

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY Bench.

O.A.No. 1205/92
T.A.No.

199

DATE OF DECISION 17.12.1993

Shri N.R.Gaikwad.

Applicant(s)

Versus.

Union of India & Ors.

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(N.K.VERMA)
MEMBER (A)

(-)
CHAIRMAN/VICE CHAIRMAN/
Member

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH.

Original Application No.1205/92.

Shri N.R.Gaikwad.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri N.K.Verma, Member(A).

Appearances:-

Applicant by Shri R.K.Jain.
Respondents by Shri P.R.Pai.

Oral Judgment:-

(Per Shri N.K.Verma, Member(A)) Dt. 17.12.1993.

Shri R.K.Jain proxy for Shri S.Husain appears for the applicant. He submitted that the applicant's date of birth was wrongly recorded in the Service Register as 4.9.1932 whereas it should have been 4.9.1940. The applicant came to know about this mistake on 9.2.1962, when he made representation to the Railway authorities to correct his date of birth. Since there was no reply he again sent another representation on 5.7.1970. This application was also not replied. Thereafter, he went on making representations from 1984 onwards till the date of his retirement when he was telegraphically ordered to be retired on 30.9.1990 as his representations were not found acceptable by the Railway authorities. Thereafter, he came to the Tribunal for seeking the said relief of the change of his date of birth on 20.11.1992. Shri Pai on behalf of the respondents made preliminary objection of the limitation in this application. He denied that the applicant had made any representations to the Railways either in 1962 or in 1970. When he was aware that his date of birth was not correctly

N.K.Verma

recorded in the Service Book, he should have pursued the matter before it became time barred. There is no satisfactory explanation why the applications were made for correction in such an ~~expeditious~~ ^{Spanwise} ~~He~~ manner.

In any case, the cause of action arose in September, 1990 whereafter he should have moved the matter before this Tribunal within a period of one year, which he did not do. He quoted several Judgment of the Supreme Court and also of this Tribunal wherein the limitation had been invoked to stop any agitation in this matter before the Tribunal and the Courts of Law. During the arguments the learned counsel for the applicant could not satisfy as to why there was delay in seeking redressal before the appropriate Tribunal in time. He has referred to a DO letter purported to be written from the Member of the Railway Board to the Member of Parliament saying that it is not possible to agree to the alteration in the date of birth of the applicant, this letter is dt. 1.7.92 and he is claiming that the limitation will commence from that date onwards. I am not persuaded to accept that the application can successfully ~~meet~~ meet the limitation. Hence it is time barred and it is rejected on that score. I am also not agreed to admission of this case on merits. The case is therefore dismissed.

N.K.Verma
(N.K.VERMA)
MEMBER (A)

B.

This judgment is set aside by
SIC order dt 30-8-96
in CA 11880/96

171WS/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESOT ROAD, BOMBAY-1

R.P. No. 27 of 1994
in
O.A. No. 1205 of 1992

Nivruti Ranoo Gaikwad ..Applicant

V/s.

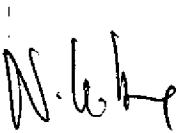
Union of India & Ors. ..Respondents

Coram: Hon. Shri N K Verma, Member (A)

TRIBUNALS ORDER: (By circulation) DATED: 29.4.94
(Per: N.K. Verma, Member(A))

This is a Review Petition against the order/judgment dated 17.12.1993 in OA No.1205/92 under which the applicant's application for alteration in the date of birth was rejected both on grounds of limitation as well as on merits. The applicant in the Review Petition has prayed for (1) revising the judgment, (2) set aside the same by a Division Bench as substantial question of law and facts are involved in the case and (3) lastly that the Tribunal be pleased to hear the O.A. in the open court. The applicant has now come up with the same pleadings and averments which had been made by him earlier.

2. There is no new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by him at the time when the order was made and there is no mistake or error apparent on the face of the record. There is no legal support for the prayer for hearing of the Review Petition of a Single bench matter before a Division Bench. The applicant has other remedies




available to him which he may seek, if he so chooses.

3. In view of the above, the Review Petition is rejected.

N.K. Verma
(N.K. Verma)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.

1205/92

Transfer Application No.

Date of Decision 25.2.1997

Nivarti Ranoo Gaikwad

Petitioner/s

Shri H.A.Sawant.

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.R.Shetty.

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri.

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

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1205 of 92.

Tuesday, this the 25th day of February, 1997.

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

Nivarti Ranoo Gaikwad,
Filter House,
Railway Quarters,
Manmad. ... Applicant.
(By Advocate Shri H.A.Sawant)
V/s.

1. The Union of India through the
General Manager, Central Railway,
Bombay V.T.

2. The Divisional Railway Manager,
Central Railway, Bhusawal.

3. The Permanent Way Inspector,
South Central Railway,
Purna.

4. The Inspector of Works,
Central Railway,
Manmad. ... Respondents.
(By Advocate Shri R.R.Shetty).

O R D E R (ORAL)

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

In this O.A. the applicant who retired as Head
Tally Clerk from the office of the Chief Inspector of
Works, Central Railway, Manmad seeks correction of his
date of birth in the Service Record from 4.9.1932 to
4.9.1940. The O.A. was considered by this Tribunal on
17.12.1993 and was dismissed as time barred. The applicant
approached the Supreme Court in SLP in Civil Appeal
No.11880 of 1996 and the Hon'ble Supreme Court allowed
the SLP by their order dt. 30.6.1996 which is reproduced
below :

" Special leave granted.

This appeal is directed against the
judgment of the Central Administrative Tribunal,
Bombay Bench, (hereinafter referred to as
'the Tribunal') dated December 17, 1993 whereby
O.A. No.1205/1992 filed by the appellant has been

dismissed by the Tribunal on the ground of limitation. In the said O.A. the appellant had challenged the order of retirement. The appellant was retired on attaining the age of 58 years on September 30, 1990 on the basis that his date of birth was September 4, 1932. The appellant had, however, represented that his correct date of birth was September 4, 1940 and he had made representation for correction of the same. The case of the appellant further is that he had also submitted a representation against his premature retirement which was rejected in 1992 and a communication of rejection of the same was sent in April, 1992 and the O.A. was filed by him in November, 1992.

Keeping in view that aforesaid facts we are of the view that it was not a fit case in which the Tribunal should have rejected the application filed by the appellant on the ground of limitation and that the Tribunal should have examined the grievance of the appellant on merits. The appeal is, therefore, allowed. The impugned order of the Tribunal is set aside and the matter is remitted to the Tribunal for considering the same on merits. No order as to costs."

Thus, this Tribunal is considering the matter on remand by the Hon'ble Supreme Court with a direction to consider the grievance of the applicant on merits.

2. The Hon'ble Supreme Court had taken note of the detailed reply based on available record sent by a very high official of the Railway viz. Member, Railway Board (at page 12) and the same is reproduced below to enable appreciation of facts :

" Kindly refer to your letter dt. 5th May, 1992 addressed to Chairman, Railway Board regarding alteration in the date of birth of Shri Nivaruti Ranoo Gaikwad, Retd. Head Tally Clerk under CICW Manmad in Bhusaval Division of Central Railway.

The representation of Shri Nivaruti Ranoo Gaikwad forwarded vice your letter referred to above has been gone into and the position is briefly as under.

The party has produced different certificates at different points of time with reference to his date of birth.

Initially, he produced a copy of the Certificate from the Chief Officer, Municipal Council, Purna, certifying that his date of birth is 4.9.1940. When asked to produce a copy of the ~~relevant~~ School Certificate, the party made available a copy of the relevant School Certificate indicating the date of birth as 4.9.1940.

On checking up with School records, it was noted that the date of birth as per School Record is 11.7.1940 and not 4.9.1940. This gave doubts to the certificates already produced by the party.

In view of the discrepancies, it has not been found possible to agree to the alteration in the date of birth. Incidentally, the party has already retired in September, 1990 on reaching the age of superannuation as per the records with the Railway."

It would thus be seen that the Railways rejected the case for change of date of birth on the ground of discrepancies viz. the date of birth as certified by the Municipal Council, Purna is 4.9.1940, the School certificate shows the date as 11.7.1940. Therefore, the Railways appear to doubt the authenticity of both the records and have chosen not to change the date of birth. It is not disputed that the applicant stands retired with reference to recorded date of birth on 30.9.1990.

3. The counsel for the applicant relies on the Judgment of this Tribunal in Hira Lal V/s. Union of India and Ors. (reported at (1987) 3 ATC 130) decided on 9.12.1986 which held that "in the absence of any Rule to the contrary a Government servant cannot be precluded from showing that entry made in the service record is wrong." That was a case relating to an employee in President's Secretariat and not a Railway employee. Next he relies on Champat Singh V/s. Union of India & Ors. (reported at 1986 ATC 75) in which it was held that "although there was a delay on the part of the employee seeking correction of date of birth in accordance with the entry in the School Leaving Certificate, the respondents had failed in their duty of obtaining of the Service Book and therefore the delay in making the claim was not held to be a bar in granting the relief. The applicant next relies on the Full Bench

Judgment in Mallela Sreerama Murthy and Another V/s. Union of India & Ors. decided on 17.3.1989 which is a case of a Railway employee. In this case, the last date for making application for change of date of birth was 3.12.1971 which was ^{modified} by means of a Circular up to 31.7.1973. The Tribunal held that Railway Board could not take away the right of those in service by fixing arbitrary ^{dates}.

4. The counsel for the Respondents, however, would argue that all these Judgments of the various Benches of the Tribunal including the Full Bench Judgment had to be considered to have been over-ruled by the latest Judgment of the Supreme Court in Union of India v/s. Harnam Singh (reported at 1993 (2) ATJ 628). That was a Judgment which related specifically to the change of date of birth of a Central Government employee and in particular interpretation of F.R.56(m) Note 5 under which amendment was made in 1979 prescribing limitation of 5 years for claiming alteration in date of birth viz. those who and the amendment was to be applicable to both entered before 1979 and those who entered service after 1979. The applicant had joined service in 1956. The Hon'ble Supreme Court held that in the case of employees who entered service prior to 1979, the Note is to be interpreted in such a manner that they would have a right to make a representation for change of date of birth within 5 years of the said amendment and if they fail to do so, then the employees cannot succeed in their applications for change of date of birth.

5. It may be observed that Harnam Singh's case was not cited either before the Tribunal which decided the case on 17.12.1993 or before the Supreme Court when it remitted the matter back to this Tribunal for a fresh decision on merits.

6. I have to proceed on the basis that any application for change of date of birth has to comply with the binding ratio laid down by the Hon'ble Supreme Court in Harnam Singh's case.

7. On this point, the counsel for the applicant would argue that the Railway Board had issued a Circular on 4.8.1972 extending initial limit from 3.12.1971 to 31.7.1973, this Circular (reproduced at Annexure A-10 of the O.A.) is quoted below :

" Note : The Railway Board have decided that in order to remove the hardship caused by the above amendment to the railway servants who were already in employment on 3.12.1971 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, such employees may be given an opportunity to represent against their recorded date of birth upto 31.7.1973 and such requests should be examined in terms of the rules as they stood before the amendment. The Railway Board have further ordered that no second opportunity shall be given after 31.7.1973 and all requests for alteration of date of birth thereafter should be disposed off strictly in accordance with amended rules."

Thus, I am required to see whether the applicant had represented for change of date of birth prior to the time limit laid down by the Railway Board.

8. The counsel for the applicant contended that the applicant joined service on 4.3.1959 and he made a representation for correction of date of birth for the first time in 1962, this representation is not on record. However, the Railways have admitted that the first representation was received on 5.7.1970. Annexure A-7 shows that an application dt. 5.7.1970 for change of date of birth was sent to the competent authorities on 10.7.1970. It appears to me, therefore that the O.A. cannot be dismissed on the ground of limitation

in terms of Harnam Singh's ratio.

9. The next contention of the counsel for the Respondents, however, is that the inconsistency in the certificates produced by the applicant stands in the way of considering the claim of the applicant, it casts a doubt on the authenticity of any of the certificates. In this connection, I may reproduce below discrepancies noticed by the Railways as shown in the written statement at page 3 :

Copy of the certificate produced by Shri Nivruti Ranu Gaikwad.	Original certificate of Central Railway School, Purna.
Col.No. (4) Date of Birth-4.9.1940	11.7.1940
-do- (5) Class in which 4th Std. studying while ((Marathi leaving school (Old)	2nd Std. (Marathi Old)
-do- (8) Fit	Not fit.
-do- (10) Date & year of leaving the school	29.6.1954 29.11.1952
-do- (12) Date of Application for obtaining School Leaving certificate.	15.9.1954 15.9.1972

10. The counsel for the applicant would contend that although there is a discrepancy as to the month and date there is no discrepancy as to the year viz. 1940 and in the case of discrepancy it was open to the Railways to accept one of the two dates which-ever was considered appropriate by them.

11. In order to settle the matter, I refer to Railway Establishment Code Vol.I Rule 225 relating to date of birth. In Rule 225(4) it is stated as below :

"(i) Where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or

(ii) Where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or

(iii) Where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended.

(a) when a candidate declares his date of birth he should produce documentary evidence such as a Matriculation certificate or a Municipal birth certificate. If he is not able to produce such an evidence he should be asked to produce any other authenticated documentary evidence to the satisfaction of the appointing authority. Such authenticated documentary evidence could be the School Leaving Certificate, a Baptismal Certificate in original or some other reliable document. Horoscope should not be accepted as an evidence in support of the declaration of age."

From what is reproduced above, it is clear that the Railways are required to rely on documentary evidence on the nature of interpretation of school or Municipal Council. In the present case, the applicant has produced two certificates one from the Municipal Council and the other from the Central Railway School. Now the school in question happens to be Central Railway School and the authenticity of the record of the Central Railway School cannot be doubted because that being a Railway Establishment it is to be assumed that the record is maintained in due course in terms of Evidence Act. From this record it is seen that the applicant had attended 2nd Standard Old Marathi when the school leaving certificate was issued and that the date of birth as per the Central Railway School Record is 11.7.1940. The old Rule 145(2)(a) quoted in Mallela Sreeram's case which though not form part of new Rule 225 can be used as a guideline for that "When the year or year and month of birth are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth." In this particular case, fortunately it is not required to resort to that guideline because

the date of birth is shown in the record of the Central Railway School as 11.7.1940. I, therefore, do not see as to why the Railways should not have seen their way in accepting 11.7.1940 as the correct date of birth and proceeded to dispose of the case as per Rules which I have quoted above. The counsel for the applicant also points out that the date of birth as recorded viz. 4.7.1932 is *prima facie* implausible because on that day if he had been recruited he would have been over aged, but on the other hand if the date of birth is 11.7.1932 he would have been within age.

12. The counsel for the Respondents would submit that being an SC candidate there was relaxation in age at the stage of Recruitment. It is difficult to accept this contention because the counsel for the respondents is required to produce the Rules as obtaining in 1959 when the applicant was recruited and not the Rules as obtaining at this time. In any case, this is not a point which is conclusive, it being mentioned only as a supporting circumstance.

13. I am therefore, of the view that the respondents were wrong in rejecting the request of the applicant for change of date of birth as recorded to a date of birth in 1940 particularly 11.7.1940.

14. The next question is whether I should issue a direction to the respondents to consider the case afresh in the light of this Judgment or whether I should issue a specific direction to the Railways to make a change. Considering the history of the case viz. it was initially dismissed on limitation and the applicant had thereafter approached the Supreme Court and the matter has come back to this Tribunal on remand from the Supreme Court, I consider that it would be in the interest of justice to

dispose of the matter by issue of a direction to the respondents, to carry out the change in the date of birth.

15. The further question is whether the applicant would be entitled to back wages in case on the basis of change of date of birth he is directed to be reinstated, since it is not in dispute that he would retire only on 31.7.1998 in view of changed date of birth. The counsel for respondents would argue that since the applicant had not actually worked, back wages should be denied to him on the principle of no work no pay. I am not prepared to accept this contention because normally this Tribunal is more reluctant to grant any interim relief in the matter of cases of change of date of birth and thereby to postpone the date of retirement. The intention is that the balance of convenience lies in favour of the applicant getting the relief as and when the relief relating to the change of date of birth is granted. There are ample authorities on this point. In view of this the applicant is entitled to the relief of reinstatement along with back wages. In the circumstances, however, I am not inclined to grant any relief of interest on back wages. But any pensionary benefits, already released to applicant are required to be adjusted against the back wages that may be released to him.

16. I, therefore, dispose of the O.A. by passing the following order.

O R D E R

1. The O.A. is allowed.
2. The Respondents are directed to change the date of birth in the service record of the applicant from the one recorded to 11.7.40 within a month of communication of this order.
3. The Respondents are also directed to reinstate the applicant in service within a month of communication of the order.

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4. The Respondents are further directed to make payment of the back wages to the applicant after adjustment of pensionary benefits within three months from the date of reinstatement.
5. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
REVIEW PETITION NO. 42/97 IN O.A.1205/92

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Union of India & Ors.

.. Review Petitioner
(Original Respondents)

-versus-

N.R.Gaikwad

.. Respondent in Review
Petition
(Original Applicant)

Tribunal's order on Review
Petition by circulation

Date: 6-5-1997

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

In this Review Petition the review petitioner/original respondents have prayed for review of the judgment of this Tribunal dt. 25-2-97 by which the respondents were directed to change the date of birth in the service record, to reinstate the applicant and to make the payment of backwages.

2. According to review petitioner there are several errors apparent on the face of the record which necessitate a review of the judgment. On scrutiny these errors appear to pertain to issues which were already considered and decided by this Tribunal. So far as the question of delay and laches is concerned, this Tribunal held that the same cannot be re-opened in view of the direction of the Hon'ble Supreme Court to dispose of the OA on merits. So far as the various arguments relating to nature of documents is concerned, the same have been considered in my judgment. Thirdly the prayer that the backwages should not be paid for the period for which the applicant did not actually work has also been

May

considered by the Tribunal.

3. I am, therefore, of the view that the review petition is not sustainable in terms of Rules under Order 47 of the CPC and the same is liable to be dismissed. I accordingly dismiss the same by circulation as provided ~~in~~ the rules.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

M

dated 6/5/97
~~order/Judgement despatched~~
to Applica.../Respondent(s)
on 26/5/97

G
27/5/97