

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 581/2000

Date of Decision : 28th September 2001

K.C.Kasabe _____ Applicant

Shri D.V.Gangal _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri R.R.Shetty _____ Advocate for the
Respondents

CORAM :

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

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library Yes

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

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Registry to issue notices
to the day after the S. Cess
of Date

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.581/2000

Dated this the 28th day of September 2001.

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

Kamalakar Chimanaji Kasabe,
Deputy Station Manager,
Central Railway,
Bhusawal.

...Applicant

By Advocate Shri D.V.Gangal

vs.

1. The Union of India
through the General Manager,
Central Railway HQs Office,
Mumbai CST, Mumbai.

2. The Chief Personnel Officer,
Central Railway HQs. Office,
Mumbai CST, Mumbai.

3. The Divisional Railway
Manager, Central Railway,
Bhusawal Division,
Bhusawal, Dist. Jalgaon.

...Respondents

By Advocate Shri R.R.Shetty

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 for the declaration that the recorded date of birth in the service record 24.8.1942 is legal and valid and order dated 15.5.1998 and the date of birth 24.8.1940 is illegal and be quashed, the non decision of date of

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birth of the applicant by the General Manager/Chief Personnel Officer is illegal, the applicant shall superannuate on 31.8.2002 and not on 31.8.2000, the applicant has right to be in service till 31.8.2002 and not upto 31.8.2000. In substance, the prayer of the applicant is that his date of birth is 24.8.1942, accordingly, he has right to continue in service upto 31.8.2002 and order passed by the respondents dated 15.5.1998 is illegal and deserves to be quashed.

2. The applicant was appointed as Probationary Assistant Station Master on 15.8.1963. The date of birth recorded was 24.8.1940. The father of the applicant Shri Chintamani Pandurang Kasabe was pursuing with the Government of M.P. for correcting the date of birth of the applicant, Orders of the Government of M.P. were passed correcting the date of birth of the applicant as 24.8.1942 on 20.4.1967. The applicant along with his father approached the respondents in Bhusawal and handed over the original letter of Government of M.P. dated 20.4.1967. The applicant submitted the representation stating that the recorded date of birth is 24.8.1942 and not 24.8.1940. The Respondent No.2 passed the impugned order dated 13.5.1998 stating that his request to change the date of birth is not acceptable.

3. It is alleged that the Divisional Railway Manager (P) Bhusawal directed Personnel Inspector to verify the authenticity of the certificate of the Government of M.P. dated 20.4.1967 and the said Personnel Inspector found that the certificate is genuine and authentic. The service record of the applicant is corrected showing the date of birth as 24.8.1942.

4. The applicant has challenged the order dated 13.5.1998 (Annexure-'A-1') on the ground that his recorded date of birth is 24.8.1942, the Railway Administration after having verified the authenticity of the certificate thereof, the entries made in the Register showing 24.8.1942 as the date of birth of the applicant. There was no reason for the Railway Administration to reject his accepted request in 1998 while the recorded date of birth is 24.8.1942 which deserves to be accepted. In view of the Rules for change of date of birth (Annexure-'A-5'), it is General Manager who is competent to pass the orders in this respect. The applicant submitted the representation dated 18.6.1998, 12.12.1998, 16.8.1999 and 1.7.2000 (Annexures-'A-2' to 'A-6'). The said letters were not replied by the respondents. The date of birth has to be determined by the State Government and not by the Railway Administration. As such, the Railway Administration has no right to disagree with the decision of the State Government. Before the Railway Administration disagree to record a particular date of birth requested by the applicant, a notice ought to have been given to the applicant. He came to know for the first time about his date of birth being recorded as 24.8.1940 only in the year 1998 in the seniority list of 1991 as the said seniority list was not circulated to the applicant till 1998. Hence, this OA.

5. The respondents have resisted the claim of the applicant on the ground of suppression of fact, OA. being barred by time.

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6. The applicant is guilty of suppression of fact for the reason that he has moved the respondents for change of his recorded date of birth, i.e. 24.8.1940 to 24.8.1942 on the basis of the said letter of Assistant Secretary to Government of Madhya Pradesh dated 20.4.1967 and the said question was decided by the respondents on 26.3.1974 vide Annexure-'R-1'. The respondents have placed the copy of the said decision on record. Perusal of the same makes it clear that the matter which the applicant wants to challenge now was agitated by him and the said matter was decided by the respondents vide order dated 26.3.1974 (Annexure-'R-1').

7. The learned counsel for the applicant submitted that the said decision is by CC(P) Personnel Branch which was not competent to decide the said matter. He has relied on Annexure 'A-5' and argued that it is the General Manager or CPOs if power is delegated to him is competent to decide the matter, while the matter was decided by CC(P) Personnel Branch. Even if the applicant's counsel's argument is accepted, it was for the applicant to challenge the said order dated 16.3.1974 within the period of prescribed limitation. A void order ought to be challenged within the period of limitation. The applicant failed to challenge the said order within the prescribed period of limitation and hence he is not entitled now to challenge the said order after a lapse of 26 years.

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8. On perusal of order dated 13.5.1998 (Annexure-'A-1'), it is mentioned that the request of the applicant for change of date of birth was rejected on 26.3.1974, 4.4.1975 and 19.11.1996 and even the further request in this respect in view of representation dated 6.1.1998 is also rejected. It is suffice to state that such an order does not give a fresh cause of action to the applicant.

9. As stated above, the applicant joined the service on 15.8.1963, he ought to have applied for change of date of birth latest by 31.7.1973. After the said date, no request for alteration in the recorded date of birth can be entertained in view of Circular No. E(NG)/2/17/VRI dated 4.8.1972. It appears that in view of the said Circular, the applicant applied for the change of date of birth and his claim was negatived by order dated 26.3.1974 (Annexure-'R-1').

10. Regarding date of birth, it is suffice to state that though father of the applicant may be and is a person having personal knowledge of the same, the date of birth was corrected by the State Government of M.P. but it is not the correct date of birth which is in dispute but as the applicant who himself has got recorded the date of birth to be 24.8.1940 while entering in service, he made an unsuccessful attempt to change the date of birth, after passing the order by the Respondents (Annexure-'R-1'), he failed to pursue the matter in accordance with law. The delay and laches on the part of the applicant dis-entitles him to challenge the said decision at the fag end of his service career, which has become barred by time.

11. The learned counsel for the applicant brought to the notice of the Bench that the written statement filed by Shri A.K. Dayama, Divisional Personnel Officer, Central Railway, Bhusawal in para 1 stated that "upon a perusal of the Service Book it would be crystal clear to the Hon'ble Tribunal that the applicant has in fact sought to be surreptitiously and fraudulently seek to change the date of birth from 24.8.1940 to 24.8.1942 as can be seen from a perusal of the Service Book. This fraud was sought to be perpetuated by the applicant for his own personal benefit." It is further stated that "whenever a change is made in the Service Book of an employee the specific order passed by the Competent Authority including the date and reference No. thereof is clearly recorded on the Service Book. There is no such record on the Service Book where the alteration is sought to have been done. From a perusal of the alteration which is sought to be done it would be crystal clear to this Tribunal that the fraud has been sought to be perpetrated by the applicant on the Respondents."

12. The applicant has also filed the rejoinder in which it is alleged that the allegation of the respondents that "the applicant has in fact, sought to surreptitiously and fraudulently seek to change the date of birth from 24.8.1940 to 24.8.1942" is a news to the applicant for the first time on 25.9.2000. The fraud is said to have been committed in the year after 1967-68, the respondents failed to establish the said fraud. No action is taken by the respondents either by lodging the First Information

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Report under Section 154 of the Cr.P.C. or proceeding departmentally against the applicant. The said points are again

13. The said points are again reiterated by the applicant in his application M.P.No.857/2000 with a prayer to direct the Registrar of this Tribunal to file a Criminal case in the appropriate Metropolitan Court in Mumbai for making false statement/evidence documents in the form of written statement dated 25.9.2000 in the above original application for offences punishable under Section 191, 192 read with Section 193 of IPC for necessary action by the Metropolitan Magistrate. It is argued by the counsel for the applicant that even in reply to the said M.P., Shri A.K. Dayama has reiterated the same fact.

14. Keeping in view the fact that the allegations levelled by the respondents, apparently are not established, I am of the opinion that it is expedient in the interest of justice that an enquiry should be made to an offence referred to in Clause (b) of Sub Section (1) of Section 195 which appears to have been committed in or in relation to a proceeding before the Bench, i.e. Court, it is observed that A.K.Dayama be issued with a notice to show cause why proceedings under Section 195 of IPC should not be instituted against him. The notice be issued and he be asked to appear in person on the next date in compliance thereof for further proceedings.

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15. In the result, I do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

PLJ
(S.L.JAIN)
MEMBER (J)

mrj.