

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.119 of 1991

DATE OF JUDGMENT: 24th APRIL, 1992

BETWEEN:

Mr. B.Pocham

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Applicant

AND

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Personnel Officer,
S.C.Railway,
Secunderabad.
3. The Senior Divisional Railway Manager (BG),
S.C.Railway, Secunderabad.
4. The Sr. Divisional Mechanical Engineer,
Diesel Loco Shed,
Kazipet.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. V.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS: Mr. D.Gopala Rao, SC for Rlys.

CORAM:

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)

T. Chandrasekhara Reddy

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to correct the date of birth of the applicant as 1.7.1940 instead of 3.7.1935 in the service register of the applicant and to retire the applicant on the basis of his date of birth as 1.7.1940.

The facts giving rise to this OA in brief are stated as follows:-

1. The applicant in the year 1954 had studied 8th class in the Government collegiate High School, Hanumakonda, Warangal District. He discontinued his studies in the same year while he was in 8th class.

2. The applicant was initially appointed as 'Yard Khalasi' w.e.f. 1.8.1958 at Bellampally. According to the applicant, he submitted his original transfer certificate No.1258 dated 12.6.1956 issued by the Government Collegiate High School, Hanumakonda, Warangal District (in which School the applicant said to have studied 8th class) at the time of his initial appointment as 'Yard Khalasi'. The said Transfer Certificate and also Caste Certificate of the applicant are said to have been received by one Mr. B.C. Moss, the then driver-in-charge at Bellampally. It is also stated that the said Mr. B.C.Moss, had obtained the applicant's left thumb impression on the service register

T. C. Moss

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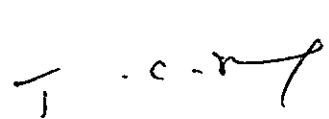
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without making any entries therein. According to the applicant, when the post of Coal-Checker fell vacant, applications were invited from among the persons who had passed 7th class and who had completed 3 years of regular service as Khalasi. As the applicant had fulfilled the norms set up for the post of Coal Checker, and as the authorities were satisfied, the applicant was promoted to the post of Coal Checker w.e.f. 6.12.1962.

3. Anyhow, the applicant came to know that his date of birth was wrongly recorded as 3.7.1935 instead of 1.7.40. So, the applicant put in representations on 22.9.1987, 29.11.1987, 20.5.1988 and 9.2.1990, for correction of his date of birth from 3.7.1935 to 1.7.1940. The representations of the applicant did not find any favour. So, ~~th~~ as the representations of the applicant were rejected by the concerned authorities vide letter dated 24.12.1990, the present OA is filed for the relief already indicated above.

4. The respondents have filed counter opposing this O.A.

5. In the counter filed by the respondents, it is maintained that the applicant never produced the said transfer certificate or the ~~caste~~ certificate at the time of initial appointment. So, in the absence of any proof to show the date of birth of the applicant, the age of the


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applicant had been assessed on a medical examination as 23 years and date of birth as 3.7.1935 as per medical certificate No.19 dated 3.7.1958 and the same had been entered in the service register of the applicant. According to the respondents, after the date of birth of the applicant was entered as 3.7.1935, the applicant had affixed his thumb impression which was duly attested. The respondents deny that the thumb impression of the applicant was obtained in the service register without filling up any entries.

6. It is further stated in the counter that the said Sri B.C.Moss, said to have been working as Driver and who is said to have received the original documents relating to the date of birth and caste of the applicant ~~is not in service~~ and had died. According to the respondents, the applicant was promoted as Coal Checker as he had completed 3 years of regular service which was the required qualification for eligibility for promotion to the post of Coal Checker from Khalasi, and that a pass in the 7th Standard was not at all mandatory for those who had completed 3 years of service. So, the allegation of the applicant that he was promoted to the post of Coal Checker on the basis of his pass the 7th class is not correct. It is also further maintained that the applicant came to know in the year 1962 itself that his date of birth was recorded as 3.7.1935 and that the applicant had put his representation only in the year 1987 for correction of his date of

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birth as 1.7.1940 and in view of the delay on the part of the applicant from 1962 to 1987 in not taking steps to get corrected his date of birth that the applicant was not entitled to the relief that he had prayed for in this OA.

7. It is contended in the counter that on so many occasions that the applicant himself had stated that his date of birth is 3.7.1935 and had also accepted the date of birth as 3.7.1935 and in view of this position also, the applicant was not entitled to the relief he has prayed for. Hence, it is the contention of the respondents that this OA is liable to be dismissed.

8. The fact that the applicant had studied upto 8th class for a few months from 29.9.1954 to 22.11.1954 in the said Government Collegiate High School, Hanumakonda is not in dispute in this case. Further, the fact that the date of birth of the applicant in the school records at the time of admission has been entered as 1.7.1940 is also not in dispute in this case. As already pointed out, it is the case of the applicant that at the time of joining his services as 'Yard Khalasi' in the year 1958, the applicant had produced the original Transfer Certificate which he had obtained from the said Government Collegiate High School, Hanumakonda, to show his date of birth as 1.7.1940 and that instead of entering 1.7.1940 as the date of birth of the applicant on the basis of the School Transfer Certificate that wrong date had been entered in the service register as 3.7.1935 and so he seeks to get

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his date of birth corrected as 1.7.1940 as per the copy of the said Transfer Certificate which is now appended as Annexure to this OA.

9. The best evidence in this case, would have been the birth extract of the applicant. The records disclose that the father of the applicant had been working in the Railways. So, naturally, the date of birth of the applicant should have been registered before the concerned Registrar of Birth and Deaths at the place where the applicant was born. As already pointed out, the birth extract of the applicant after obtaining the same from the concerned Registrar of Birth and Deaths is not filed. No explanation is coming from the applicant in the OA as to why he had not filed a copy of the birth extract either before the Department at the time of submitting his representations or before this Tribunal to show that the date of birth of the applicant is 1.7.1940. As no acceptable explanation is coming from the applicant for non-filing of the said birth extract from the Registrar of Births and Deaths, adverse inference has got to be drawn to the case of the applicant. In view of x non-filing of the said birth extract of the applicant, it becomes highly doubtful whether the applicant's correct date of birth is 1.7.1940 as contended by him.

10. No doubt, it is pleaded in this OA that, at the time of entering into service, the original Transfer Certificate was filed before the competent authority and that the

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said Transfer Certificate was issued by the said Government Collegiate High School, Hanumakonda, where the applicant had discontinued his studies when he was in 8th class and the said certificate dated 12.6.1956 discloses that the date of birth of the applicant is 1.7.1940 and that the department had failed to note the correct date of birth shown in the Transfer Certificate. As already pointed-out, the fact that the applicant had studied in the 8th class only from 29.9.1954 to 22.11.1954 is not in dispute in this case. As a matter of fact, the said Transfer Certificate shows that the date of admission of the applicant and the date on which the name of the applicant removed was cant in the 8th class as 29.9.1954/22.11.54. So after admission, only for two months the applicant seems to have studied in the said Government Collegiate High School, Hanumakonda, in the year 1954. The said Transfer Certificate further shows the date of birth of the applicant as 1.7.1940. We are unable to understand how the respondents would have failed to note the date of birth of the applicant as 1.7.1940, and why the department had taken trouble to assess the age of the applicant by arranging a medical examination if the said Transfer Certificate had been produced before the respondents. In view of this position, we are not able to go along with the contention of the Advocate appearing for the applicant that the said Transfer Certificate was produced before the competent authority. So, we are of the opinion, when the applicant joined the service as 'Yard Khalasi', he had not produced the said Transfer Certificate in support of his date of birth for reasons best known to him.

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11. Admittedly, the date of birth of the applicant in the Transfer Certificate of the Government Collegiate High School, Hanumakonda is shown as 1.7.1940. Now, the question is whether the date of birth of the applicant as entered in the TC as 1.7.1940 could be taken as correct date of birth. In this context, it will be worthy to note the decision of the Shimla Bench reported in 1989(2) SLJ CAT 154- Shri S.P.Dhaul (Petitioner) Vs. State of Himachal Pradesh (Respondents) wherein it is observed as follows:-

"Held, that there is no doubt that the matriculation certificate is normally regarded as sufficient proof of the date of birth. But this is only so when the date of birth is to be recorded initially on first appointment. If on the other hand, the date of birth shown in the matriculation certificate is at variance with the date of birth already entered in the service record on the basis of the declaration made or information furnished by the Government servant himself or is in conflict with other documents of some worth, then such date of birth reflected in the matriculation certificate cannot be accepted blindly and will need to be judged carefully in the context of the attendance facts and circumstances of the case. After all, the date of birth shown in the matriculation certificate is based merely on the information given by the guardian

T. C. A. [Signature]

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at the time of admission in the school or on the information given by the candidate himself while filling up the admission form for appearing in the matriculation examination. The information so given is generally not required to be supported by any confirmatory document such as a proper birth certificate. It cannot therefore be said that the date of birth entered in the matriculation certificate must invariably be accepted in each and every case that its authenticity or correctness can never be questioned."

12. The observations made in the above cited Judgment applies on all fours of the facts of this case. Absolutely, there is no supporting document to claim that the date of birth of the applicant as contained in the Transfer Certificate as 1.7.1940 is the correct one.

13. In this connection, it^(b) also worthy to note one more decision of the Madras Bench reported in ATR 1986(2) CAT 332 - T.Ramaswami (Petitioner) Vs. Genral Manager and others (Defendents) wherein it is held as follows:-

".... It should be remembered that even at the stage of entry into service with the Railways, he did not produce the said transfer certificate or any other certificate such as birth extract etc. The question is whether the transfer certificate giving the applicant's date of birth as 10.6.1925 should be taken as sufficient proof of the applicant's

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age. The entry in the school register is normally made on information furnished by persons accompanying the child to the school. Unless the person who gave the information is available for examination, the mere entry in the school register cannot be taken as conclusive evidence of the age of the applicant. In this case, admittedly no birth extract has been produced. As already stated, the applicant himself produced his discharge certificate at the time of his entry into service with the Railways as proof of his age and the Railways having acted upon that certificate and fixed his date of birth, it is not possible to alter that date of birth merely on the basis of the entry made in the transfer certificate given by the school. Thus, the suit filed by the applicant fails not only on the ground of limitation, but also on merits. Application is therefore dismissed."

14. So, no material is placed before the court to show on what basis in the school records and in the Transfer Certificate said to have been issued by the Government Collegiate High School, Hanumakonda, the date of birth of the applicant had been shown as 1.7.40. It is also not known as to who furnished the date of birth of the applicant as 1.7.1940 at the time of admission of the applicant in the said school. In view of the said position, it is rather difficult to place

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any reliance on the said Transfer Certificate in coming to the conclusion that the correct date of birth of the applicant is 1.7.1940.

15. We are in agreement with the contention of the learned counsel for the applicant as per Rule 145 of the Railway Establishment Code Volume I, that the employee had to apply for correction of date of birth within three years and that this time limit does not apply when the applicant chooses to go to the Tribunal and obtain correction of date of birth through the Tribunal.

16. It is the contention of the learned counsel appearing for the applicant that, as per the respondent's case that the date of birth of the applicant had been ascertained on putting him to medical examination and in view of this, there was [✓] possibility of a serious error on the part of the medical authority who examined the applicant and arrived at his age and in view of this position that the date of birth of the applicant as mentioned in the Transfer Certificate i.e., 1.7.1940 should be accepted. Because the medical authorities might have committed error in arriving ^{at} the age of the applicant when he entered into service, from that itself, it cannot be concluded that the date of birth as contained in the Transfer Certificate issued by the said School at Hanumakonda is correct. The burden is heavily cast on the

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applicant to show that the date of birth of the applicant as contained in the said Transfer Certificate as 1.7.1940 is true and correct. It is not proved as to why he has not filed the required birth extract in this case. Hence, we have no difficulty in negating the said contention of the learned counsel. The learned counsel appearing for the applicant relied on the under mentioned decisions in support of his contention that the date of birth as mentioned in the said school Transfer certificate has got to be accepted in preference to the date of birth as determined by the medical authorities:-

1984(1) SLJ 591 - RK Chatterjee Vs. Union of India
1987(5) SLR 454 - Union of India Vs. B. Krishnaroy
1988(4) SLR 384 - Nityananda Patnaik Vs. State of Orissa
1988(5) SLR 586 - GP Vishwakarma Vs. Union of India
1976(1) SLR 402 - MC Vaidya Vs. State of HP
1990(1) SLR 264 - M. Sreeramamurthy & Rangamani Vs. Union of India

We have gone through the said decisions carefully and the said decisions do not apply to the facts of the case at all whereas, the decisions ATR 1986(2) CAT 332 and 1989(2) (SLJ) CAT 154 to which a reference is already made would apply to the facts of this case.

Even though the learned counsel stoutly contended that the age assessed for one on medical examination cannot be accepted, as could be seen from the AIR 1980 Supreme Court 1251 = 1989 SLJ 704 (SC) age fixation by medical board can be

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~~accepted~~. That being the position there is no reason why the date of birth as entered in the Service Register should not be accepted as the correct date of birth of the Applicant.

17. There are some more aspects which made the applicant disentitled to the prayer which he had asked for. At page 5, it is pleaded that the applicant came to know that his date of birth was wrongly recorded as 3.7.1935 instead of 1.7.1940 when he applied for CCS loan for the first time, when he became eligible after completion of five years of service. Admittedly, the applicant had joined the service ~~xx~~ on 1.8.1958 as already pointed out as Yard Khalasi at Bellampally. So, after five years, the applicant came to know that his date of birth is 1.7.1940. So, in the year 1963 itself, the applicant knew that his date of birth had been wrongly entered in the Department. However, from 1963 onwards till 1987, the applicant had remained silent. The explanation that is given by the applicant for the delay in approaching the concerned authorities for correction of his date of birth is not satisfactory. So, in view of the delay by the applicant in approaching the proper authorities for correction of date of birth, the applicant is certainly not entitled for the relief prayer for by him.

18. After promotion as Coal-Checker, the applicant had been further promoted as Junior Clerk and then Senior Clerk and the seniority list had been published in the year 1972 with the dates of birth calling for objections. The applicant had never questioned his date of birth nor made any representation for alteration of date of birth from

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3.7.1935 to 1.7.1940. As could be seen, the applicant has shown his date of birth as 3.7.1935 and not as 1.7.40 when the applicant gave his bio-data particulars on 29.1.1967, 17.12.1968, 15.3.1971 and 6.7.1973. So, in view of the conduct of the applicant in showing his date of birth on different occasions as 3.7.1935 the applicant is estopped from contending that his correct date of birth is 1.7.1940.

19. As could be seen, the applicant in the OA has pleaded at page 5 that the applicant was promoted to the post of Junior Clerk w.e.f. 9.6.1972 against a general vacancy. Thereafter, the Railway Board issued a circular # on 4.2.1972 giving a chance for the employees, seeking alteration of their date of births upto 31.7.1973. According to the applicant, he approached the staff of Divisional Superintendent, Secunderabad, requesting for correction of his date of birth to 1.7.1940 from 3.7.1935 on the basis of the school records which were then available in the office of the Divisional Superintendent. The applicant was told that no such transfer certificate either original or copies were available in his service register to enable them to entertain his request to enter his actual date of birth in the service Register. The applicant was told that his request for ratification of date of birth can be entertained only if he produced the original transfer certificate issued by the school authorities on which he relied upon. But, the applicant could

T. C. N.

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Copy to:-

1. The General Manager, South Central Railway, Secunderabad.
2. The Chief Personnel Officer, South Central Railway, Secunderabad.
3. The Senior Divisional Railway Manager(BG), South Central Railway, Secunderabad ~~Division, Secunderabad.~~
4. The Senior Divisional Mechanical Engineer, Diesel Loco Shed, Kazipet.
5. One copy to Sri. V.Venkateswara Rao, advocate, CAT, Hyd.
6. One copy to Sri. D.Gopala Rao, SC for Railways, CAT, Hyd.
7. One spare copy.

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not produce the same from the school authorities immediately inspite of his best efforts for want of concerned staff in the school. The story that the applicant approached the school authorities in the year 1973 for obtaining a transfer certificate and that he could not get the same as no sufficient staff was available in the school appears to be putforth only for the purpose of explaining the conduct of the applicant in not obtaining advantage of the circular dated 4.2.1972. We are not able to give any credence to the story putforth by the applicant for not taking steps to get corrected his date of birth as per the circular of the Railway Board issued in the year 1972.

20. If the applicant's contention that his correct date of birth is 1.7.1940 is true, atleast in the year 1973, he should have approached the proper authorities for correction of his date of birth, by making representations after obtaining the Transfer Certificate from the school authorities. So, as the applicant had an opportunity in the year 1973 itself in view of the circular dated 4.2.1972 to correct his date of birth but has not availed that opportunity, on this ground also, the applicant is not entitled to the relief that he has prayed for. Hence, we see no merits in this OA and this OA is liable to be dismissed and is accordingly dismissed. In the circumstances of the case we direct the parties to bear their own costs.

(T. CHANDRASEKHARA REDDY),
Member (Judl.)

Dated: 29 April, 1992.

mv/vsn

O.A. 119/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
MEMBER (JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 24/7/1992.

ORDER / JUDGMENT

R.A./G.A./M.A.No.

O.A.No.

119/91

T.A.No.

(W.P.No. _____)

Admitted and interim directions
issued

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected: 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 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