

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 613/94

Transfer Application No:

DATE OF DECISION: 16.2.95

E.Ramaswamy Petitioner

Shri M.S. Ramamurthy Advocate for the Petitioner

Versus

Union of India and others Respondent

Shri N.K. Srinivasan Advocate for the Respondent(s)

CORAM :

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

The 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 ?

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

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No.613/94

E.Ramaswamy

... Applicant.

V/s.

Union of India  
through the General  
Manager, Western Railway  
Churchgate, Bombay

Chief Permanent Way  
Inspector, Western Railway  
Bombay Central, Bombay

Deputy Chief Engineer  
(Construction), Western  
Railway, Churchgate Station  
Building, 8th floor,  
Bombay.

Chief Administrative  
Officer (C) Western  
Railway, Churchgate Station  
Building, 1st Floor  
Bombay.

... Respondents.

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

Appearance:

Shri M.S. Ramamurthy, counsel  
for the applicant

Shri N.K. Srinivasan, counsel  
for the respondents.

ORAL JUDGEMENT

Dated: 16.2.95

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

Shri M.S. Ramamurthy, counsel for the applicant has argued that all along the service career of the applicant, date of birth was accepted to be 5.6.1940. He took me through a number of documentary evidence such as letters, Seniority list issued in 1984 and Loan application duly accepted by the respondents in which the date of birth was shown as 5.6.1940 and also the seniority list of 1977. The date of birth was entered in the service book of the applicant based on the certificate issued by the Village Officer which was duly verified by the Permanent Way Inspector and noted in the first page of the service Book. The School Leaving Certificate

produced was not in proof of educational qualification but of his age. There was no educational qualification prescribed for appointment of Gangman at that time.

This proof of age was duly accepted by the respondent, and never challenged before the issue of show cause notice at page 36 exhibit E. This notice was issued on 7.2.94 stating that according to the respondents he is due to retire from Railway Service on 30.6.94. Even though the applicant had made detailed submission as to why his date of birth should be continued to be accepted as 5.6.1940. The respondents served on him a notice dated 26.4.94 retiring him with effect from 30.6.94 taking into account his date of birth as 5.6.1936. The learned counsel for the applicant submitted that the Railways were ~~not~~ stopped from taking action after having continued the applicant to work in the Railways based on his date of birth as 5.6.1940 for 30 years.

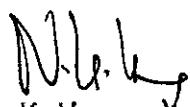
2. Shri Srinivasan, counsel for the respondents in his written reply stated that the action of the respondents is based on the service book which was brought into use at the time of the appointment of the applicant in another Division of the Railways at Sawai Madhopur in 1964. The applicant was terminated from that job in 1966 and that service book was closed thereafter. When the applicant joined the present set up, a new service book was started in which the first page was filled up showing the date of birth as 5.6.1940 verified with the School Leaving Certificate copy of which is available in the service book. This was also verified by the Permanent Way Inspector. However the Railways have shown a certificate of Village Munsif which states that the date of birth of the applicant is

5.6.1936. However Shri Srinivasan could not reply to the quary made in the court why the Railways had accepted the date of birth as 5.6.1940 when they had earlier accepted a different date. He also could not reply as to how a service book which was closed on termination of service could be reopened after 30 years to inflict the notice of termination of the applicant. If the Railways were that much alert and keen to ensure that the applicant did not avail of any benefit by producing two different certificates, then the applicant should have <sup>been</sup> asked to produce a more reliable documentary evidence to ensure modification of the date of birth.   
N. B. W.  
The same could have even got verified and modified through their own sources at a proper time much earlier than what they have done now, when 30 years of inaction has taken place.

3. I have given anxious consideration to the whole matter as argued by both the parties. The learned counsel for the applicant has rightly submitted that the Railways are estopped from taking the action of retiring the applicant on the basis of a service book entry made in context of appointment which was terminated in 1966. That service book was closed and consigned to old records. They have <sup>been</sup> all along accepted the new date of birth as entered in the current service book maintained now and the Railways are precluded from taking any action from the previous service book. The chance of discovery of an old record should not expose the Government Servant to such harsh consequence as has been proposed by the Railways by the impugned order.

  
W. B. W.

4. The O.A. succeeds and I hereby quash the impugned order at Exhibit 'A' dated 26.4.94. The applicant shall have the continuity of service till he attains the age of superannuation as per the date of birth recorded in the current service book. There will be no order as to costs.

  
(N.K.Verma)  
Member (A)

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