

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 651/92

~~Transfer Application~~

DATE OF DECISION 20.1.1993

Shri Umakant Jha Petitioner

Shri E.K.Thomas Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri V.M.Bendre for Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice S.K.Dhaon, Vice Chairman

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Not

Sy
(S.K.Dhaon)
Vice Chairman

NS/

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 651/92

Shri Umakant Jha

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon

Appearance

Shri E.K.Thomas
Advocate
for the Applicant

Shri V.M.Bendre
for Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 20.1.1993

(PER: S.K.Dhaon, Vice Chairman)

The controversy regarding the date of birth of the applicant has come to this Tribunal for the second time. The applicant was recruited as a Lascar in the Indian Air Force on 9.5.1955. At the time of recruitment his date of birth was entered as 2.5.1930. On 7.2.1977, he, for the first time, made a representation that his date of birth had been wrongly recorded. In fact, it was 7.5.1936. His representation was rejected, primarily on the ground that the same was barred by time. He came to this Tribunal by means of OA.No. 199/90. On 23.8.1991 this Tribunal took the view that the bar of limitation will not be applicable to the case of the applicant as the same had been introduced in the Service Rules after the recruitment of the applicant. This Tribunal also made a specific direction that due notice should be taken of the extract of the School Leaving Certificate which had been produced by the applicant showing that his date of birth was 9.5.1936. This Tribunal also observed that if

the applicant satisfies the authority concerned that in fact he was born on 9.5.1936, necessary changes will be effected and will be given the benefit of the same and he will be retired from service keeping in view the fact that he was born on 9.5.1936.

2. Admittedly, the applicant had retired from service.

3. The Enquiry Officer concerned has given a detailed report. He has emphasised that the applicant was given an opportunity to put forward his case. The applicant appeared in person. He has discarded the alleged extract from the school leaving certificate on number of grounds. He has emphasised that, at the time of entry in service, the applicant had given out that he was an illiterate person with no educational background at all. Therefore, instead of appending his signatures against the relevant entries, the applicant has affixed his left thumb impression. A zerox copy of the record at the time of entry of the applicant in service has been shown to me. No doubt all the queries contained in the form are in English yet it is significant that the applicant instead of signing or making his signature in Hindi had affixed his left thumb impression mark against the relevant columns. Even the declaration made by the applicant, as shown in the zerox copy, had not been signed instead we find his thumb impression on the same. However, in reply to paragraph 4.2 of the application given by Shri Nitin Adke, Flight Lieutenant, attached to the Air Force Station, Cotton Green, Bombay, it is averred in paragraph 6 that the applicant had put his signatures in Hindi. If the zerox copy is correct, which should be presumed to be correct, the applicant did not sign in Hindi when he entered service. It is difficult to believe that a person who is capable of signing would not do so and will instead be satisfied by appending his thumb impression.

4. The Enquiry Officer had given cogent reasons for coming to the conclusion that the extract of the School Leaving Certificate filed by the applicant is not worthy of reliance. Learned counsel for the applicant has vehemently urged that it was the duty of the enquiry officer to have probed into the matter further. He has also urged that the enquiry officer should have either gone to the spot to make the enquiry or at any date he should have summoned the Register from the institution concerned. It is to be remembered that under the directions of this Tribunal a duty was cast upon the applicant to satisfy the relevant authority that his date of birth was really 7.5.1936. It follows that the burden of proving the genuineness and the correctness of the extract from the School Leaving Certificate was upon the applicant. Nothing has been shown to me to indicate that the applicant had, at any stage, requested the enquiry officer to summon the original Register of the school concerned. The next contention advanced is that the enquiry officer ignored ^athe very material ²piece of evidence, namely, the certificate alleged to have been issued by the Mukhiya of the village concerned that in the record of the village the date of birth of the applicant had been shown as 9.5.1936. The original certificate issued by the Mukhiya is before me. A true copy of the same has also been filed by the applicant himself. I have perused the same. The Mukhiya had made a reference to some record in the certificate. The proper course for the applicant was to have obtained a certified ³copy of the record on the basis of which the Mukhiya purported to issue a certificate. The certificate of the Mukhiya could not and cannot be treated as conclusive. Rather it is a hearsay evidence. Further more, the Mukhiya should have been asked by the applicant to file an affidavit in support of his certificate.

5. This Tribunal is not sitting as a court of appeal. We are only concerned to find out as to whether justice and fair-play operated in the enquiry proceedings. I find no illegality in the approach of the Enquiry Officer. He may have arrived at an erroneous decision but that cannot be a ground for interference.

6. This application has no force, it is rejected but without any order as to costs.

Sen
(S.K. DHAON)
VICE CHAIRMAN

mrj.