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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 98/94

Transfer Application No:

DATE OF DECISION 31-1-94

Smt. C.M.Hussain Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India through Respondent
Divisional Rly. Manager
C.Rly.

Shri S.C.Dhawan Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Shri

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

M.R.K.
(M.R.Kolhatkar)
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(3)

O.A. 98/94

Smt. C.M.Hussain
Bombay Applicant

Vs

Union of India through
Divisional Rly. Manager
C.Rly.Bombay Respondent

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

Appearance :

Shri G.S.Walia counsel
for the applicant.

Shri S.C.Dhawan counsel
for the respondents.

Dated : 31-1-94

Oral Judgment

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

After hearing the parties and perusing the documents on record we are in a position to dispose of the case at the admission stage finally. The case of the applicant is that she was appointed on compassionate grounds on 1-12-81, as her husband died in harness, as water woman under the Chief Luggage Superintendent, Bombay VT. She is illiterate. At the time of her entry in service she had given her date of birth under affidavit which was prepared by a sympathiser of the family and she did not know actually what her date of birth was. On 16-10-93 she came to know that she was to retire on 31-1-94 on completion of 58 years of service, the recorded date birth being 15-1-36. The applicant has produced birth certificate issued by the Municipal Corporation, Solapur showing her date of birth as 25-12-43. It is stated in the certificate that this entry has been made under S.13(3) of Birth and Deaths Registration Act 1969 on the basis of orders of JMF Class I. On 6-10-93 she applied for change of date of birth to 25-12-43. She received a reply vide annexure 'B' letter dated 17-1-94 that her request for change of date of

birth is not agreed to. No reasons have been given in this reply as to why the request has not been agreed to. The applicant has therefore prayed for quashing of this reply dated 17-1-94, and that the date of birth as indicated in the Certificate issued by the Municipal Corporation Solapur namely 25-12-43 may be directed to be substituted. The applicant has also asked for interim relief pending hearing and final disposal of this application to the effect that the Railway administration may be restrained from retiring her on 31-1-94.

2. This case was filed on 28-1-94 and circulated for urgent hearing and interim relief on 31-1-94. Shri Dhawan accepted notice on behalf of the respondents opposing reliefs claimed by the applicant and also the interim relief.

3. In the course of arguments, Shri Walia has relied on the judgement of this Tribunal in O.A. 1323/93 in which a similar case was finally decided at the admission stage and interim relief was granted to the applicant with a direction to the respondents (Postal Department) by treating the present application as a representation and to dispose of the same by a speaking order within 3 months. Shri Walia has also cited the case of Kantiram H. Pandya vs UOI & Ors which is a case of Division Bench of CAT Ahamadabad O.A. No. 71/90 in which judgement was delivered on 30-9-93 to which the Member of the present Single Bench was party as Member of the Division Bench. The Divisional Office, Central Railway, Bombay V.T. has not given reasons to the applicant as to why the change of date of birth sought by the applicant in her application dated 6-10-93 was not accepted. In this connection counsel has relied on AIR 1976 SC 437 (M/s Ajanta Industries vs Central Board of Direct Taxes) where it is laid down that the non communication of reasons is a severe infirmity which can render an order invalid. He has also stated that reasons if initially not given cannot be supplied in the form of affidavit. So far as interim relief is concerned he has relied on earlier judgement of this Tribunal in O.A. 1323/93 referred to earlier

which according to him is identical and has further suggested that the applicant in this case also can be given interim relief. Shri Dhawan has opposed the application and the prayer for reliefs. So far as interim relief is concerned he has invited our attention to the judgement of the Supreme Court in Secretary & Commissioner, Home Department and Ors. Vs R. Kirbakaran AIR 1993/2647 in which Supreme Court has observed that even if ultimately their applications are dismissed, by virtue of interim orders, applicants continue for months after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting any interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.

4. So far as the evidence produced by the applicant is concerned, Shri Dhawan stated that the applicant applied on 6-10-93 i.e. less than 4 months prior to the date of retirement and that she has produced certificate dated 17-9-93 which is anterior to the date of application. He has particularly highlighted the inconsistency in the application that in para 4.3 of the application states that the applicant made enquiries after 6-10-93 regarding the record, whereas date of certificate as produced from the Municipal Corporation Solapur is 17-9-93. According to him, the application appears to have ^{be} cooked up evidence and therefore this is not a fit case either for admission or for interim relief.

5. Shri Walia stated that so far as contents of para 4.3 are concerned the reference "thereafter" is a typographical error and should not be made much of. He has emphasised on the weightiness of the evidence viz. certificate from the JMF Class I. He has emphasised the point of the order being a non-speaking one and also referred

to Railway Board's circular dated 19-10-86, which states that in the case of illiterate staff, representations for alteration of date of birth from Class IV staff could be entertained without any time limit being stipulated for submitting such claims.

6. We have considered the matter carefully. In our ^{central} view the order of the Railway ~~dated~~ dated 17-1-94 is liable to be quashed for being a non-speaking order. It has been well established, apart from the Ajanta Industries judgement, that giving reasons for passing of orders is an essential ingredient of principles of natural justice. Since the applicant has produced a certain document which on the face of it indicated that it was issued by the authority JMF Class I, it was necessary for the railway administration to go into evidence ^{any} value thereof viz-a-viz affidavit earlier filed by the applicant as ~~the~~ ^{to her} date of birth and then come to a conclusion.

7. So far as interim relief is concerned, we have considered the precedent of our ~~judgement~~ in O.A. 1323/93 delivered on 31-12-93 as well as CAT Ahmedabad judgement in O.A. 71/90. At the outset, it can be stated that analogy of CAT Ahmedabad judgement does not apply because that case proceeded on the basis of the scrutiny of speaking order passed by the Chief Personnel Officer, Western Railway from the point of view of compliance with the specific directions issued by the Tribunal earlier. So far as case No. 1323/93 is concerned, that case is distinguishable on the ground that the applicant had applied to the postal authority 2 years prior to the retirement i.e. 1991 and the department passed a non-speaking order rejecting the claim just on the eve of retirement. Secondly that order also proceeded on the basis that the applicant had a right to the protection of Rules 129 & 130 of the P&T Manual Volume IV which prescribed a procedure of medical examination by the Civil surgeon. Admittedly, the final orders were passed ex parte without the benefit of the assistance of the counsel of the opposite

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party. Our attention has also been invited to the judgement in the case of this Bench in Abdul Jafar vs UOI ATC 2289 where the application for interim relief was declined on the ground that if the applicant succeeded, he will be entitled to all the consequential benefits.

At this stage, Shri Walia reiterated the earlier statement made by the applicant that she is prepared to give an undertaking that if she is allowed to continue in service beyond 31-1-94, she will be prepared to forego emoluments till the final decision of this case. We have considered this as well as the material placed before us and various arguments. We disposed of the case at admission stage by passing the following order :

Order:

The O.A. is disposed at admission stage. Divisional Railway Manager, Central Railway, Bombay's letter dated 17-1-94 is quashed to the extent that it rejects the request of the applicant for change of date of birth ~~to~~ 25-12-43 without giving any reason. However, that part of the order which states that applicant will be retiring from railway service on 31-1-94 after duty hours is not quashed and the application of the applicant for the interim relief is rejected. The respondents are directed to consider the application of the applicant as contained in her representation dated 6-10-93 and additional material she may choose to produce within a reasonable time and to pass a speaking order accepting or as rejecting the same within two months from the receipt of this order. It is open to the applicant to approach this Tribunal if she feels aggrieved by that order. There will be no order as to costs.

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