

ANNEXURE - I

List of Papers in Original Application No.

117/92

Sl.No. of Papers	Date Of Papers Or Date of filing.	Description of Papers.
		<u>Part - I</u>
	23-9-92	O Original Judgement O.A & Material Papers. Counter Reply Counter

PART I, PART- II and PART ---.iii
Destroyed.

23/3/99.

OA-117/92.

①

Date	Office Note	Orders
22.9.92		<p>None present on behalf of the applicant. No representation on behalf of the applicant. Mr. V. Bhimanna, for the respondents are is present and reports ready. List this OA for dismissal on 23.9.92.</p> <p>T. R. M. (HTCSR) M(J)</p>
23.9.92		<p>OA is dismissed with no order as to costs. Vide the orders on separate sheets.</p> <p>T. R. M. (HTCSR) M(J)</p>
6.8.93		<p>None for the app.</p> <p>The objections having been cleared by the learned counsel for the applicants, let the RP be given a regular number and post it for further orders.</p> <p>None for the applicant, Mr. V. Bhimanna for the respondents.</p> <p>T. R. M. HTCSR M(J)</p> <p>2 HABG M(A)</p>

(P.T.O.)

OA. 117/92

Date	Office Note	Orders
		<p>for the applicant will be at liberty to file the rejoinder within one week hereafter. keep the case before the Registrar, ^{after} for completion of pleadings & directions as per in the usual course.</p> <p style="text-align: right;">T. C. N. (HTCSR) m/s)</p>
21.4.92	<p><u>Service</u> R.B. 1952 Served</p> <p><u>Before the D.R. (C)</u> <u>for Directions</u></p>	<p>Even after expiry 8 weeks time for filing counter, the counter is not filed. Hence Post the case in usual course</p> <p style="text-align: right;">S. J. / 4/92 Dy. Registrar (C)</p>
13.8.92		<p>None present on behalf of the applicant. Mr. V. Bhimanna, for the respondents is present. Counter of the ^{den} respondents is not yet filed. List then OA for final hearing on 22-9-92. The respondents will be at liberty to file their counter with a copy to the Advocate for the applicant. The applicant may file his rejoinder if any. by by the date of hearing with a copy to the opposite party.</p> <p style="text-align: right;">T. C. N. (HTCSR) m/s)</p>

Central Administrative Tribunal

HYDERABAD BENCH

②

O.A. No./TA No.

117/1992

T. K. Sushaichalan

Applicant (s)

Versus

The Sr. Div. Personnel Officer, Secy. Guntakal & co. Ltd.

Respondent (s)

Date	Office Note	Orders
14.2.92		<p>Applicant is absent.</p> <p>Mr. T. Lakshminarayana, Advocate for the applicant not present. Mr. V. Bhimanna, Advocate for the respondents takes notice of this OA. List this OA for admission hearing on 17-2-92.</p> <p>T. C. M. P.</p> <p>(HTCSR) M(J)</p>
17.2.92		<p>At the request of Mr. Pathrow for Mr. T. Lakshminarayana, Advocate for the applicant adjourned to 19.2.92.</p> <p>T. C. M. P.</p> <p>(HTCSR) M(J)</p>
18-2-92		<p>Sri T. Lakshmi Narayana, learned counsel for the applicant and Sri V. Bhimanna, learned counsel for the respondents are present and heard. As this is a fact matter for adjudication, O.A. is admitted. The Respondents may file their reply opposing the O.A. within eight weeks with an advance copy to the learned counsel for the applicant. The counsel</p>

18/2

14/4 21/4

(P.T.O.)

(42)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

O.A. No. 117/92

Date of Decision: 23.9.92

~~T.A. No.~~

T.K. Seshachalam

Petitioner.

Mr. T. Lakshminarayana

Advocate for
the Petitioner(s)

Versus
The sr. Divisional Personnel Officer,
S.C.Rly., Guntakal, Anantapur Dt. and another.

Respondent.

Mr. V. Bhimanna

Advocate for
the Respondent
(s)

CORAM:

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

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
 2. To be referred to the Reporters or not ?
 3. whether their lordships wish to see the fair copy of the Judgment ?
 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.)
- W

T - C - n f
(HTCSR)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.: 117/92

Date of Order: 23.9.1992

BETWEEN:

T.K.Seshachalam

.. Applicant.

A N D

1. The Senior Divisional Personnel Officer, S.C.Rly., Guntakal, Anantapur District.
2. The Divisional Mechanical Engineer (Carriage & Wagons) South Central Railway, Guntakal, Anantapur District... Respondents.

Counsel for the Applicant

.. Mr. T.Lakshminarayan

Counsel for the Respondents

.. Mr.V.Bhimanna

CORAM:

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

(Order of the Single Member Bench delivered by
Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)).

T.C.R.

BY
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This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act to declare that the applicant should be deemed to continue in service till the date of superannuation on the basis of his date of birth as 21.9.1935 and to direct the respondents to pay all wages to the applicant w.e.f. 1.3.90 onwards till 30.9.93 - the date of superannuation of the applicant.

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

The applicant was originally appointed in Group 'D' service on 27.7.54. He was promoted to the post in Group 'C'. Ultimately, the applicant attained the cadre of Train Examiner. The applicant retired on 29.2.90 as per notification issued on 28.2.90 by the Competent Authority. According to the applicant, his correct date of birth is 21.9.35. According to him, he should have been retired on 30.9.1993 which is the correct date of his superannuation. According to the applicant, the retirement on 28.2.90 is not valid. Hence, the present OA is filed for the relief as already indicated above.

No counter is filed by the Respondents.

Mr T. Lakshmi Narayana, Advocate for the applicant and Mr V. Bhimanna, Standing Counsel for the respondents are present, ~~and heard~~.

Even though counter is not filed, as the material is sufficient to give a fair disposal of this OA, we proceed to decide this OA after hearing both sides.

For allegedly tampering the date of birth in the service register of the applicant from "9.2.32" to "21.9.35" a departmental enquiry was initiated as against the applicant. A regular enquiry officer was appointed by the

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respondents to conduct the enquiry. The report of the Enquiry Officer is appended as Annexure-4 to this OA and the report of the enquiry officer is found at pages 12,13,14 and 15 of the material papers to this OA.

In the matter with regard to alteration of date of birth, it is needless to point out that heavy burden is cast on the applicant to place reliable evidence to show his correct date of birth. The contention of the applicant herein is, that he has not filed this OA to correct date of birth, but his prayer is to allow him to continue in service till the date of superannuation on the basis of date of birth as 21.9.1935. Unless this Tribunal is satisfied that the correct date of birth of the applicant is 21.9.35, the applicant will not be entitled to be superannuated on the basis of date of birth as 21.9.35. There is no documentary proof to show that the correct date of birth of the applicant is 21.9.35. Nor is there pleading to show that any of the documents would disclose that his correct date of birth is 21.9.35. Leave it as it is. ~~21~~ Coming back to the enquiry report which we have referred to earlier, we may refer to the first para at page 4 of the enquiry report which is as follows and which has got relevance in deciding this OA.

"The charged employee in his reply to Q.No.75 that his date of birth has been shown in the records as 9.2.34, 21.9.35, and 9.2.32 besides the date of birth shown as 21.9.35 in the certificate issued by the Municipal Health Officer/Bellary when he was question No.76 that why he failed to represent contradicting the date of birth even though representations were called for. The charged employee states that the seniority list wherein the date of birth has been mentioned have not been circulated and acknowledged by him in token of having been supplied with the copy of seniority list. Therefore, he states that there was no need for him to make a representation. In reply to Q.No.77, the charged employee mentioned that he has mentioned his date of birth as 21.9.35 in the family composition declaration against the column provided therefor.

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When the employee as asked vide Q.No.78 that when he applied for the post of TXR he has mentioned his date of birth as 9.2.32. In reply to this, he states that he can only attribute this was done in-advertantly. He also states that the date of birth of his own brother Sri K.Lakshmanaswamy is 9.2.32 and both are not twins."

As could be seen from the replies given to the said question in the said enquiry, the applicant has stated that he has mentioned his date of birth as 9.2.1932 when he applied for the post of TXR. So, if the correct date of birth is 21.9.35, we are unable to understand why the applicant stated that his date of birth as 9.2.35 when he applied for the post of TXR. As could be seen from the above para, the applicant has stated that his date of birth is shown in the records as 9.2.34, 21.9.35 and 9.2.32. Besides the date of birth shown as 21.9.35 in the certificate issued by the Municipal Health Officer/Bellary. So, as per the own statement of the applicant, his dates of birth are also 9.2.32 and 9.2.34. So, in view of the inconsistent dates of birth of the applicant, it is ~~very~~ difficult to believe when he states that his correct date of birth is 21.9.35.

The said report also would go to show that the applicant had taken a stand during the enquiry that his date of birth was suitably corrected in the SR on his representation submitted to Sr.DPO as per the appeal dated 20.11.89 and that the said correction of the date of birth was made from "9.2.32" to "21.9.35". Mr V.Bhimanna, for the respondents submitted that no orders had been passed at any time by any authority correcting the date of birth of the applicant from 9.2.34 to 21.9.35, even though the said appeal dated 20.11.89 had been submitted by the applicant for the said correction of date of birth. So, from the statement of

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Mr Bhee Manna

it is quite evident that originally in the service register the date of birth should have been recorded as 9.2.32 only and not as 21.9.35. So in view of this position also, the date of birth of the applicant, as having been entered as 21.9.35 in the service register cannot be accepted.

Mr T. Lakshminarayana, for the applicant took us though the family composition declaration wherein the applicant has declared that his date of birth is 21.9.35 and on that basis, it is contended that the correct date of birth of the applicant is 21.9.35. It is needless to point out that admissions are best piece of evidence. As could be seen when he applied for the post of TXR he has mentioned his date of birth as 9.2.32. In view of the ^{and} admission, the date of birth of the applicant as 9.2.32, in the subsequent declaration stating that the date of birth of the applicant as 21.9.35, is of no avail to the applicant.

The elder brother of the applicant who is one Mr DK Lakshmanaswamy had worked as Senior Clerk in the Loco Shed, Railways. His date of birth also seems to have been recorded in his register as 9.2.32. It is the contention of the applicant as the said Sri D.K.Lakshmanaswamy is elder than the applicant and his date of birth had been entered in the Service Register as 9.2.32, the date of birth of the applicant also cannot be 9.2.32, and so, in view of this position, that it could be safely inferred that the date of birth of the applicant is 21.9.35. No doubt in the service register of D.K.Lakshmanaswamy, the elder brother of the applicant, his date of birth might have been mentioned as 9.2.32. But there is no proof to show that 9.2.32 is the correct date of birth of the said DK Lakshmanaswamy to draw any inference that the date of birth of the applicant is 21.9.35. Hence, the said contention has no force and hence, we have no difficulty in rejecting the same.

Annexure-1 to the OA is the notification issued on 25.10.89 with regard to C&W staff that were due to retire in the year 1990. The applicant's date of birth is shown as 9.2.32 and the date of retirement as 28.2.90. Two months after the said notification was issued, the applicant had filed OA 113/90 before this Tribunal questioning the notification issued that he was due to retire from 28.2.90 was not valid and that, his correct date of birth was 21.9.35 and that he was to be retired on the basis of his date of birth as 21.9.35. The said OA had been disposed of by the orders of the Tribunal dated 17.7.90. As enquiry with regard to the tampering of the applicant's service register was pending, this Tribunal had not passed any orders on merits with regard to his date of birth. But the Tribunal has observed as follow

"if it is established that the applicant had tampered the records that his date of birth is 9.2.32 the claim of the applicant will have no basis. If on the contrary, the enquiry establishes that he had not tampered the date of birth entry in the service register, it would follow that the applicant would be deemed to have continued in service till the date of superannuation."

On the basis of the said observation, Mr T. Lakshminarayana contends that the applicant is not responsible with regard to the tampering and in view of the observations of the Tribunal that he should be allowed to continue in service on the basis of his date of birth as 21.9.35. Mr V. Bhimanna counsel for the respondents, took us through the relevant paras of the enquiry report. The relevant ^{two} paras reads as follows: (last but two paras in the report).

"It therefore leads to prove that Sri TK Seshachalam HTXR/GTL has not replaced two pages of two volumes of his service register by himself and altered the date of birth as 21.9.35 from 19.2.32 since he is an open line staff and has no access to the SR section

Sri TK Seshachalam, while functioning as HXTR/GTL

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he was not responsible for the replacement of 2 pages of two volumes of his service register and not altered his date of birth as 21.9.35 from 9.2.32 in the first page of the service register which is kept in the record Room of Sr.DPO's office/Guntakal. He has thus not contravened the Rule No.3-1(iii) of Railway Service & Conduct Rules, 1966."

From the reading of the said two paras , it is amply evident that 2 pages of 2 volumes of Service Register had ~~not~~ been altered and that there had been ~~no~~ tampering of the date of birth of the applicant in his service register, though the Applicant is not responsible for the same. Besides, we have already given a finding that we do not have any ~~xx~~ proof to show that the date of birth of the applicant is 21.9.35. So, the said observation in the OA 113/90 do not come to the rescue of the applicant in establishing that his date of birth is 9.2.35. So, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

T. Chandrasekhara Reddy
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 23rd September, 1992

(Dictated in the Open Court)

Deputy Registrar (J)

To

1. The Senior Divisional Personnel Officer,
S.C.Railway, Guntakal, Anantapur, Dist.
2. The Divisional Mechanical Engineer
(Carriage & Wagons) S.C.Rly, Guntakal, Anantapur Dist.
3. One copy to Mr.T.Lakshminarayana, Advocate
2-2-185/54/1/D, Bagh Amberpet, Hyderabad.
4. One copy to Mr.v.Bhimanna, SC for Rlys, CAT.Hyd.
5. One spare copy.

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TYPED BY ②

COMPARED BY

CHECKED BY RM

APPROVED BY 15/10

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: 23-9 -1992

~~ORDER~~ JUDGMENT:

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

in

O.A.No.

117/92

T.A.No.

(wp.No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

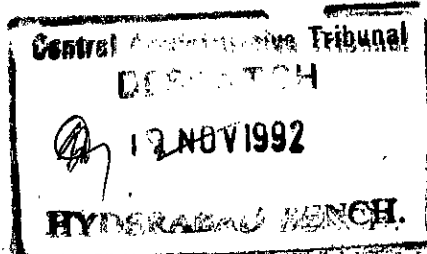
Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

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the respondents to pay all wages to the applicant w.e.f. 1.3.90 onwards till 30.9.93 - the date of superannuation of the applicant.

3. The Review petitioner was originally appointed in Group'D' service on 27.7.54. He was promoted to the post of Group'C'. Ultimately the applicant attained the cadre of Train Examiner. The applicant was retired on 29.2.90 on the basis of his date of birth ⁰³9.2.1932 that was shown in the service register of the applicant. According to the applicant, his correct date of birth is 21.9.35. So, it is the case of the applicant, that he should have been retired on 30.9.93 instead of 28.2.90. Hence, the applicant had approached the Tribunal by filing OA 117/92 for the ~~above~~ relief as already indicated.

4. After hearing Mr T.Lakshminarayana, counsel for the applicant and Mr V.Bhimanna, Standing Counsel for the Railways, for respondents, the said OA117/92, for the reasons mentioned therein, was dismissed on 23.9.92. The present review petition is filed to review our order dated 23.9.92. There is a delay of about 11 days in filing this RP. MA 609/92 is filed to condone the delay of 11 days in filing this RP. The reason assigned for the delay in filing this RP is that there was law and order problem ~~that~~ ~~exists~~ then existing in Hyderabad and hence, the applicant could not meet his counsel ^{in instructing him to file} to ~~instruct~~ ^{for filing} the review within time i.e. before 12.12.1992 ^{i.e. within a} -one month after receipt of the said order by the applicant.

5. Records disclose that the copy of the order had been issued to the counsel for the applicant on 11.11.92.

T. C. M. P.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD



M.A.609/93

in

RP Sr.No.3938/92

in

OA 117/92

Date of order: 30-8-1993

Between

T.K.Seshachalam

.. Applicant

and

1. The Sr.Divisional Personnel Officer, South Central Rly., Guntakkal
2. The Divisional Mechanical Engineer (Carriage & Wagons) SCRly, Guntakkal .. Respondents

Counsel for the Applicant :: Mr T.Lakshminarayana

Counsel for the Respondents :: Mr V. Bhimanna, SC For Rly.

CORAM:

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

ORDER (BY CIRCULATION)

RP Sr.No.3938/92 is filed by the applicant herein under Rule 17 of the CAT Procedures Rules, 1987 to review our judgement dated 23.9.92. After going through the grounds raised in this RP, we proceed to decide this RP by circulation in terms of Rule 17(iii) of CAT Procedure Rules, 1987.

2. The applicant herein had filed OA 117/92 to allow him to continue in service till the date of superannuation on the basis of his date of birth as 21.9.35 and to direct

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5/8/93

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^{The} In usual course, the order ^{would} have been received by the counsel within two or three days. Serving a copy of the order ^{on} the counsel ^{of} the applicant is as good as serving a copy of the order on the applicant himself. There was plenty of time for the Review petitioner to consult his advocate soon after copy of the order was communicated to his counsel. The reason assigned in the MA for the delay in filing this RP is not at all convincing. Hence, MA 609/93 is liable to be dismissed and is accordingly dismissed. As MA 609/93 is dismissed this RPSR No.3938/92 is also liable to be rejected.

6. We have gone through the grounds raised in this RP. Absolutely, there are no valid grounds in the RP. ^{rejected} Hence the RP is ~~also dismissed~~ leaving the parties to bear their own costs.

ENTERED TO BE TRUE COPY

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9 93
(Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

mvl

To

1. The Senior Divisional Personnel Officer, S.C.Railway, Guntakal.
2. The Divisional Mechanical Engineer (Carriage & Wagons) S.C.Rly, Guntakal.
3. One copy to Mr.T.Lakshminarayana, Advocate, CAT.Hyd.
4. One copy to Mr.v.Bhimanna, SC for Rlys. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

pvm

18/10/93
7/5/93

ANNEXURE - I.

List of Papers in Original Application No.

Sl.No. of Papers	Date Of Papers Or Date of fol- ing.	Description Of Papers.
		<u>Part -I</u>
		O Original Judgement
		O.A & Material Papers.
		Counter
		Reply Counter

PART - I, PART- II and PART --- III.
Destroyed.

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

~~GA NO/TA NO~~ RP No. /93 in OA No. 117/1992

T.K. Seshachalam Applicant (S)

Sr. Div. personnel officer, Secy, Guntakal Cantt Respondent (S)
Versus

Date	Office Note	Orders
30-8-93		MA 609/93 and RPSMD. 3938/92 dismissed by circulation vide orders on separate sheets. T.K. Seshachalam 10522 MCD)

Dt.:

30/8/93

S2 3938/13
~~QA/RP/CP/TA/NO.~~

Pre-delivery judgement/order on
the above ~~QA/RP/CP/TA~~ as dictated by the
Hon.Member() is put up for kind perusal
please.

By

HMLJ.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

M.A.609/93

in

RP Sr.No.3938/92

in

OA 117/92

Date of order: 30-8-1993

Between

T.K.Seshachalam

.. Applicant

and

1. The Sr.Divisional Personnel Officer, South Central Rly., Guntakkal
2. The Divisional Mechanical Engineer (Carriage & Wagons) SCRly, Guntakkal .. Respondents

Counsel for the Applicant :: Mr T.Lakshminarayana

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

CORAM:

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

ORDER (BY CIRCULATION)

RP Sr.No.3938/92 is filed by the applicant herein under Rule 17 of the CAT Procedures Rules, 1987 to review our judgement dated 23.9.92. After going through the grounds raised in this RP, we proceed to decide this RP by circulation in terms of Rule 17(iii) of CAT Procedure Rules, 1987.

2. The applicant herein had filed OA 117/92 to allow him to continue in service till the date of superannuation on the basis of his date of birth as 21.9.35 and to direct

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the respondents to pay all wages to the applicant w.e.f. 1.3.90 onwards till 30.9.93 - the date of superannuation of the applicant.

3. The Review petitioner was originally appointed in Group'D' service on 27.7.54. He was promoted to the post of Group'C'. Ultimately the applicant attained the cadre of Train Examiner. The applicant was retired on 29.2.90 on the basis of his date of birth ^{as} 9.2.1932 that was shown in the service register of the applicant. According to the applicant, his correct date of birth is 21.9.35. So, it is the case of the applicant, that he should have been retired on 30.9.93 instead of 28.2.90. Hence, the applicant had approached the Tribunal by filing OA 117/92 for the above relief as already indicated.

4. After hearing Mr T.Lakshminarayana, counsel for the applicant and Mr V.Bhimanna, Standing Counsel for the Railways, for respondents, the said OA117/92, for the reasons mentioned therein, was dismissed on 23.9.92. The present review petition is filed to review our order dated 23.9.92. There is a delay of about 11 days in filing this RP. MA 609/92 is filed to condone the delay of 11 days in filing this RP. The reason assigned for the delay in filing this RP is that there was law and order problem ~~that exists~~ then existing in Hyderabad and hence, the applicant could not meet his counsel ^{in instructing him to do} to ~~instruct for filing~~ the review within time i.e. before 12.12.1992-one month after receipt of the said order by the applicant.

5. Records disclose that the copy of the order had been issued to the counsel for the applicant on 11.11.92.

T. C. N. P.

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20/12/92

...3...

16

^{The} In usual course, the order ^{would} have been received by ^{the} counsel within two or three days. Serving a copy of the order ^{to} the counsel ^{of} the applicant is as good as serving a copy of the order on the applicant himself. There was plenty of time for the Review petitioner to consult his advocate soon after copy of the order was communicated to his counsel. The reason assigned in the MA for the delay in filing this RP is not at all convincing. Hence, MA 609/93 is liable to be dismissed and is accordingly dismissed. As MA 609/93 is dismissed this RPSR No.3938/92 is also liable to be rejected.

6. We have gone through the grounds raised in this RP. Absolutely, there are no valid grounds in the RP. ^{rejected} Hence the RP is ~~also dismissed~~ leaving the parties to bear their own costs.

(T.CHANDRASEKHARA REDDY)
Member(judl.)

Dated: 30-8-1993

Deputy Registrar(J)

mvl

To

1. The Senior Divisional Personnel Officer,
S.C.Railway, Guntakal.
2. The Divisional Mechanical Engineer (Carriage & Wagons)
S.C.Rly, Guntakal.
3. One copy to Mr.T.Lakshminarayana, Advocate, CAT.Hyd.
4. One copy to Mr.v.Bhimanna, SC for Rlys. CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

pvm

300 24/10/93
Q.16
7/13

6 copies

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

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

AND

THE HON'BLE MR. P. T. EIRUVENGADAM : M(A)

Dated: 30-8 -1993

~~ORDER/JUDGMENT.~~

M.A./R.A./C.A.N.O. 609/93 & RPSR-3938/92
in O.A. 117/92

O.A.No.

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

pvm

Central Administrative Tribunal
DESPATCH
22 SEP 1993
HYDERABAD BENCH

50/93

OA 117/92

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.

CIVIL APPEAL

SUPREME COURT LEAVE PETITION

NO. 20170/93

~~Petition~~ ^{Petition} was filed in the SUPREME COURT OF INDIA
BY Sri T.K. Perka Chayam ~~against The Divisional Railway~~
~~Department~~ ^{Manager of Orr} seeking leave to ~~appeal~~ appeal against the
~~Order~~ Judgment of this Hon'ble Tribunal dated 23-9-1992
and made in ~~I.A.~~ O.A. No. 117/92 The Supreme Court was
pleased to dismiss the leave to appeal/~~petition~~ stay the
~~operation of judgment on~~ 26-11-1993

The Judgment of the Tribunal in ~~I.A.~~ O.A. NO. 117/92
and the letter/order of the Supreme Court of India
are enclosed herewith for perusal.

Submitted.

Deputy Registrar (J) A 8/8/94

~~Registrar~~

Hon'ble Vice Chairman ✓

Hon'ble Member (A) LA2

Hon'ble Member (J) C 16/12/94

Hon'ble Member (A-II) 17/12/94

Records

50
50/93

D.No. 6397/93 /Sec. XII A
SUPREME COURT OF INDIA
NEW DELHI

From :-

The Registrar,
Supreme Court of India
New Delhi.

DATED :- 8th December, 1993
12

To

The Registrar,
Central Administrative Tribunal,
Hyderabad Bench at Hyderabad,
(Andhra Pradesh.)

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/~~XXX~~). NO20170 of 199
(Petition under Article 136 (1) of the constitution of India
from the judgment and order dated 23rd September, 1992
of the ~~High Court of Andhra Pradesh at Hyderabad~~ Central Administrative Tr
, Hyderabad Bench at Hyderabad in O.A. No.117 of 1992

T.K. Sesha Chalam

Petitioner (s)

Versus

The Divisional Railway Manager & Ors. Respondent (s)

Sir,

I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed
by the Court on 26th November, 1993.

Yours faithfully

R. Ch
FOR REGISTR

Recd
30/12/93

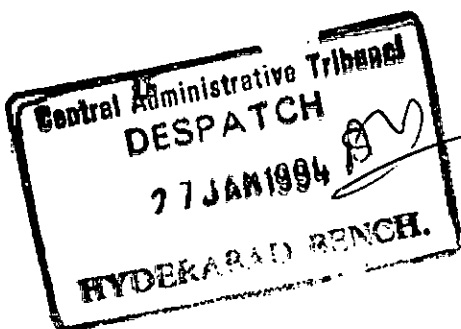
~~In the~~ Central Administrative Tribunal
Hyderabad Bench.

End No. CAT/Hyd/Secy/No/93. Dt: 17-1-94.

Communicate:

dy Regd (S) 8/8/94
S.O. (S) 8/8/94

- To,
- 1) The Senior Divisional Personnel Officer,
S.C. Railway, Hyderabad, Hyderabad Dist.
 - 2) The Divisional Mechanical Engineer,
(Carriage & Wagons) S.C. Mys, Hyderabad,
Hyderabad Dist.
 - 3) One copy to Mr. Lakshminarayana, A.P. Secy
2-2-185/94/1/0, Bagh Amberpet, Hyd.
 - 4) One copy to Mr. S. Shrinanana S.C. Secy Mys,
CAT, Hyd.
 - 5) One spare copy



This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act to declare that the applicant should be deemed to continue in service till the date of superannuation on the basis of his date of birth as 21.9.1935 and to direct the respondents to pay all wages to the applicant w.e.f. 1.3.90 onwards till 30.9.93 - the date of superannuation of the applicant.

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

The applicant was originally appointed in Group 'D' service on 27.7.54. He was promoted to the post in Group 'C'. Ultimately, the applicant attained the cadre of Train Examiner. The applicant retired on 29.2.90 as per notification issued on 28.2.90 by the Competent Authority. According to the applicant, his correct date of birth is 21.9.35. According to him, he should have been retired on 30.9.1993 which is the correct date of his superannuation. According to the applicant, the retirement on 28.2.90 is not valid. Hence, the present OA is filed for the relief as already indicated above.

No counter is filed by the Respondents.

Mr T. Lakshmi Narayana, Advocate for the applicant and Mr V. Bhimanna, Standing Counsel for the respondents are present. ~~and counter is not filed.~~

Even though counter is not filed, as the material is sufficient to give a fair disposal of this OA, we proceed to decide this OA after hearing both sides.

For allegedly tampering the date of birth in the service register of the applicant from "9.2.32" to "21.9.35" a departmental enquiry was initiated as against the applicant. A regular enquiry officer was appointed by the

T. C. N. *[Signature]*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.: 117/92

Date of Order: 23.9.1992

BETWEEN:

T.K.Seshachalam

A N D

1. The Senior Divisional Personnel Officer, S.C.Rly., Guntakal, Anantapur District.
2. The Divisional Mechanical Engineer (Carriage & Wagons) South Central Railway, Guntakal, Anantapur District... Respondents.



Counsel for the Applicant

.. Mr. T.Lakshminara

Counsel for the Respondents

.. Mr.V.Bhimanna

CORAM:

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

(Order of the Single Member Bench delivered by
Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.)).

--- T.C.R.

When the employee as asked vide Q.No.78 that when he applied for the post of TXR he has mentioned his date of birth as 9.2.32. In reply to this, he states that he can only attribute this was done in-advertantly. He also states that the date of birth of his own brother Sri K.Lakshmanaswamy is 9.2.32 and both are not twins."

As could be seen from the replies given to the said question in the said enquiry, the applicant has stated that he has mentioned his date of birth as 9.2.1932 when he applied for the post of TXR. So, if the correct date of birth is 21.9.35, we are unable to understand why the applicant stated that his date of birth as 9.2.35 when he applied for the post of TXR. As could be seen from the above para, the applicant has stated that his date of birth is shown in the records as 9.2.34, 21.9.35 and 9.2.32. Besides the date of birth shown as 21.9.35 in the certificate issued by the Municipal Health Officer/Bellary. So, as per the own statement of the applicant, his dates of birth are also 9.2.32 and 9.2.34. So, in view of the inconsistent dates of birth of the applicant, it is ~~very~~ difficult to believe when he states that his correct date of birth is 21.9.35.

The said report also would go to show that the applicant had taken a stand during the enquiry that his date of birth was suitably corrected in the SR on his representation submitted to Sr.DPO as per the appeal dated 20.11.89 and that the said correction of the date of birth was made from "9.2.32" to "21.9.35". Mr V.Bhimanna, for the respondents submitted that no orders had been passed at any time by any authority correcting the date of birth of the applicant from 9.2.34 to 21.9.35, even though the said appeal dated 20.11.89 had been submitted by the applicant for the said correction of date of birth. So, from the statement of

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respondents to conduct the enquiry. The report of the Enquiry Officer is appended as Annexure-4 to this OA and the report of the enquiry officer is found at pages 12,13,14 and 15 of the material papers to this OA.

In the matter with regard to alteration of date of birth, it is needless to point out that heavy burden is cast on the applicant to place reliable evidence to show his correct date of birth. The contention of the applicant herein is, that he has not filed this OA to correct date of birth, but his prayer is to allow him to continue in service till the date of superannuation on the basis of date of birth as 21.9.1935. Unless this Tribunal is satisfied that the correct date of birth of the applicant is 21.9.35, the applicant will not be entitled to be superannuated on the basis of date of birth as 21.9.35. There is no documentary proof to show that the correct date of birth of the applicant is 21.9.35. Nor is there pleading to show that any of the documents would disclose that his correct date of birth is 21.9.35. Leave it as it is. ~~Q~~ Coming back to the enquiry report which we have referred to earlier, we may refer to the first para at page 4 of the enquiry report which is as follows and which has got relevance in deciding this OA.

"The charged employee in his reply to Q.No.75 that his date of birth has been shown in the records as 9.2.34, 21.9.35, and 9.2.32 besides the date of birth shown as 21.9.35 in the certificate issued by the Municipal Health Officer/Bellary when he was questioned No.76 that why he failed to represent contradicting the date of birth even though representations were called for. The charged employee states that the seniority list wherein the date of birth has been mentioned have not been circulated and acknowledged by him in token of having been supplied with the copy of seniority list. Therefore, he states that there was no need for him to make a representation. In reply to Q.No.77, the charged employee mentioned that he has mentioned his date of birth as 21.9.35 in the family composition declaration against the column provided therefor.

Annexure-1 to the OA is the notification issued on 25.10.89 with regard to C&W staff that were due to retire in the year 1990. The applicant's date of birth is shown as 9.2.32 and the date of retirement as 28.2.90. Two months after the said notification was issued, the applicant had filed OA 113/90 before this Tribunal questioning the notification issued that he was due to retire from 28.2.90 was not valid and that, his correct date of birth was 21.9.35 and that he was to be retired on the basis of his date of birth as 21.9.35. The said OA had been disposed of by the orders of the Tribunal dated 17.7.90. As enquiry with regard to the tampering of the applicant's service register was pending, this Tribunal had not passed any orders on merits with regard to his date of birth. But the Tribunal has observed as follows

"if it is established that the applicant had tampered the records that his date of birth is 9.2.32 the claim of the applicant will have no basis. If on the contrary, the enquiry establishes that he had not tampered the date of birth entry in the service register, it would follow that the applicant would be deemed to have continued in service till the date of superannuation."

On the basis of the said observation, Mr T. Lakshminarayana contends that the applicant is not responsible with regard to the tampering and in view of the observations of the Tribunal that he should be allowed to continue in service on the basis of his date of birth as 21.9.35. Mr V. Bhimanna counsel for the respondents, took us through the relevant paras of the enquiry report. The relevant ^{two} paras reads as follows: (last but two paras in the report).

"It therefore leads to prove that Sri TK Seshachalam HTR/GTL has not replaced two pages of two volumes of his service register by himself and altered the date of birth as 21.9.35 from 19.2.32 since he is an open line staff and has no access to the SR section

Sri TK Seshachalam, while functioning as HTR/GTL

Mr Bhee Manna

it is quite evident that originally in the service register the date of birth should have been recorded as 9.2.32 only and not as 21.9.35. So in view of this position also, the date of birth of the applicant, as having been entered as 21.9.35 in the service register cannot be accepted.

Mr T. Lakshminarayana, for the applicant took us though the family composition declaration wherein the applicant has declared that his date of birth is 21.9.35 and on that basis, it is contended that the correct date of birth of the applicant is 21.9.35. It is needless to point out that admissions are best piece of evidence. As could be seen when he applied for the post of TXR he has mentioned his date of birth as 9.2.32. In view of the ^{and} admission, the date of birth of the applicant as 9.2.32, in the subsequent declaration stating that the date of birth of the applicant as 21.9.35, is of no avail to the applicant.

The elder brother of the applicant who is one Mr DK Lakshmanaswamy had worked as Senior Clerk in the Loco Shed, Railways. His date of birth also seems to have been recorded in his register as 9.2.32. It is the contention of the applicant as the said Sri D.K.Lakshmanaswamy is elder than the applicant and his date of birth had been entered in the Service Register as 9.2.32, the date of birth of the applicant also cannot be 9.2.32, and so, in view of this position, that it could be safely inferred that the date of birth of the applicant is 21.9.35. No doubt in the service register of D.K.Lakshmanaswamy, the elder brother of the applicant, his date of birth might have been mentioned as 9.2.32. But there is no proof to show that 9.2.32 is the correct date of birth of the said DK Lakshmanaswamy to draw any inference that the date of birth of the applicant is 21.9.35. Hence, the said contention has no force and hence, we have no difficulty in rejecting the same.

he was not responsible for the replacement of 2 pages of two volumes of his service register and not altered his date of birth as 21.9.35 from 9.2.32 in the first page of the service register which is kept in the record Room of Sr.DFO's office/Guntakal. He has thus not contravened the Rule No.3-1(iii) of Railway Service & Conduct Rules, 1966."

From the reading of the said two paras , it is amply evident that 2 pages of 2 volumes of Service Register had ~~not~~ been altered and that there had been ~~no~~ tampering of the date of birth of the applicant in his service register, though the Applicant is not responsible for the same. Besides, we have already given a finding that we do not have any ~~xx~~ proof to show that the date of birth of the applicant is 21.9.35. So, the said observation in the OA 113/90 do not come to the rescue of the applicant in establishing that his date of birth is 9.2.35. So, we see no merits in this OA and hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

CERTIFIED TO BE TRUE COPY

.....*D. S. Lakshminarayana*.....

Date.....*11/11/92*.....

Court Officer

Central Administrative Tribunal
Hyderabad Bench
Hyderabad

To

1. The Senior Divisional Personnel Officer,
S.C.Railway, Guntakal, Anantapur, Dist.
2. The Divisional Mechanical Engineer
(Carriage & Wagons) S.C.Rly, Guntakal, Anantapur Dist.
3. One copy to Mr.T.Lakshminarayana, Advocate
2-2-185/54/1/D, Bagh Amberpet, Hyderabad.
4. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
5. One spare copy.

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*Three last
pages
71*

From :-

The Registrar,
Supreme Court of India,
New Delhi.

Dated:- 8th December, 1993

To,

The Registrar,
Central Administrative Tribunal,
Hyderabad Bench at Hyderabad,
(Andhra Pradesh.)

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) No.20170 of 1993
(Petition under Article 136 (1) of the Constitution of India
from the judgment and order dated 23rd September, 1992
of the Central Administrative Tribunal, Hyderabad Bench at
Hyderabad in O.A.No.117 of 1992.

T.K.Sesha Chalam

Petitioner (s)

Versus

The Divisional Railway Manager & Ors.

Respondent (s)

Sir,

I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed by the
Court on 26th November, 1993.

Yours faithfully,

//True Copy//

Sd/-
FOR REGISTRAR.

CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH: HYDERABAD

Endt. No. CAT/Hyd/Judl/SC/50/93

Dt: 17-1-1994.

Communicate:

By.

Sd/-

Dy.Registrar(Judl.)

S.O.(Judl.)

//True Copy//

1. The Senior Divisional Personnel Office, S.C. Railway,
Guntakal, Anantapur District.
2. The Divisional Mechanical Engineer, (Carriage & Wagons),
S.C.Rlys, Guntakal, Anantapur Dist.
3. One copy to Mr.T.Lakshminarayana, Advocate, 2-2-185/54/1/D,
Bagh Amberpet, Hyd.
4. One copy to Mr.V.Bhimanna, SC for Rlys, CAT, Hyderabad.
5. One spare copy.