated 14.8.1958, the applicant who was granted extension of service, act of respondents in retracing it, is stated that it was not in accordance with law. The said memorandum is not a subject matter before us.

13. In the case of Shri S.S.Shanbhu it has been held that at any time the defective date of birth in the record has to be corrected, it should be made at the time of entry in service or shortly afterwards and not at the time when the person concerned is about to retire. Thus the said case laid down the proposition that at the time of retirement the said change need not be made. The said case in my considered opinion would not help the applicant. The fact that the applicant was unaware or came to know of the incorrect date of birth of 1.7.1937 at the time of retirement cannot be believed at all.

14. The learned counsel for the applicant relied on 1999(2) ATJ 521 Malook Chand V/s State of Punjab and argued that the applicant must have offered an opportunity to prove his contention and the respondents must have recorded the finding

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there to and acted accordingly. On perusal of the said authority I find that principle of natural justice are laid down in the said authority and on perusal of the facts I find that the recorded date of birth was changed without affording an opportunity to the employee and in that situation the said principle was ordered to be observed. The facts of the present case are entirely different. Hence this authority does not help the applicant at all.

15. The learned counsel for the applicant relied on 1971 SLR 14 State of Assam and Anr. V/s Daksha Prasad Deka and Ors. which laid down the proposition that opportunity to prove true date of birth must be afforded. It was based on principle of natural justice.

16. The learned counsel for the applicant relied on (1987) 3 ATC 130 Hira Lal V/s Union of India and others decided by CAT, Principle Bench, New Delhi on 9.12.1986 which laid down the proposition that in the absence of any rule to the contrary, a Government servant cannot be precluded from showing that entry made in service record is wrong. The General Financial Rules, 1963, Rule 79(2) not a bar to such correction. This case is in respect of Government employee and not a Railway employee. Further the said proposition apply in the absence of any rule to the contrary. In case of Railway employee the circular of 1973 is a circular which is applicable and hence the said decision even on question of law cannot apply in the present case.

17. The learned counsel for the applicant relied on (1990) 14 ATC 15 Ram Briksha Gupta V/s Union of India and others decided by Allahabad Bench which laid down the proposition that Administrative instructions cannot take away government

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employee's right to get the entry altered, though statutory rules can be framed in this regard. The said case is of an employee of Field Gun Factory. Hence this case also does not help the applicant.

18. The learned counsel for the respondents relied on AIR 1995 SC 1349 Union of India and others V/s Kantilal Hematram Pandya which laid down the proposition that failure of employee to mention alleged correct date of birth in absence of declaration of date of birth while filing provident fund withdrawl. The representation for correction made three decades after joining service and unexplained and inordinate delay in filing application, the applicant will not be entitled to any relief. In the said case 1993 AIR SCW 1241 Union of India V/s Harnam Singh was followed and the proposition of law laid down in the said case was relied. On perusal it is clear that in case if there is any period of limitation prescribed in seeking for correction of date of birth, the government employee must do so without any delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the Courts and Tribunals. The law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

19. In the result, in my considered opinion, the application is barred by limitation, suffers from delay and latches and is devoid of merits and is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.Jain
(S.L.Jain)
Member(J)