

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 28TH DAY OF JULY 1980

BEFORE

THE HON'BLE MR. JUSTICE V.S.MALIMATH

WRIT PETITION NO.3527/1979

I.A.II FOR VACATING THE STAY

1. K.Basavaraju.

..Petitioner.

(M/s. Grenko Advocates)

-Versus-

1. Divisional Accounts Officer, D.A.O's Office,  
Souther Railways, Mysore. 2. Financial Adviser &  
Chief Accounts Office, Southern Railways, Madras.  
3. The Director of Public Instruction,  
New Bakhix Public Office, Bangalore.

.Respondents.

(By Sri. G. Dayananda for R-1,2)

WHEREAS a writ Petition filed by the above named  
Petitioner under Article 226 of the Constitution of  
India, has been registered by this Court.

Read ~~XXXXXX~~ the interim order dated 12-4-79X.

Read I.A.II filed on 24-7-80 by the Advocate  
for the Respondents for R-1 and 2, to vacate the stay.

After hearing, the court passes the following:-

ORDER.

The Interim Order granted by this Court be and  
is hereby vacated.

Issued under my hand and the seal of this Court,  
this the 28th day of July 1980.

By Order of the Court,

As Registrar.

sak.Copies. 5.  
Dt. 28-7-1980.  
Time. 3.30.p.m.



CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Commercial Complex(BDA)  
Indira Nagar,  
Bangalore-560038

Dated the September '86

Application No 172/86(T)  
(W.P. No 3587/79 )

Shri K.Basavaraju

... Applicant

Versus

1. The Divisional Accounts Officer,  
D.A.O's Office, Southern Railways,  
MYSORE
2. Financial Adviser and Chief Accounts  
Office, Southern Railways, MADRAS.
3. The Director of Public Instruction,  
New Public Office, BANGALORE.

... Respondents

A copy of the Judgement delivered on <sup>25.8.86</sup> by Hon'ble  
Shri Ch.Ramakrishna Rao, Member (Judicial) on behalf of the  
Bench consisting of himself and Hon'ble Shri L.H.A.Rego,  
Member (Administrative) is forwarded herewith.

SECTION OFFICER  
(JUDICIAL)

To

1. Shri K.Basavaraju, Advocate for  
C/o M/S Grenko, Garudachar Building, Applicant.  
Avenue Road, Bangalore 560053
2. Shri A.N.Venugopal Advocate for  
C/O Shri N.S.Srinivasan, Respondents.  
R.No.12, 2nd Floor,  
S.S.B. Mutt Building,  
Tank Bund Road, B'lore-560009



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

APPLICATION NO.172 OF 1986(T)  
(W.P.No.3587/1979)

DATE OF DECISION: 25.08.1986

C O R A M

The Hon'ble Shri Ch.Ramakrishna Rao, Member (Judicial)

The Hon'ble Shri L.H.A.Rego, Member (Administrative)

...

Shri K.Basavaraju

... Applicant.

Versus

1. The Divisional Accounts  
Officer, D.A.O's Office,  
Southern Railways,  
Mysore.

2. Financial Adviser & Chief  
Accounts Office,  
Southern Railways,  
Madras.

3. The Director of  
Public Instruction,  
New Public Office,  
Bangalore.

Respondents.

Shri L.S.Chikkanna Gowda

: Advocate for applicant.

Shri A.N.Venugopal

: Advocate for respondents.

...

JUDGMENT

DELIVERED BY SHRI Ch. RAMAKRISHNA RAO, MEMBER(JUDICIAL)

The prayer, in the main, of the applicant in the writ petition, initially filed by him in the High Court of Karnataka and later transferred to this Bench of the Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985, is that he be retained by the authorities of the Southern Railway impleaded as respondents 1 and 2 until he attained the age of superannuation on 31-3-1981 according to his correct date of birth (DOB in short) and not to superannuate him earlier on 31-3-1979 on the basis of the DOB entered erroneously in his service records. The facts giving rise to the application are, briefly, as follows:

The applicant joined service as a First Division Clerk in the office of the <sup>1st</sup> respondent ~~no. 1~~ and at the time of joining services he inadvertently gave his DOB as 17-3-1921 instead of 17-3-1923, which was his correct DOB. In 1978 this was noticed by him and he immediately took steps to get the mistake rectified by filing a suit, ~~Mx~~ O.S.No.541/1978 on the file of the First Munsiff, Mysore, in which he sought ~~for~~ a declaration that his DOB was 17-3-1923. This suit was decreed and the Court directed the defendant <sup>1st</sup> i.e. the Deputy Commissioner of Mysore (DC in short) to take steps for correcting the DOB as 17-3-1923 in the School Register relating to the applicant. The Southern Railway, i.e. the first and <sup>2nd</sup> second respondents, were not impleaded as defendants ~~in~~ <sup>in</sup> the said suit but on the basis of the decree obtained from the Civil Court, the applicant addressed the Southern Railway i.e. the first respondent



to correct the DOB in his service records. Thereupon, the applicant was asked by the first respondent to produce the School Certificate with the altered DOB as directed by the Court. Thereafter the applicant approached the DC with <sup>a</sup>the request to issue a corrected DOB certificate and the DC, in his turn, addressed <sup>the said</sup> respondent <sup>no. 3</sup> the Director of Public Instructions (DPI), Bangalore to do the needful in the matter of compliance with the directions given by the Civil Court. Despite several reminders ~~the~~ DOB certificate corrected by the DPI was not issued to the applicant. Meanwhile, <sup>the said</sup> respondent ~~no. 1~~ issued O.O.No.73 dated 22-3-1979 terminating the services of the applicant with effect from 31-3-1979 (<sup>AN</sup>a.n.) due to superannuation at the age of 58, <sup>years</sup>which is under challenge in this application.

2. Shri L.S. Chikkanna Gowda, learned counsel for the applicant submits that his client took the pains to approach the competent Civil Court and obtained a decree against the DC, who in his turn directed the DPI to issue a corrected DOB certificate to his client but despite several reminders <sup>no</sup> action was taken by the DPI nor did the DC ensure compliance with the <sup>above</sup>decree of the Civil Court. In our view, the remedy of the applicant lay in filing an execution petition against the defendant <sup>at</sup>and getting the decree executed in the manner provided in the Code of Civil Procedure, which he does not seem to have done. This not having been done, the grievance of the applicant <sup>seems</sup>is more of imaginary than real.

3. Shri Chikkanna Gowda next submits that the

attention of the <sup>first</sup> respondent no. 4 was drawn to the decree of the Civil Court, ~~and~~ who called upon his client to produce the DOB certificate duly corrected without himself effecting the change of the DOB in the Service Records, which they were bound to do.

4. Shri A.N. Venugopal, learned counsel for the respondents submits that the Southern Railway, <sup>viz to first</sup> and <sup>the second</sup> respondents 1 and 2 in this application, were not impleaded as defendants in the suit filed by the applicant, wherein he obtained a decree regarding his correct DOB; that the said decree is binding only on the DC who was the defendant <sup>a</sup> ~~and the decree was therefore binding only on the DC and his subordinate officer the DPI.~~ According to Shri Venugopal, the Railway authorities desisted from taking a stiff posture and called upon the applicant to produce the DOB duly corrected so that the matter could be <sup>ignoring technicalities</sup> examined further <sup>and</sup> even this was not complied with by the applicant.

5. The crucial question for consideration in this case is, whether Southern Railway <sup>above</sup> is bound by the decree of the Civil Court in which they were not impleaded as parties. <sup>For</sup> ~~Before~~ <sup>this</sup> answering ~~that~~ question we should acquaint ourselves with the types of judgments and the effect, if any, they have on persons not parties to the same.

6. There are two types of judgments - judgments in rem and judgments in personam. Taylor in his