

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REGISTERED

Commercial Complex(BDA)
Indira Nagar,
BANGALORE- 560 038.

Dated 26th November 86

Application No. 1750 /86(T)
WP No. 10882/86

Applicant

M.Nachaiah, Enquiry-cum-Preservation Clerk,
Grade-I, Southern Railway, Mysore Division, MYSCRE
(By Sri G.B.Manjunath, Advocate)

..Petitioner

To

1. The Southern Railways, Chief Personnel Officer, HQrs., Office, Personnel Branch, MADRAS-3.
2. The Southern Railways, Divisional Railway Manager, Mysore Division, MYSCRE.
3. The State of Karnataka, Secretary, Education Deptt., Vidhana Soudha, Vidhana Veedhi, Bangalore-1.
4. The Karnataka Secondary Education Examination Board, Secretary, 6th Cross, Malleswaram, BANGALORE-3.
(By Sri A.N.Venugopal for Respondents)
5. Sri A.N.Venugopal
C/O Shri N.S.Srinivasan, Railway Advocate,
High Court of Karnataka Building, Bangalore-1.

Advocate for Respondents.

SUBJECT: Sending copies of Order passed by the Bench in
Application No. 1750/86

....

Please find enclosed herewith the copy of the Order/

Interim Order passed by this Tribunal in the above said Application
No. 1750/86 on 22.10.86.

Encl: as above.


SECTION OFFICER
(JUDICIAL)

P.C.J.

 Copies sent to Journals with order of A.No. 1750/86.

 Copy to F of A.No. 1750/86 R.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH:BANGALORE

DATED THIS THE 22nd DAY OF OCTOBER,1986

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy, ..Vice-Chairman.
And
Hon'ble Mr.L.H.A.Rego, .. Member

APPLICATION NO. 1750 OF 1986.

M.Rachaiah,
S/o late Mari Javaraiah,
Aged about 50 years,
Enquiry-cum-Reservation Clerk,
Grade-I, Soputhern Railway,
Mysore Division, MYSORE. .. Petitioner./
(By Sri G.B.Manjunath, Advocate)

v.

1. The Southern Railways
represented by its Chief
personnel Officer, Head Quarters
Office, Personnel Branch, MADRAS-3.
2. The southern Railways
represented by the Divisional Railway Manager,
Mysore Division, MYSORE.
3. The State of Karnataka
represented by its secretary,
Education Department,
Vidhana Soudha, Vidhana Veedhi,
Bangalore-1.
4. The Karnataka Secondary Education
Examination Board, represented
by its Secretary, 6th Cross,
Malleswaram, BANGALORE-3. .. Respondents
(By Sri A.N.Venugopal for Respondents)

This application coming for preliminary hearing this day,
Vice-Chairman made the following:

ORDER

This case transferred from the Hon'ble High Court
of Karnataka where it was registered as Writ Petition
No.10882 of 1986, has been placed by the Registrar of
this Tribunal before us to examine whether this Tribunal
should take this application its file, issue notice to parties
and then deal with the same in accordance with the provisions
of the Administrative Tribunals Act of 1985 ('the Act')
or not.

2. The applicant who was the petitioner before the HighCourt working in the Southern Railways is an employee of Government of India. When the applicant's claim for rectification of his date of birth from 28-28-8-1928 to 28-6-1936 was not allowed by respondent Nos. land 2 he moved the High Court in Writ Petition No.10882 of 1986 under Article 226 of the Constitution of India challenging their action and seeking for appropriate reliefs. On 27-6-1986 Swami,J. before whom the said Writ Petition was posted for preliminary hearing made the following order:

"Emergent notice returnable in 2 weeks. In the meanwhile the petitioner shall not be retired on the basis that his date of birth is 28-6-1928 and as such the date of superannuation of the petitioner is 30-6-1986. Call on 14-7-1986".

On 5-9-1986 the same learned judge made an order thus:

"Call after 2 weeks in view of the submission made on behalf of the petitioner that he will move the relevant Administrative Tribunal for appropriate relief."

On 1-10-1986 the same learned Judge directed the case to be called on 15-10-1986. But on 16-10-1986 the HighCourt on the administrative side had transferred the said Writ Petition to this Tribunal under Section 29 of the Act and the same has been received by this Tribunal on 6th October 1986.

3. On 18-9-1986 the applicant made an application before this Tribunal for very ^{the} reliefs he had sought in Writ Petition No.10882 of 1986 which we have rejected on 17-10-1986.

4. The

4. The Act came into force from 1-11-1985 from which day Tribunals for the State of Karnataka and other States were also constituted by Government conferring exclusive power over service matters of Government of India. On and from 1-11-1985, the jurisdiction of all Courts in the country over service matters of Government of India was exclusively conferred on the Tribunals constituted and functioning under the Act. In this view the applicant should have approached only this Tribunal for adjudication of his grievance at any rate against respondents Nos.1 and 2 (Vide:Section 28 of the Act).

5. Section 29 of the Act providing for transfer of pending proceedings reads thus:

"29.(1). Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation or society being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

Explanation:



"Explanation: For the purpose of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal" in relation to any local or other authority or corporation or society means the date with effect from which the provisions of sub-section(3) of Section 14 or, as the case maybe, sub-section(3) of Section 15 are applied to such local or other authority or corporation or society.

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the states for which it is established, has or have a State Tribunal or State Tribunals all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation:- For the purpose of this sub-section, "State Tribunal" means a Tribunal established under sub/section (2) of Section 4.

4. Where any suit, appeal or other proceeding stands transferred from any Court or other authority to a Tribunal under Sub-section(1) or 1 sub-section (2),-

(a) the court or other authority shall, as soon as may be after such transfer forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under Section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem it.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section(3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

Under this section only proceedings that were pending before a High Court or any other Civil Court relating to a service matter of Government of India as on the date of Act came into force

and

and a Tribunal was constituted viz., as on 31-10-1985 alone can be transferred to the Tribunals under the Act. We have earlier noticed that what is transferred to this Tribunal was not a proceeding that was pending as on 31-10-1985. This section does not provide for transfer of proceedings filed on and after 1-11-1985 to the Tribunals or empower them to receive on transfer, take them on file and deal them under the Act. When that is so, the Hon'ble HighCourt could not have transferred WritPetition No.10882 of 1986 filed before it on 26-6-1986 to this Tribunal for disposal. We cannot therefore take this application on our file and deal with the same under the Act. If that is so, we have no alternative except to re-transfer the proceedings to the Hon'ble High Court for disposal. We refrain to say as to how the Hon'ble HighCourt should dispose of the re-transferred proceedings.

6. In the light of our above discussion we direct the Registrar of this Tribunal to re-transfer Writ Petition No.10882 of 1986 to the Hon'ble High Court of Karnataka for disposal along with an authenticated copy of this order and also the order made by us in Application No.1709 of 1986 for such action as it deems fit.

S/—
VICE-CHAIRMAN/

S/—
MEMBER(AM)(R)

np/

R. Ch. 26/11/86
SECTION C
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 17TH OCTOBER, 1986

Present: Hon'ble Mr Justice K.S. Puttaswamy Vice-Chairman
Hon'ble Mr L.H.A. Rego Member (AM)

Application No. 1709/86

M. Rachaiah
Enquiry-cum-Reservation Clerk,
Grade I, Southern Railways,
Mysore Dn, Mysore. (Shri G.B. Manjunatha ... Advocate) ...
Vs. Applicant

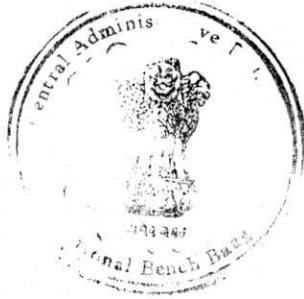
1. The Southern Railways, by its Chief Personnel Officer, Headquarters Office, Personnel Branch, Madras 600 003.
2. The Southern Railways, by its Divisional Railway Manager, Mysore Division, Mysore. (Shri A.N. Venugopal ... Advocate) ... Respondents

The application has come up for hearing before Court today, Vice-Chairman made the following:

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985 (the Act), the applicant has sought for a direction to the respondents to correct his date of birth in his service records from 28.6.1928 to 28.6.1936.

2. The applicant joined service as a Junior Clerk in the Southern Railways of Indian Railways owned by the Union of India. When the applicant entered service, he



gave his date of birth as 28.6.1928 on the basis of school leaving certificate issued by the concerned educational authority, attested the same, which was also accepted and entered in the Service Register made available by Shri A.N.Venugopal, learned Advocate who had suo motu entered appearance for the respondents.

3. On 25.7.1973, the applicant made an application before the General Manager, Southern Railways, Madras (GM) for rectification of his date of birth from 28.6.1928 to 28.6.1936. On 26.6.1974, the Divisional Personnel Officer, Mysore (DPO) to whom the GM referred that application rejected the same. The applicant did not challenge the same in any legal proceeding. But very strangely in 1981, the applicant again moved the Chief Personnel Officer, Madras (CPO) for rectification of his date of birth from 28.6.1928 to 28.6.1936, who, on 21.1.1985 (Annexure C) rejected the same in these words:

"Your request for alteration of recorded date of birth from 28.6.1928 to 28.6.1936 was examined in detail and the following observation are made:

- (i) The last date for receipt of representation from literate employees, was over by 31.7.1973.
- (ii) Your case can however be considered provided you get your date of birth altered as 28.6.1936 in your SSLC book by the Educational authorities concerned.

Sd/-
for Chief Personnel Officer"

On receipt of this endorsement, the applicant had filed Writ Petition No. 10882 of 1986 before the Hon'ble High Court of Karnataka, seeking for a mandamus to the Secondary Education Board, to rectify his date of birth from

28.6.1928 to 28.6.1936, with an interim order which is still pending disposal before that court. The Hon'ble High Court had granted the interim order sought by the applicant. While that writ petition is pending before the Hon'ble High Court of Karnataka, the applicant has moved this application before this Tribunal on 19.8.86.

4. Shri G.B. Manjunatha, learned counsel for the applicant, strenuously contends that the respondents accepting the unimpeachable evidence like the certificate of birth (Annexure D) and the certificate issued by the Chairman of the Group Panchayat of the village Binakanahalli (Annexure B) produced by his client should have altered his date of birth from 28.6.1928 to 28.6.1936, without unnecessarily driving him to get that altered in the SSLC certificate by the educational authorities.

5. Shri Venugopal contends that the application made by the applicant was hopelessly belated and therefore summarily called for rejection and the order made by the CPO does not call for interference. In support of his contention, Shri Venugopal strongly relies on a Full Bench ruling of the Calcutta Bench of the Tribunal in Sengupta Vs Union of India 1986 ATR 177.

6. Rule 145 of the Indian Railway Establishment Code (Volume I) regulates the entries of dates of birth and their correction by the employees of the Railways. These Rules did not confer a right on the railway servants to seek for alteration of his date of birth entered in his service register on his joining service but only conferred



power on the named authorities to rectify the same. Rule 146(3) of the Rules which originally made such a provision reads thus:

"The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a gazetted railway servant, and a General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered"

But in 1971, the Railway Board effected an amendment somewhat on the lines of provisions contained in Rule 51(4) of the Fundamental Rules stipulating a period within which an application can be made. Sometime thereafter, the Railway Board issued circular no. PB 178/73 stipulating the very last date before which application should be made by those in service then and that circular in so far as it is material to this case, reads thus:-

"Attention is invited to Advance Correction Slip No. 303 to the Indian Railway Establishment Code, Vol. I forwarded with Railway Board's letter of even number dated 3rd December 1971 which requires that requests for alteration of date of birth should not be entertained after completion of the probation period or three years service whichever is earlier.

2. It has been represented that the above amendment would cause hardship to the railway servants who were already in employment on 3rd December, 1971 and who did not take advantage of the provision of the rule regarding alteration of date of birth as it stood before the above amendment.

3. The Board have, considered the matter and have decided that such employees may be given an opportunity to represent against their recorded date of birth upto 31st July, 1973. Such requests should be examined in terms of the rules as they stood before the amendment.

4. The Board desire that wide publicity should be given to these orders through Railway Gazettes to enable aggrieved staff to ask for rectification of any mistake in their recorded date of birth. No second opportunity will be given after 31st July 1973 and all requests for alteration of date of birth thereafter should be disposed off strictly in accordance with the amendment referred to above.



(This disposes of General Manager, Central Railway's letter No. HPB/302/R dated 10th April, 1972)."

Under this circular which liberally extended the period in this regard for the existing personnel till 31 July 1973, the applicant, presented his application on 22nd July, 1973 which was rejected by the DPO on 26.9.1974 and the applicant allowed the same to become final. When he had allowed the same to become final, it was not open to the applicant to again move in 1981 to seek for that very relief. On this score itself the CPO should have rejected the hopelessly belated application without making any other observations at all. We are of the view that on this short ground we should decline to interfere and reject this application.

8. The applicant joined service on 15-1-1957. Even ignoring the application made on 22-7-1973, the application made in 1981 was after 24 years he joined service. We need hardly say, that was too long a period to make an application for alteration, that too by an educated employee. We are of the view that on this ground, the CPO should have rejected the hopelessly belated application made by the applicant.

9. In dealing with a somewhat similar question, a Division Bench of the High Court of Karnataka consisting of Chandrasekhar CJ and Venkatachala J in Writ Appeal No. 804 of 1981 decided on 26th August, 1982 had ruled thus:

"In Article 51(4) referred to above, it has been stated, inter alia, that a request for change of the date of birth, unless made within a reasonable time from the date of commencement of service, shall not be

considered and that no request made for such correction at about the time of superannuation of an employee shall be entertained. The petitioner entered service in 1941 and it is about 25 years thereafter that he started requesting the authorities for correction of his date of birth in his service register. In these circumstances, the authorities were justified in not acceding to his request for correcting his date of birth. The aforesaid decree obtained by the petitioner against the State Government, was not binding on the Central Government which was not a party to the suit. Hence, we do not see any good ground to interfere with the order of the learned single Judge".

In Sen Gupta's case, a full Bench of the Calcutta Bench had expressed a similar view. We are in respectful agreement with these views. On the ratio of these rulings also, the belated application made by the applicant called for rejection.

10. The observation made by the CPO at para 2 was totally irrelevant and uncalled for and was made without a full and proper examination of all the facts and circumstances and the law bearing on the point. We cannot therefore attach any importance to the same and make a ground for interference where no interference is called for.

11. In the light of our discussion, we hold that this application is liable to be rejected. We, therefore reject this application at the admission stage with no costs to the respondents as they appeared even before we had admitted this application.

SD/-
VICE CHAIRMAN

SD/-
MEMBER (AM) &
D.X.86

/SR/

1 TRUE COPY /

AK Aug 26/1986

SECTION OFFICE
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE