

(25)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 205 of 1991

Date of Decision :

~~Ex. No.~~

Mr. Sayed Rasool

Petitioner.

Mr. K. Venkat Reddy

Advocate for the
petitioner (s)

Versus

General Manager, S.C.Rly, Sec'bad
and 3 others

Respondent.

Mr. N.W. Ramana, SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

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 ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA 205/91.

Date of Judgment: 24-4-1991

Syed Rasool

Vs.

...Applicant

1. The General Manager,
S.C.R., Railway Nilayam,
Secunderabad.
2. The Divisional Railway Manager
South Central Railway, Sec'bad (BG)
Division, Secunderabad.
3. Divisional Personal Officer (BG),
South Central Railway,
Sec'bad (BG) Division, Secunderabad.
4. Chief Carriage & Wagon Superintendent,
S.C.R., Ballampally District, Adilabad.

...Respondents

Counsel for the Applicant : M/s K.Venkat Reddy &
T.Premanandam

Counsel for the Respondents : Shri N.V.Ramana, SC for Rlys

CORAM:

THE HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment of the Division Bench delivered
by Hon'ble Shri J.N.Murthy, Member (J)).

This petition is filed to quash the proceedings
No.C/D/535/C&W/CF-III dated 13-7-90 issued by the 2nd
Respondent and quash the same by declaring that the
date of birth of the applicant is 5-11-1939 and conse-
quently direct the respondents to correct the date of
birth of the applicant as 5-11-1939 instead of 9-6-1935
in the service book.

The facts of the case are briefly as follows:-

contd...2.

The applicant joined the Railways in the year 1958 as Yard Khalasi at Chinthakav under the Loco Foreman, Dornakal. He studied upto 8th class in Urdu Medium in the Government High School, Adilabad and Government Gazetted High School, Adilabad from 1946--51 and 1951--55 respectively. He joined in the service at the age of 18 years two months. The applicant born on 5-11-1939. ^{ing into service,} His native place is Adilabad. At the time of enter- / his date of birth was wrongly recorded by the authorities. The applicant had produced study certificate which was indicated about the date of birth of the applicant at the time of regularisation of his services in the year 1958. The authorities had not conducted the Medical Examination to determine the age of the applicant. Subsequently, he was promoted as Fitter H.S.III in the year 1979. The applicant further states that though he studied upto 8th class, he is not acquainted with the English language and he is only able to read little telugu. Hence the study of 8th class in Urdu Medium cannot be taken into consideration as literate. He did not understand the rules and procedure and consequences of the wrongly recording the date of birth. It is further stated that he made several representations to the authorities concerned in the year 1988 and 1989 for correction of his date of birth.

on the strength of his school leaving certificate and bonafide certificates and finally on 6-7-90, he submitted his representation alongwith school leaving certificate of Government Gazetted High School, Adilabad dated 23-6-80, continuation of Bonafide and Conduct certificates issued by the Government High School, Adilabad for the years 1946/51, and also Bonafide and Conduct Certificates issued by the Government Gazetted High School, Adilabad for the years 1951 to 55, date of birth certificate issued by Government Gazetted High School dt.9-11-89. But the authorities ignored all the representations of the applicant and his valid certificates. The authorities have not conducted any enquiries on the said representations and on the valid certificates. But, issued proceedings No. C/P/535/C&W/CF/D.III dated 13-7-90 by denying the representations of the applicant for the correction of his date of birth as 5-11-39 instead of 9-6-35. Hence this petition.

2. Respondents had not filed any counter. Shri K.Venkat Reddy, learned counsel for the applicant and Shri N.V.Ramana, learned standing counsel for Railways

argued the matter
Shri Venkat Reddy, learned counsel for the applicant states that the applicant's representation was not considered on the ground that he has not made repre-

 contd....4..

sentation before 31-7-1973. For this contention relies upon the decision rendered in Shri Hira Lal Vs. Union of India (ATR 1987(1)CAT 414), wherein it was held as follows:-

"Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No.19017/79-Estt.-A dated the 30th November, 1979, published as S.O.3997 in the Gazettee of India dated the 15th December, 1979, takes ~~XXXXXX~~ ~~the correction of the date of birth~~ ~~in the XXXXX XXXXX~~ effect from that date. It lays down that a request for the correction of the date of birth in the service record shall be made within five years of entry into Government service. But obviously the five years period of limitation prescribed for the first time under the said S.O. 3997 cannot apply to these Government servants who were in service by that day for more than five years. In issuing the said S.O. it could never have been the intention of the Government that there should be two classes of Government employees--those employees who had entered Government service prior to 15-12-1974 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within 5 years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is therefore, reasonable to infer that the period of limitation prescribed under the said S.O. would be applicable to those

To


1. The General Manager, S.C.Rly,
Railway Nilayam, Secunderabad.
2. The Divisional Railway Manager,
S.C.Railway, Sec'bad (BG) Division,
Secunderabad
3. The Divisional Personal Officer (BG)
S.C.Railway, Sec'bad (BG) Division, Secunderabad.
4. The Chief Carriage & Wagon Superintendent,
S.C.Rly, Ballampally Dist, Adilabad.
5. One copy to Mr. K.venkat Reddy, Advocate,
7-20 Madhurapuri, Beside Konark Theatre Dilsukhnagar, Hyd.
6. One copy to Mr.N.v.Ramana, SC for Rlys, CAT.Hyd.Bench.
7. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT-Hyd.
8. One spare copy.

pvm

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who entered service after
15-12-1979."


3. We have examined the case. The request of the applicant seeking the change in the date of birth was not considered by the Respondents and he was replied wide the impugned order No.E/D/535/C&W/CF-III dated 13-7-1990 by the Divisional Railway Manager, Secunderabad (BG). The reasons ^{stated} said in that letter is that the applicant had not made any representation for change of date of birth before 31-7-1973 as required ⁱⁿ by the Railway Board letter No.E(NG) 11-70 (BRT) dated 4-8-1972. A Full Bench of this Tribunal had decided on 17-8-1989 in T.A. Nos.1104/86 and 1089/86 that the Railway Board circular dt.4-8-72 doesnot have the force of law and therefore directed the respondents therein to consider the cases of the applicants for change of date of birth on merits. Applying the same direction, in this case also we direct the respondents to consider the case for change of date of birth of the applicant on its merits and dispose of the same. With these directions the Original Application is allowed. There is no order as to costs.


(J.NARASIMHA MURTHY)
Member (J)

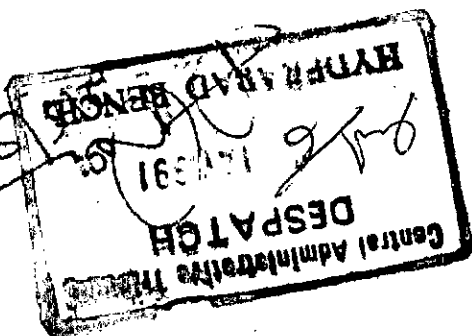

(R.BALASUBRAMANIAN)
Member (A)

Dated: 24 April, 1991.

vsn/avl


21/5/91
For Deputy Registrar (Judl)

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Admitted and interim direction issued
Allowed
Disposed of with direction.
Dismissed.
Dismissed as withdrawn.
Dismissed for default.
M.A. Ordered/Rejected.
No order as to costs.

M.A./R.A./C.A. No. _____
In _____
T.A. No. _____
O.A. No. _____
W.P. No. _____
24/5/91 ✓

ORDER / JUDGMENT.

DATED: 24-5-1991.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYD
THE HON'BLE MR. B. N. JAYASINHA:
AND
THE HON'BLE MR. D. SURYA RAO: M
AND
THE HON'BLE MR. J. NARASIMHA MUR
AND
THE HON'BLE MR. R. BALASUBRAMANIAN

TYPED BY _____
CHECKED BY _____
APPROVED _____
COMPAR _____
24/5/91