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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1113/93

Transcript of Proceedings:

DATE OF DECISION

16-2-94

Shri Jairaj Arokia Swamy----- Petitioner

Shri C. Nathan-----

Advocate for the Petitioners

Versus

~~Union of India and others.~~-----

Respondent

Shri S.C. Dhawan.-----

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~XXXX~~ Smt. Lakshmi Swaminathan, Member (J)

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 ?

} *yes*

} *NO*

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1113/93

Shri Jairaj Arokia Swamy

... Applicant.

V/s.

Chief Workshop Manager
Central Railway
Carriage & Wagon Workshop
Matunga,
Bombay.

Chief Personnel Officer
Central Railway
Bombay V.T.

Union of India through
General Manager,
Central Railway
Bombay VT.

... Respondents.

CORAM: Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance:

Shri C.Nathan, counsel
for the applicant.

Shri S.C.Dhawan, counsel
for the respondents.

JUDGEMENT

Dated: 16-2-94

¶ Per Smt. Lakshmi Swaminathan, Member (J) ¶

This application has been filed by
Shri Jairaj Arokia Swamy, who is working as Painter,
Grade I in the Paint Shop, Carriage and Wagon Workshop,
Matunga, Bombay claiming that his correct date
of birth is 2.1.1941 as per ^{his} Baptism Certificate
and not 12.2.36, as shown in the letter dated 5.2.93
(Exhibit A) of the O.A. His representations dated
30.1.91 and 24.3.92 for alteration of the recorded
date of birth were rejected by the respondents
vide their letter dated 2.4.93.

2. According to the applicant, he was
recruited as Office Boy on 12.2.1958 as he was
under-aged and was posted to work in the Central
Railway, Carriage and Wagon Workshop, Matunga, Bombay.

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Thereafter he was transferred to Mill Wright Shop and then to Fitting Shop and later on to the Paint Shop as a Khalasi. He states that he has submitted the Baptism Certificate in support of his age to the respondents, copy of which is given at pages 20 and 21 of the application, about 20 days after his recruitment. He states that he is functionally illiterate i.e. incapable of reading and writing in any language. Rule 225(4) of the Indian Railway Establishment Code (Vol.I), Vth Edition 1985 gives the provisions as to how the date of birth as recorded in accordance with these Rules may be altered by the competent authority. The learned counsel for the applicant has submitted that the applicant being in the category of an illiterate employee with the Railways, can submit the representation for change of his date of birth at any time and the question of limitation of three years is not relevant to his case. Further, he also referred to the Railway Ministry's decision given below this Rule that when a candidate declares his date of birth he should produce documentary evidence such as Matriculation certificate or a Municipal birth certificate. If he is not able to produce such evidence, he should be asked to produce any other authenticated documentary evidence which could be a School Leaving Certificate, a Baptismal Certificate in original or some other reliable record to the satisfaction of the appointing authority.

3. The respondents have submitted that this application is not tenable in law for the following reasons. They have referred to the letter written by the applicant in 1957 (Exhibit I) in which he has stated that he was working under the Inspector of Works at Kurla as a Casual Labourer and that he

can read, write and speak English. In the letter addressed to the Works Manager, Central Railway, Matunga in 1958 (Exhibit I, P.2), the applicant states that he has studied upto IV in English and his age is 22 years. In this letter he has desired that he should be taken as Class IV Staff i.e. as Office Boy. According to the respondents the applicant, vide his letter in October 1957, applied for the post of Khalasi to the Works Manager, Central Railway in which he has stated that he can read, write and speak English language.

According to the learned counsel his declared age of 22 years in 1958, would mean that he was born in 1936 and not in 1941 as claimed by him now. Pursuant to this application the applicant had been appointed as Class IV staff on 12.2.58 and was posted in the Carriage and Wagon Workshop, Mantunga. They also contend that the applicant was not under-age at the time of his appointment as alleged. The respondents state that these letters written by the applicant in 1957 and 1958 when read together show that he has given his date of birth as 12.2.36 and the same has been correctly recorded by the respondents in his service records. They have, however, stated that the Service Register of the applicant has been mis-placed and they are not able to produce the same. They have consequently relied upon other contemporaneous documents to support their case. They have produced the original record of leave maintained by the office from 12.2.58 when the applicant joined service, in which the date of birth of the applicant is shown as 12.2.36. This document, as well as other original records produced by the respondents were also shown to the applicant and his counsel ^{but} ~~and~~ they have denied that the signatures in the applications are ~~not~~ those of the applicant.

In the seniority list of the Workshop staff dated 18.10.78 (Ex. III) the applicant is shown in serial No. 252 and his date of birth is given as 12.2.36. They have also pointed out the discrepancy in the age declared in the affidavit dated 15.11.91 given by the applicant as 15.11.1940 (Exhibit IV), whereas he now claims that his date of birth is 2.1.1941 based on the Baptismal Certificate. The learned counsel for the respondents also referred to para 7 of the representation dated 1.10.93 submitted by the applicant in which he has stated that he went to Mysore on 11.9.93 and he was guided by certain neighbours of his father, late Shri Arokia Swamy to locate the Church where he was baptised and could obtain the extract from the register of Baptism. According to the respondents, if in fact the applicant had submitted a copy of the Baptismal Certificate to them in 1958, he would not have to further search the location of the church where he was baptised in order to obtain another copy from the Baptismal Register. Counsel also pointed out that this extract from the Register of Baptism, St. Joseph's Cathedral at Mysore, shows that it is in respect of one " Yessudas" son of ~~one~~¹³ Arokia Swamy. The note given by the Parish Priest, St. Joseph's Cathedral, Mysore is that it is possible that " Yessudas" was called by the pet name " Jairaj" but it cannot be relied upon as it did not pertain to the applicant, Shri ~~Jairaj~~ Arokia Swamy. He also referred to certain extracts from the Register of the Central Railways Employees Co- operative Credit Socidty (Ex. II) to show that the date of birth of the applicant had also been entered in their records as 12.2.36. Having regard to all the documents therefore, according to the respondents the only conclusion that can be arrived at is that the recorded date of birth is 12.2.36 and applicant's claim for correction of date of birth as per Baptism Certificate to 2.1.41 cannot be acceded to and the application deserves to be dismissed. Counsel also, submits that since admittedly the applicant joined service on 12.2.58, his

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representation for change of date of birth could not be entertained after three years of service as per Rule 225(4) of the Indian Railway Establishment Code. The applicant has sent his representation for change in the recorded date of birth on 30.1.91 and the respondents have submitted that the application is barred by limitation.

4. The main contention of the learned counsel for the applicant is that the respondents ought to have produced the Service Records(S.R.) of the applicant from which it would have become apparent whether the date of birth recorded in it is as per the relevant provisions of the Railway Code, namely Rule 144 of the Railway Establishment Code 1971, equivalent to Rule 225 of 1985 Code. In the absence of this S.R., his argument is that the respondents have no option, but to correct the date of birth according to the Baptismal Certificate he has produced.

5. The Supreme Court in a recent decision in the case of Secretary and Commissioner, Home Department and others V/s. R. Kirubakaran, AIR 1993 SC 2647 has observed: that :

" An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth,

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the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever.

"..... According to us this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature is made out the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been made,... prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book.

"..... The decision of the Supreme Court in Union of India and others V/s. Harnam Singh AIR 1993 SC 1367., considered the same question and held, inter alia, that application by the public servant to correct his date of birth in the service record should be done within a reasonable time, where there is no rule or order for prescribing the period."

The learned counsel for the applicant has sought to distinguish ^{Harnam Singh's} the case on the ground that the respondents have failed to produce the service register of Shri Jairaj Arokia Swamy in this case.

6. I have carefully considered the rival contentions of the parties and all the relevant records in this case. The only question for consideration is whether relying on the extract of the Baptism Certificate, the applicant's date of birth ought to be changed in the S.R. from 12.2.36 to 2.1.41. Even assuming that the applicant was appointed by the respondents on 12.2.58 as Class IV employee and that he was treated as an illiterate staff, thereby allowing him to make a representation to the respondents for change of date of birth at any time i.e. without any time limit, the question is whether an order to correct his date of birth can be passed on the material produced by the applicant. As opposed to this, although the respondents have not produced the S.R. of the applicant, they have produced certain original records, including the applications for appointment, leave, loan and other documents to show that his date of birth has been consistently recorded by them as 12.2.36. In the letter issued by the respondents dated 19.7.90 there appears to be a mistake in the month, as the date is shown as 12.3.36 instead of 12.2.36, but I do not think that this in any way materially affects the case of the respondents. It cannot be stated that the Baptismal Certificate conclusively shows that the same has been issued to the applicant, Mr. Jairaj Arokia Swamy as the name given is "Yessudas". I cannot also accept the explanation given by the Parish Priest that it is possible that "Yessudas" may also called by the pet name "Jairaj", because any one can have any or several

pet names. It is also pertinent to note that nowhere in the application, or in the document relied upon by the applicant, he has stated that his actual name was "Yessudas" and not "Jairaj" or that it was his pet name which has been referred to in his official records. Therefore, the Baptismal Certificate is not an irrefutable piece of evidence which can be relied upon for a change of his date of birth. It is also relevant to mention that the applicant has himself given contradictory statements of his date of birth at different times, as evidenced from the applications and affidavit submitted by him to the respondents. The applicant's explanation regarding the difference in the date of birth given in his affidavit dated 15.11.91 and searching for the church in Mysore in 1993 where he had been Baptised are not ^{at all} ~~convincing~~ ^{13.} to be relied upon. I am also of the view that in the circumstances of the case, his representation for change of date of birth in 1991 after 33 years of joining the service, has not been made within a reasonable time.

7. Having regard to the observations of Supreme Court in the cases referred to above, and the facts in this case, I see ~~absolutely~~ ^{13.} no merit in this application as the applicant has not produced any ^{conclusive} ~~irrefutable~~ evidence on which it can be concluded that his date of birth i.e. 12.2.1936 as recorded in the official documents with the respondents needs to be changed as claimed by him. The application is therefore, dismissed but with no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

...

R.P.No. 68/94
in
O.A.No. 1113

Shri Jairaj Arokiaswamy ... Applicant

v/s

Union of India & Ors. ... Respondents

Tribunal's order on Review Petition No. 68/94

Dated:

This review petition is filed against the order and judgment dated 16.2.1994 in O.A. No. 1113/93 rejecting the application for change of date of birth. I have carefully perused the petition and the application for condonation of delay in filing the review petition.

2. The applicant has not pointed out any error apparent on the face of the record. All the grounds raised in the petition have also been raised at the time when the O.A. was considered and the applicant was heard in support of the O.A. The applicant's grievance is that the order dated 16.2.1994 is erroneous but that ground cannot be a ground for a review of the order. There is no error apparent on the face of the record or any other grounds justifying review of the order. The Supreme Court has held in Chandra Kanta and Another v. Sheik Habib [AIR 1975 SC 1500] that once

an order has been passed by the Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. Hence, this petition is liable to be rejected.

3. There is also delay in filing the review petition. Rule 17(1) of the Central Administrative Tribunal (Procedure) Rules, 1987 provides as follows:-

" No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed".

4. In the result, this review petition is dismissed under rule 17 of the CAT (Procedure) Rules, 1987 read with rule 49, Appdix IV Para II(b) of CAT Rules of Practice, 1993.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (Judicial)