

O.A.119/89.

Single
(Judgment of the Bench delivered by Hon'ble
Shri J. Narasimha Murthy, Member (Judicial))

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This is a petition filed by the petitioner for a declaration that his correct date of birth is 1--1--1942 and for consequential reliefs.

The petitioner states that he is initially appointed as Chargeman 'C' at Diesel Locomotive Works, Varanasi, Uttar Pradesh and was transferred to South Central Railway during January, 1976 as Chargeman 'A'. He was brought up by his maternal grand-father as Guardian since his childhood. He was away from his parents. His father and guardian were agriculturists. At the time of admission into school his guardian has informed the school authorities that the date of birth of the petitioner is 1--7--1940 without any evidence and authentic information. The same date of birth has been entered i.e., 1-7-1940 in the School Leaving Certificate. The Applicant has declared his date of birth as 1--7--1940 when entered the Railway service, as he was under the bonafide impression that his date of birth as mentioned in the school record was correct. His guardian died in 1970 and his father died in the year 1976. When his father was alive, on knowing that the Applicant's date of birth was entered in the school register as 1--7--1940, informed the Applicant that the date of birth as entered in the school register is not correct and that the Applicant's

Applicant's correct date of birth is 1--1--1942 as entered in the register of births at Sub-Registrar's Office, Achanta, West Godavari District. He promised the Applicant that he would send the extract of the Register of births showing his correct date of birth in due course of time. Unfortunately, he passed away in April, 1976. Thereafter the Applicant did not take much interest in obtaining a copy of the extract of his correct date of birth, for the reason that he was given to understand that no alteration in the date of birth as entered in the service register can be made by virtue of Railway Board's instructions contained in their letter No. E(NG)II-70/^BNR/I dated 4--8--1972 to the effect that setting a last date for making a representation as 31--7--1973. After the death of his father, the Applicant was supplied with a true extract of his date of birth entry by the younger brother of his guardian, which was obtained by his father during his lifetime. Though he came to know that his correct date of birth is different from the one entered in the service register, the Applicant could not take any steps for alteration of his date of birth in the service register, in view of the Railway Board's instructions and the information given by his superiors to the effect that no representation would be entertained for alteration of date of birth after 31--7--1973. After getting hold of a true extract

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of his correct date of birth in the month of January, 1988, he submitted a representation along with a copy of the same to the General Manager, South Central Railway on 4--2--1988 requesting for correction of his date of birth in his service register. A copy of the said representation was sent to the Chief Personnel Officer, South Central Railway, Secunderabad and he also gave reminders on 9--3--1988 and 12--4--1988. Thereafter, the Chief Personnel Officer, South Central Railway, Secunderabad, vide his letter No.P.212/Mech/UBL dated 23--5--1988 addressed to the Chief Mechanical Engineer/Secunderabad informed that the C.P.O., has not agreed for alteration of the date of birth of the Applicant for the reasons that in all the official records his date of birth is recorded as 1--7--1940 and he has not disputed this for over 25 years and that the recorded date of birth in the School Leaving Certificate is authentic unless there is very strong case to believe otherwise. There is no such evidence in the case. A copy of the letter dated 23--5--1988 of the Chief Personnel Officer, South Central Railway, Secunderabad was communicated to the Applicant on 11--11--1988. Immediately thereafter he submitted another representation to the Chief Personnel Officer to consider his representation. Thereafter the Chief Personnel Officer Secunderabad again addressed the Chief Mechanical

Engineer, Secunderabad on 14--12--1988 inviting his attention to his earlier letter dated 23--5--1988.

Refusal to alter the date of birth of the Applicant from 1--7--1940 to 1--1--1942 in the service register is highly arbitrary and illegal, inasmuch as the applicant is entitled to continue in service till the date of his retirement on attaining the age of superannuation on the basis of his correct date of birth. Right to continue in service till the date of superannuation as per correct date of birth is an important legal right, which cannot be brushed against by the administrative instructions and delay. The right accrued to the applicant under Rule 145 of Indian Railways Establishment Code to continue in service till the date of superannuation as per correct date of birth, cannot be denied by executive instructions, fixing a dead-line and time limit. However, subsequent instructions of the Railway Board contained in their letter No. E(NG)-I-86-BR-7 dated 13--10--1986 gives a right to the applicant to get his representation for alteration of date of birth decided on merits. Ignoring the said instructions of the Railway Board directing the authorities to examine the representations of Group 'C' staff on merits, the Chief Personnel Officer/ South Central Railway, Secunderabad rejected the representation of the applicant without assigning any reasons and merely the ground of delay. The evidential value

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of the entry in birth's extract, as entered in the birth register is more authentic and is of high value against the entry made in the school leaving certificate. Under Section 25(2) of Births, Deaths and Marriages Registration Act, 1886, every copy of an entry in a register book given under this section shall be certified by the Registrar of births and Deaths and shall be admissible in evidence for the purpose of proving of the birth or death to which the entry relates. Therefore, the evidence produced by the applicant to record his correct date of birth in the service register cannot be brushed aside on the ground that it is not evidence and unbelievable evidence. Therefore, the letter dated 25-3-1988 of the Chief Personnel Officer/ South Central Railway Secunderabad refusing to alter the date of birth of the applicant is highly illegal arbitrary and violative of Articles 14 and 16 of the Constitution of India. The impugned order did not indicate any reasons for refusal to effect the correction of date of birth in the service register of the Applicant. The impugned order is passed in utter violation of the principles of natural justice. The impugned order is liable to be quashed inasmuch as it infringes the fundamental right guaranteed to the Applicant under Articles 14 and 16 of the Constitution

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and the most important legal right to continue in service till the age of the superannuation as per his correct date of birth.

The Applicant prays that his date of birth be corrected as 1--1--1942 and grant all consequential benefits such as seniority, promotion, arrears of salary and allowances etc.

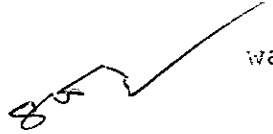
The Respondents did not file their counter.

We heard both the counsel.

The point for consideration is:

"Whether the date of birth can be altered from 1--7--1940 to 1--1--1942? If so whether the claim of the Applicant is in time?

The counsel for the petitioner argued that the petitioner was appointed as Chargeman in Grade 'C' in Varanasi. From there he was transferred to South Central Railway in 1976 as Chargeman Grade 'A'. The maternal grand-father is the guardian when he was admitted in the school. He is an Agriculturist. He declared the date of the Applicant as correct without any documentary evidence as 1--7--1940. The guardian died in the year, 1970. His father died in the year 1976 April. The father of the petitioner came to know that wrong date of birth was entered in the school registers. He informed



the Applicant ~~that~~ to get it corrected his date of birth as 1--1--42 as entered ~~in~~ in the Birth register in Sub Registrar's Office. The father of the Applicant obtained the birth extract of the petitioner from the Sub Registrar's Office on 19--6--1968. On 1--4--1972 the Railway Board issued a circular to make representations regarding the correction of date of birth of the employees before 31--7--1973. But the petitioner failed to make his representation within time to the Railway Board. But he submitted his application on 4--2--1988 to the General Manager to correct his date of birth. They did not take any action. Reminders were also given on 9--3--1988, 12--4--1988. His claim was rejected by the Chief Mechanical Engineer and the same was communicated to him on 11--11--1988. ~~He also cited the decision~~ *reported in* (1) *in support of his case.*

In this case the petitioner contends that *Maternal* the grand-father of the petitioner is an Agriculturist.

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~~(P) 1987 (2) A.T.L.T. 22-S.N.~~

He gave declaration of his date of birth when he was admitted in the school without any records before him as 1--7--1940. A Photostat copy of the School-leaving certificate was filed and in this it is noted, the date of birth of the Applicant, as 1--7--1940.

There is nothing to show that the Grand-father of the Applicant got admitted him in the school and he gave declaration of his date of birth at the time of admission. The contention that the grand-father of the Applicant is an agriculturist and he wrongly noted the date of birth of the Applicant also cannot be accepted because it is written in the birth extract that he belongs to Brahmin community, illiteracy or ignorance cannot be pleaded.

He may be an Agriculturist but he cannot be an illiterate person. So the contention that the grand-father of the Applicant gave a declaration when the Applicant was admitted in the school that the date of birth of the Applicant is ~~xx~~ 1-7-1940/and that date of birth i.e., 1--7--1940 is wrongly noted in the School Leaving Certificate cannot be accepted. He has ~~xxx~~ filed the photostat copy of the birth extract from the register of Births. He

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obtained this on 19--6--1968 and as per the birth extract the petitioner was born on 1--1--42 and the birth was reported on 1--1--42. In this birth extract against column 7 Name, if any,

"VISWESWARARAO" is mentioned. Column 7 was partly struck and the "Word" "Name" is inserted.

Against that Column 7 the name was written as

"Visweswara Rao". On the date of birth, ^{and} on the ^{which are one and the same} date of registration, the name of the boy who

is only "ONE DAY OLD" is mentioned as "VISWESWARA RAO".

This ^{is} most unusual. After the birth of the child,

either on the 31st day or in the 3rd month there

will be Namakaranam Ceremony. Until and unless

that Ceremony is over the child will not be called

by name according to the custom and practice in

those days and even now also. The fact of ment-

ioning the name in Column 7 throws doubt about the

genuineness of the birth extract. It is very strange

that the name is mentioned in the birth extract.

It is also not mentioned in the birth extract

whether the child is first issue or second issue, ⁴

and also not mentioned the age of the mother also.

In remarks column it is written as "SODARUDU" (Brother)

It is not mentioned either he is the eldest or youngest.

The non-mention of these particulars and mentioning

the name of the child on the date of birth and on the

date of registration which are one and the same date,

throws a ^{doubt} ~~cloud~~ about the authenticity of the birth
extract. As argued by the learned counsel for
the Applicant that ^{if} his correct date of birth is
1--1--1942, why he kept quiet all these years,
there is no evidence. He produced the Zerox
copy only on 5--7--1989 with a letter. It
has never seen the light of the day so far.
If he is an illiterate, there is ^{some} meaning
to say that out of ignorance, he could not ^{have}
produced the birth extract as soon as ^{if} was
taken from the Sub Registrar's Office. There
is no cause for the delay in claiming the
correction of date of birth, before the
Department. The Department by Board's
Circular asked them ^{employees} to give their representations
regarding the correction of date of birth as
early as in 1972. They have also fixed the
time limit i.e., upto 31--7--1973. The Appli-
cant did not take any steps and kept quiet and
subsequently ^{made} ~~make~~ a representation on 4-2-1988
for correction of date of birth and subsequently
made representations which were rejected by the
higher authorities. There is inordinate delay
in seeking the correction of date of birth. ^h The
~~Applicant did not mention in any of the Appli-~~
~~cations that he has got the birth extract with~~
~~him. He did not even file earlier.~~ ^h

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As The Applicant, his father and grand-father are all literate persons. A perusal of the birth extract shows that it was fabricated and invented for this purpose. I doubt the genuineness of the birth extract filed in the Tribunal. I feel that it is created for this purpose.

In view of the above discussion, the contention of the Applicant that ~~xxx~~ his date of birth is 1--1--1942 cannot be accepted. I hold that the date of birth of the Application is 1--7--1940 ^{but} ~~and~~ not 1-1-1942. _{PL}

In the result the petition is dismissed. No costs.

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10-7-89
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(J. NARASIMHAMURTHY)
MEMBER (JUDICIAL)

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S. Venkata
Deputy Registrar (J)

13/11/89