

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

REVIEW PETITION

IN

O.A.NO.336 of 1991

DATE OF JUDGMENT: 20/5 August 1992.

BETWEEN:

1. The General Manager,
South Central Railway,
Secunderabad.
2. The F.A. & C.A.O.,
S.C.Railway,
Secunderabad.
3. The Sr. Divisional Accounts Officer,
S.C.Railway,
Secunderabad .. Review Applicants

AND

Mr. K.N.Gopalakrishnan .. Review Respondent

COUNSEL FOR THE APPLICANTS: Mr. V.Bhimanna, SC for Rlys.

COUNSEL FOR THE RESPONDENT: Mr. N.Raghavan

CORAM:

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDL.)

This Review Petition No.70/92 in O.A.No.336/91 is filed by Shri V.Bhimanna, learned Standing Counsel for the Railways, under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, against the Judgment dated 26.3.1992 in O.A.No.336 of 1991 stating that there is an error apparent on the face of the record in delivering the Judgment allowing the Original Application of the Respondent herein for correction of his date of birth as 13.2.1936. Amongst the other grounds, one of the grounds raised by the review applicant is that-

"This Hon'ble Tribunal ought to have observed the lapses of the respondent in approaching the applicants herein at the fag end of his service even though the alleged decree in O.S.No. 832/82 was made on 16.9.1987 wherein the Railway administration is not a party."

2. Brief facts leading to the case as stated in the Judgment dated 26.3.1992 in O.A.No.336/91 are as follows:-

The applicant joined in Railway service as a Clerk on 15.12.1956. On the basis of SSLC certificate,

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his date of birth was recorded in the service register as 9.1.1935. In the year 1979 he could secure his horoscope papers at his native place and based on the said records he had obtained birth certificate indicating the correct date of birth viz., 13.2.1936 from the Registrar of Births & Deaths, Dharmapuri, Tamilnadu. Subsequently, the applicant had furnished the said Birth Certificate to the Director of School Education, Madras and requested them to correct his date of birth in the SSLC Register, but the said authorities informed the applicant that it cannot be corrected. The applicant states that he had filed a civil suit bearing O.A. No.832/82 on the file of the concerned learned District Munsiff Court at Dharmapuri, and that the said Hon'ble Court by judgment dated 16.9.1987 issued mandatory injunction directing the school authorities to correct the date of birth of applicant in his SSLC book and accordingly corrected by them. The applicant, thereafter, had approached the 2nd respondent for alteration of date of birth in his service register, but the said request of the applicant was rejected on the plea that the applicant ought to have sought alteration within the probation period. However, the applicant preferred an appeal to 2nd respondent on 13.6.1990, but it was also rejected stating that he is not eligible for alteration of his date of birth. Aggrieved by the said action of the 2nd respondent, he had also preferred an appeal before the 1st respondent, but the said authority also by procee-

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dings dated 20.10.1990 has rejected his request. The applicant, therefore, filed the O.A.No.336/91 on the grounds that the action of the respondents have ignored the circular No.12/90 dated 13.12.1990, and that Rule 225 does not preclude them from correcting wrong date of birth. The respondents denied the allegations of the applicant and averred that the applicant failed to explain the long delay caused in the matter and that there are no merits. They also contended that the applicant failed to make the Railways as defendants in the Court proceedings before the District Munsiff, Dharmapuri and, therefore, the said Judgment is not binding on them.

3. I have heard Mr. V.Bhimanna, learned Standing Counsel for the Review Applicants and Mr. N.Raghavan, learned Counsel for the Review Respondent. The party is also present during the hearing.

4. The learned counsel for the Review Respondent Mr. N.Raghavan objected the review petition being admitted on the ground that the orders passed on 26.3.1992 in O.A.No.336/91 were already executed and the competent authority has directed the change of date of birth in the service book of the applicant and hence the review petitioner cannot approbate and reprobate. The learned counsel for the review applicants states that the Judgment is implemented because of the fear of contempt of court before filing the review petition and even after implementing the Judgment in the O.A., a review petition can be made.

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5. Conditions to satisfy the review as stated in

47 CPC reads as follows:-

"1. Application for review of judgment -

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent he can present to the Appellate Court the case on which he applies for the review."

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So, a review can be done when a material error manifest on the face of the order passed earlier resulting in miscarriage of justice.

7. In the Judgment in the O.A.No.336/91, a decision of the Supreme Court was cited viz., AIR 1991 SC 308, "Director of Technical Education and another Vs. Smt. K. Sitadevi" at Para-5 (Page-5) wherein the second line which reads-

"The legal position would be that a decree without the State being a party is not binding on the employer (The State) in the matter of determination of the date of birth.",

is not properly appreciated by this Tribunal while pronouncing the Judgment. Para 6 of the Judgment of the Supreme Court reads as follows:-

"We, therefore, clarify the legal position that a decree without the State being a party is not binding on the employer (The State) in the matter of determination of the date of birth."

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7. The main ground of the Judgment was based upon the decree obtained by the O.A. applicant in the O.S.No. 832/82 on the file of the learned District Munsiff Court, Dharmapuri and basing on the Decree, the school authorities corrected the date of birth of the applicant in the O.A. in his SSLC Book. Here, the O.A. applicant had not made the Railways as party to the O.S.No.832/82 and hence, the Judgment of the learned District Munsiff Court, Dharmapuri is not binding on the Railways in view of the principle of the Supreme Court as cited in the Judgment in O.A.No.336/91 viz., AIR 1991 SC 308. The learned counsel for the Review Respondent argues that even if the respondent made the Railways as party in the O.S.No.832/82, what the Railways could do and it is of no consequence. This view cannot be accepted in view of the rulings of their lordships in the Judgment cited by me supra. In Para-5 of the Judgment in the O.A.No.336/91, the four lines viz., "legal position would be that a decree without the State being a party is not binding on the employer (The State) in the matter of determination of the date of birth", were not appreciated while delivering the Judgment. So, there is an error apparent on record crept-in in the Judgment passed in O.A.No.336/91 dated 26.3.1992. It is not heroic to perpetuate an error. In view of this position, the other

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points raised by both the counsel are not necessary to discuss.

8. The contention of the review respondent that the review applicants had already effected the change of his date of birth by virtue of the original order dated 26.3.92 in the O.A.No.336/91 does not alter the position of the law but on the other hand it shows that the review applicants are prompt in following the directions of the Court. / *Final*

9. The respondents are directed to act in accordance with these observations. Therefore, I hold that it is a fit case for review and following the decision of the Supreme Court in "AIR 1991 SC 308" referred to supra, I set-aside the Judgment passed on 26.3.1992 in the O.A.No. 336/91 and allow this Review Petition with no order as to costs. *Now this Review stands in the place of Judgment.* / *Final*

hstky
(C.J.ROY)
Member(Judl.)

Dated: *20th* August, 1992. *82/8/92*
Deputy Registrar(J)

To

1. The General Manager, S.C.Rly, Secunderabad.
2. The F.A. & C.A.O., S.C.Rly, Secunderabad.
3. The Sr.Divisional Accounts Officer, S.C.Rly, Secunderabad.
4. One copy to Mr.V.Bhimanna, SC for Rlys,CAT.Hyd.
5. One copy to Mr.N.Raghavan, 113, Jeera Compound. Sec'bad.
6. One copy to Hon'ble Mr.C.J.Roy ; Member(J)CAT.Hyd.
7. One spare copy.

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82/8/92
for C.J.
20/8/92

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TYPED BY

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN;

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDD
MEMBER (J)

AND

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

Dated: 20 - 8 - 1992

~~ORDER~~ / JUDGMENT

R.A./C.A./M.A. No 70/92

in

O.A.No.

336/91

T.A.No.

(W.P.No)

Admitted and interim directions
issued

RP.
Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

No orders as to costs.

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