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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.873/91

DATE OF JUDGEMENT: 6th NOVEMBER, 1992

BETWEEN

N.Venkataiah

.. Applicant

AND

1. General Manager,
South Central Railway
Secunderabad.
2. Divisional Railway Manager
Meter Gauge, Sec'bad
3. Sr.Divisional Engineer, (MG)
SCRly, Sec'bad
4. Asst.Engineer (Bldgs)
South Cent.Rly
Sec'bad

.. Respondents

Counsel for the Applicant : Mr. S.Lakshma Reddy

Counsel for the Respondents : Mr. V.Bhimanna, SC for Rlys

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. Chandrasekhara Reddy

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JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY
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 continue the applicant in service treating his age as 23 years in the year 1962 as per the Fit Certificate No.9(M.18B/A) dated 18.10.62 with all consequential benefits after setting aside the orders of superannuation of the applicant ^{came into force with} that effect from 30.9.91 and pass such other orders as may seem fit and proper in the circumstances of the case.

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

1. The applicant was initially appointed as Casual Labour in the year 1954. He was brought to the monthly rates as CMR with effect from 19.7.61. He was found fit for C-I category on 14.9.63. As the applicant did not produce any material to show his date of birth, the age of the applicant was assessed as 30 years as per Fit Certificate No. ~~12~~ M.18B/A-No.161 dated 14.9.63 by medical examination and accordingly in the service register of the applicant, the date of birth of the applicant was ^{entered as} 14.9.1933. On the basis of the date of birth of the applicant, as 14.9.33, the applicant was superannuated w.e.f.30.9.91. It is the case of the applicant that as on 14.9.63, that he was not aged 30 years but was aged only 23 years and that the applicant is liable to be superannuated on the basis of his ^{by the applicant} date of birth as 14.9.40. Hence, the present OA is filed for the relief as already indicated above.

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2. Counter is filed by the respondents opposing this OA.

3. In the counter filed by the respondents, it is maintained that absolutely there are no grounds to show that the applicant was aged 23 years in the year 1963 and so the OA of the applicant is liable to be dismissed.

4. It is needless to point out that heavy burden is cast on the applicant to show that the date of birth of the applicant is 14.9.40 and he was aged 23 years only in the year 1963, when his services were regularised in C-I category. The applicant has not filed his birth extract or any other acceptable evidence to show that his date of birth falls in the year 1940. To say in one word, this is a case where → there is no → evidence to show that the date of birth of the applicant is 14.9.40.

5. The contention of the applicant is that on 18.10.62, the applicant's age had been assessed medically when he was first examined for opening the service register after his regularisation as Khalasi in C-I category and at that time i.e. on 18.10.62 his age was assessed as 23 years. → The learned counsel for the applicant to substantiate the contention of the applicant relies on the proceedings of the South Central Railway letter dated 28.5.91, which was a reply given to (Bldgs.) the letter of Asst.Engineer/ South Central Railway dated 17.5.91. As the entire case of the applicant stands on the basis of the said letter, it would be convenient to extract the contents of the letter herein.

" SOUTH CENTRAL RAILWAY

No.HQ/MD/84/Emp/V.M.

Office:CHS/C/LGD

From:-M.S/M.E/ GD

dated 28.5.91

To

AEN/B/SC

Sub:-Issue of duplicate medical certificate -regarding

Ref:-Your letter No.22/STF/91 dt.17.5.91

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With reference to letter cited above, Sri Venkataiah Mallaiah, aged 23 years has attended for Medical examination with GM2 form dated 17.10.62 for the post of Khalasi in category C-I. He was made fit for appointment in Cey One(C-1) category vide fit Certificate No.9(m.18B/A) dated 18.10.62.

Hence, the duplicate medical certificate could not be issued from medical registers. This may be treated as duplicate certificate and disposal at your end please.

Sd/- xxxx 28/5/91"

6. Nowhere in the above proceeding, it is mentioned that the age of the applicant had been assessed as 23 years in the year 1962. It is quite possible that when the applicant was first sent on 17.10.62 for medical examination, he might have mentioned his age as 23 years. But, as could be seen from the medical examination on 14.9.63, the age of the applicant had been assessed as 30 years and so, in the service register of the applicant, the date of birth of the applicant had been entered as 14.9.33. As the said letter dated 28.5.91 does not go to show that the applicant's age on 17.10.62 has been arrived as 23 years by medical examination, no credance can be given to the statement contained in the said letter that the applicant's age was 23 on 17.10.62. Further we are not provided with any material to show on record that the date of birth of the applicant falls in 1940 as contended by him and that he(applicant) was aged only 23 years in the year 1962 when he was regularly appointed as Kalasi in C-1 category. In this connection,

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we may straightaway refer to Annexure 'C' appended to the counter which is the affidavit of the applicant sworn before the II Metropolitan Magistrate, Hyderabad on 17.2.81. The fact that the applicant had sworn such an affidavit dated 14.2.81 before the II Metropolitan Magistrate is admitted by the applicant's counsel.

In the said affidavit with regard to the age of the applicant, the applicant had sworn as follows:

"I, N.Venkataiah S/o Mallaiah aged 47 years Occupation Fitter in Inspector of Works (M.Head Quarters) S.C.Railway Rs/o H.No.9-3-24:Opp:to Himayatnagar Post Office, Rezimental Bazar, Secunderabad 500 025 do hereby solemnly affirm and state on oath as follows:

| | | | | | | |
|----|----|----|----|----|----|----|
| 1. | xx | xx | xx | xx | xx | xx |
| | xx | xx | xx | xx | xx | xx |
| 2. | xx | xx | xx | xx | xx | xx |
| | xx | xx | xx | xx | xx | xx |
| 3. | xx | xx | xx | xx | xx | xx |
| | xx | xx | xx | xx | xx | xx |
| 4. | xx | xx | xx | xx | xx | xx |

Sd/ N.Venkataiah
Deponent

Sworn and signed before me
on the 17th day of Feb'81
at Hyb

Magistrate
II Metropolitan Magistrate
Hyderabad "

So, as could be seen from the said affidavit dated 14.2.81 the applicant had stated ~~xx~~ his age as 47 years. So, if the applicant's age was 47 years as on 14.2.81, then the applicant should have born in the year 1934. But, as could be seen, the applicant's contention is that he is born in

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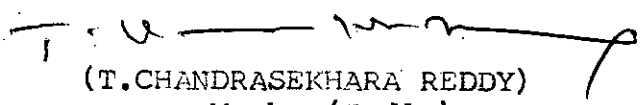
1. General Manager, South Central Railway, Secunderabad.
2. Divisional Railway Manager Meter Gauge, Sec-bad.
3. Senior Divisional Engineer, (MG), South Central Railway, Secunderabad.
4. Assistant Engineer (Bldgs) South Central Railway, Sec-bad
5. One copy to Sri. S.Lakshma Reddy, advocate, CAT, Hyd.
6. One copy to Sri. V.Bhimanna, SC for Railways, CAT, Hyd.
7. One spare copy.

Rsm/-

P. J. Lakshma Reddy
19/11/49

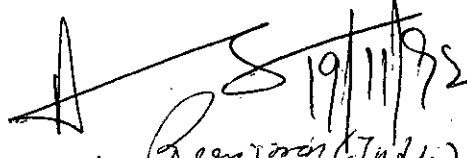
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the year 1940. If the applicant was born in the year 1940, the applicant's age could not be 47 years on 17.2.81, but should have been 40 years. As per the applicant's own admission, as could be seen from the said affidavit dated 14.2.81, the applicant's age was 47 years as on 14.2.81. So, it is rather difficult to accept the fact that the applicant was born in the year 1940. So, from the said affidavit, wherein the applicant has given his age, it becomes quite probable that the applicant might have born in the year 1933 and so the date of birth of the applicant as entered in his service register as 14.10.33 appears ^{to} be quite probable. As there is no proof to show that the date of birth of the applicant is in the year 1940, and that, he was aged 23 years in the year 1962, we have no difficulty to hold that the applicant had failed to substantiate that his date of birth falls in the year 1940 as contended by him. Hence, this OA is liable to be dismissed, and accordingly is dismissed leaving the parties to bear their own costs.


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 6th day of November, 1992

mvl


Deputy Registrar (Judl.)

Cond - 7/1

10/11/92
O.H-873/4
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

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

AND

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

AND

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

Dated: 6/11/1992

ORDER/JUDGMENT:

~~R.A. / C.A. / M.A. No~~

O.A. No.

in
873/41

T.A. No.

(wp. No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

pvm

