

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXX XXX XXX Hyderabad

O.A. No. 632 of 1987
~~XXX XXX XXX~~

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DATE OF DECISION 22/3/88S.Ponnu Swamy

Petitioner

V.Rama Rao

Advocate for the Petitioner(s)

Versus

Chief Personnel Officer, SC Railway, Respondent
Secunderabad and othersP.Venkatarama Reddy, SC for Rlys. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N.Jayasimha, Vice Chairman

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

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?

MGIPRRND-12 CAT/86-3-12-86-15,000

(BNJ)
VC(DSR)
M(J)

ORIGINAL APPLICATION NO. 632 of 1987

The applicant who was working as Depot Store Keeper in the Office of the Divisional Engineer (Construction)-I, South Central Railway, Secunderabad filed this application questioning the orders of the Chief Personnel Officer, SCR., Secunderabad in CPO No.P(E) 212/Class I V Class III dated 11.2.1986 (1st respondent) and confirmed by the General Manager, South Central Railway, Secunderabad (2nd respondent) in Lr.No.P(E)212/Class IV Class III dated 12.11.1986 discharging the applicant from service. The applicant states that on 12.3.1943 he was appointed as Coolie in the Stores Department of Nizam State Railway on compassionate grounds after the death of his father. He was recruited when he was 12 years of age as his father was a railway employee and died in harness. At that time there was no age limit prescribed particularly when appointments were made on compassionate grounds. He states that his thumb impression was taken on a Medical Certificate in which his age was fixed as 18 years without his knowledge. The applicant passed his H.S.C.Examination in the year 1951. His date of birth was recorded as 15.5.1931

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in HSC Certificate. He passed B.A. Examination in the year 1955. After passing H SC in 1951, he submitted his provisional HSC Certificate to the authorities. He was promoted as Junior Clerk on 7.7.1951. At that time an objection was raised by the Office stating that his date of birth as per the Service Card opened in 1946 was 1925 and not 1931 as furnished in the HSC Certificate. After inquiry, the then Controller of Stores passed an order on 13.5.1952 fixing the date of birth as 15.5.1931 and the same was informed to the applicant on 15.5.1952. The applicant was then promoted as Senior Clerk in 1963 and as Head Clerk in 1968 and as Chief Clerk in 1981. He was placed on the panel of promotion to the post of Office Superintendent in 1985. During all these years, his date of birth was taken as 15.5.1931. Prior to his promotion as Office Superintendent on 9.1.1986 a show cause notice was issued to him calling upon him to state why he should not be discharged from service with immediate effect taking his date of birth as 1.7.1925 as stated in the Medical Fitness Certificate (Illiterate Service Card) issued at the time of his appointment as Coolie in 1943 and asked to submit his explanation within fourteen days from 9.1.1986.

On 24.1.1986 the applicant submitted his representation requesting the authorities to permit him to peruse his Service Register and Personal File. The Chief Engineer by his letter dated 30.1.1986 permitted the applicant to peruse his Service Register and personal file. The Divisional Engineer by his letter dated 3.2.1986 permitted the applicant to peruse the file in the Chambers of SPO (HQ) and also directed to submit his explanation within three days from the date of receipt of his letter. The applicant submitted a detailed explanation on 11.2.1986 stating that his date of birth as recorded in HSC Certificate was correct and the matter was finally decided by the competent authority after thorough examination in 1952. Even before expiry of three days time granted to the applicant on 10.2.1986, the applicant was served with a discharge order dated 11.2.1986 issued by the 1st respondent and he was stopped from duty from 12.2.1986. The applicant was not even allowed to hand over the charge of the stock. On 13.2.1986 the applicant submitted a representation that he was not permitted to hand over the stock of the material as such he will not be held responsible for any discrepancy whatsoever which may arise. On 19.2.1986 the Divisional

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Engineer sent a reply stating that the applicant may keep a representative and that he will be held responsible for any loss. The applicant contends that the procedure adopted for discharging him from service discloses that the authorities concerned were biased against him and were bent upon removing him from service without going through his explanation and Memos submitted by him. The Divisional Engineer informed the applicant on 11.3.1986 that the decision taken by the CPO and communicated to him on 11.2.1986 stands good. The applicant then submitted a detailed Review Petition to the 2nd respondent on 15.10.1986. The 2nd respondent passed a mechanical order dated 12.11.1986 stating that no new facts have been brought on record and that the decision already taken in the case holds good. The applicant questions the impugned orders stating that the order passed by the 1st respondent is not a speaking order and that the order is illegal not based upon the principles of natural justice. The applicant states that the order is pre-determined and biased. The applicant further states that no minimum age limit was prescribed for appointment of the applicant and as such the age mentioned in the Medical Fitness Certificate is only a guess work. The applicant further states that

once a thorough inquiry was conducted in the year 1952 and it was finally decided that his date of birth was 15.5.1931, it is not open to the 1st respondent after lapse of 35 years to reopen the matter. It is, therefore, illegal and stated that the impugned orders are/liable to be set aside.

2. A counter has been filed on behalf of the respondents stating that when the service record was opened in the year 1946, the applicant's age was mentioned as 18 years and that the applicant affixed his thumb impression on the service record and also signed in English against such an entry. In his Mulki Certificate issued by the Collector in 1352 Fasli (Equivalent to 26.11.1942) his age was given as 16 years which tallied with the age noted in the service record. Hence the statement of the applicant that he joined service as a Coolie at the age of 12 years is misleading and incorrect. It is stated that the age mentioned in the High School Certificate is based upon the applicant's own statement without any verification. When the applicant produced the High School Certificate in 1952 a note was put up on 13.5.1952 and the orders of the Deputy Controller of Stores were solicited if the employee/applicant shall be directed to

the D.M.O. for age verification. The Deputy Controller put his initial against the note but the counter goes on to state that the endorsement "Yes" above the initials of the Deputy Controller of Stores appears to be a clear interpolation. Further the endorsement "CC to take the provisional certificate as the authority for his age and intimate the applicant accordingly" also appears to be an interpolation. Presumably this interpolated endorsement made in the Note Sheet of 13.5.1952, a subordinate Service Register was opened on 24.9.1953 much later to 13.5.1952 entering the applicant's date of birth as 15.5.1931. It is stated that the Deputy Controller of Stores is not competent to order alteration of the date of birth and the matter should have been referred to the General Manager. This fact came to light long after on the basis of the information furnished by the Vigilance Department. Thereafter on 9.1.1986 a show cause notice was issued to the applicant as to why his date of birth should not be taken as 1.7.1925 and he be discharged from service accordingly with immediate effect. This show cause notice was served on the applicant on 10.1.1986. The applicant did not submit his explanation within fourteen days. However on the last day i.e. 24.1.1986, he requested the Divisional Engineer to permit him to

peruse the Service Register and Personal File. He was permitted to do so on 6.2.1986 in the Office of the CPO. Even on that date also, he did not submit his explanation. Since the applicant did not submit his explanation within the time prescribed, the Chief Personnel Officer decided on 6.2.1986 that applicant's date of birth should be taken as 1.7.1925 and he should be retired from service forthwith.

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A memorandum dated 11.2.1875 was issued by the Additional Chief Personnel Officer consequent upon the decision taken by the CPO on 6.2.1986 discharging the applicant from service. In view thereof, a letter dated 10.2.1986/issued by the Divisional Engineer, Secunderabad to the applicant stating that he may submit his explanation within three days becomes redundant. This letter was issued by the authority not competent to do so without knowing the fact that a decision had already been taken by the Chief Personnel Officer. It is contended by the respondents that the decision was taken after considering all the relevant facts. Nearly eight months after retirement, the applicant submitted a representation to the General Manager and once again the matter was examined and his request was rejected by a communication dated 12.11.1986. Even prior thereto,

the Chief Personnel Officer has considered the applicant's appeal dated 11.2.1986. On 14.12.1987 he has come to the conclusion that the appeal dated 11.2.1986 did not bring out any new points. The counter goes on to state that the applicant being the Depot Store Keeper, incharge of all material in the Construction Depot from 28.7.1980, he was supposed to have sent the stock sheets and narrative reports for verification pertaining to the period from 1981 to 1984. On verification it was found that there were lot of discrepancies in the stocks maintained by the applicant for which he was served with a charge sheet for major penalty and the said proceedings are still pending finalisation. It is stated that the allegation that the applicant was discharged from service at jet speed without giving him time for stock verification is misleading and baseless. It is only meant to build up defence to the charge sheet issued against him.

3. We have heard the learned counsel for the applicant and the learned Standing Counsel for the Railways. The points that arises for consideration from the foregoing contentions made in the affidavit

and the counter are: firstly, whether the higher authorities in the Railway could revise or review in 1985 a decision taken in the year 1952 by the Dy. Controller of Stores in regard to the date of birth of the applicant and secondly, whether the order of the Dy. Controller of Stores, of the then Nizam's Railway competent to take any decision in regard to the date of birth of the applicant;

4. The Establishment Code (1949) issued by the Railway Department, Government of Hyderabad, lay down as follows:

"1.10. Date of birth.--

(i) Every person, on entering Railway Service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering Railway Service. The date of birth as recorded in a School or College certificate will be adopted without any modification. Where documentary evidence of age or date of birth is not produced at the time of first appointment the candidate shall be required to produce satisfactory evidence of his date of birth to the Chief Medical Officer at the time of medical examination who shall assess the age and record his own opinion on the medical certificate of health in the following form:-

"After consideration of the candidate's own statement, the evidence produced before me and his general appearance, I consider his age to be years."

The age as given by the Chief Medical Officer shall be accepted as final.

(ii) When the year and month of birth are known but not the exact date, the 16th of that month shall be treated as the date of birth.

(iii) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of attestation, e.g., if a person enters service on 21st January 1949 and if on that date his age was stated to be 19, his date of birth should be taken as 21st January, 1930.

(iv) The age as determined by the provisions of the preceding sub-rules shall be recorded in the service register, or service or history sheet, as the case may be.

(v) In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(vi) The date of birth as recorded in accordance with the above rules shall be held to be binding and no alteration of such date shall be permitted subsequently. It shall, however, be open to Government in the Railway Department in the case of class I and class II railway servants and the General Manager in the case of other railway servants, to cause the date of birth to be altered.

(a) where in the opinion of Government or the General Manager, as the case may be, 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

(b) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred."

The learned Counsel for the Railways contends that it ~~was~~ only the General Manager who is competent to alter the date of birth and the Dy. Controller of Stores is not competent to do so. The rules are clear enough to show that the Dy. Controller of Stores was not the competent officer and no approval of the General Manager taken for altering the date of birth.

5. . The Second contention is that no action was taken to revise/review the order from 1952 till 1985 and that the applicant was denied fair hearing and the orders passed arbitrarily. The following are the the sequence of events:

12.3.1943 .. The applicant was appointed as a coolie.

7.7.1951 .. The applicant was appointed as a Junior Clerk.

In 1951 .. Represented that his correct date of birth is 1931 and not 1925.

13.5.1952 .. The applicant's date of birth was fixed as 15.5.1931.

15.5.1952 .. The applicant was informed.

9.1.1986 .. A show cause notice was issued to the applicant.

24.1.1986 .. The applicant submitted a representation seeking permission to peruse the Service Register.

10.2.1986 .. The applicant was given three days' time to submit his explanation.

11.2.1986 .. The applicant submitted his explanation.

11.2.1986 .. The applicant was discharged from service by Addl. C.P.O.

12.2.1986 .. Applicant was discharged from service by Q.E.(C) I.

11.3.1986 .. The appeal made by the applicant was rejected by Q.E.(C) I.

15.10.1986 .. The applicant submitted an appeal to the General Manager.

12.11.1986 .. The General Manager rejected the appeal.

It would be seen from the above that from 1952 to 1986 the question relating to the date of birth was never raised and the applicant's date of birth in the Service Register remained as 15.5.1931. It was only in the year 1986 that a show cause notice was issued to the applicant. The file discloses that the question was opened up for examination in August 1985 for the reason that if the date of birth

of the applicant is taken as 15.5.1931, he would have been employed at the age of 11 years, 9 months and 27 days which is contrary to the certificate issued by the C.O. S. that he was employed at the age of 18 years and is also contrary to the physical fitness certificate issued at the time of employment i.e., 1.7.1925. It is thereupon that that a show cause notice dated 9.1.1986 was issued to the applicant.

6. From the chronology of events given above, it would be clear that the applicant was given three days time to submit his explanation as to why his date of birth should not be corrected from the year 1931 to 1925. Even before the expiry of the three days i.e. by the next date 11.2.1986, he received the order of discharge from the Additional Chief Personnel Officer which was communicated to him on 12.2.1986. On the ground that a reasonable opportunity has not been given to the applicant, the order of the Additional Chief Personnel Officer dated 11.2.1986 would have to be set aside. It is well settled that any order with civil consequence passed without giving a reasonable opportunity to the party affected cannot be sustained vide STATE OF ORISSA vs. BINA PANI DEVI (AI R 1967 SC 1269) wherein it was

held by the Supreme Court as follows:-

" We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the 1st respondent of being heard and meeting or explaining the evidence."

7. Accordingly, the order dated 11.2.1986 is set aside and the respondents are directed to reinstate the applicant to service within four weeks from the date of receipt of this order. The applicant is entitled to difference between salary and pension for the period he has been out of service. With these directions, the application is allowed. There will be no order as to costs.

B.N.Jayasimha

(B. N. Jayasimha)

Vice Chairman

D.S.Rao

(D. Surya Rao)

Member (J)

Dated this the 22nd day of March 1988

mdj *

*S. Venkateswaran
by Registration (J)
26/3/88*