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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 26/2002

Date of Decision: 20.03.2002

Het Ram

.....Applicant

(By Shri G.K. Aggarwal, Advocate)

Versus

Union of India & ORs.....Respondents.

(By Shri S.M. Arif, Advocate)

Corum:

Hon'ble Shri Govindan S. Tampli, Member (A)

1. To be referred to the Reporter or not ? YES/~~NO~~
2. Whether it needs to be circulated to other Benches of the Tribunal ? YES/~~NO~~

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 26/2002

New Delhi this the 20 th day of March 2002

Hon'ble Shri Govindan S. Tampi, Member (A)

Het Ram Kunwar,
B-10/1295, Vasant Kunj
New Delhi

.....Applicant

(By Shri G K Aggarwal, Advocate)

VERSUS

1. Union of India through Secretary
Ministry of Urban Development
& Poverty Alleviation,
Nirman Bhawan, New Delhi
2. The Secretary,
UPSC, Sahjahan Road,
New Delhi
3. The Appointments Committee of the Cabinet (ACC)
Govt. of India, through The Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi

.....Respondents

(By Shri S.M. Arif, Advocate)

O R D E R

Shri Het Ram Kunwar, the applicant, seeks the rectification of his date of birth as 1.7.1943, instead of 14.3.1942 as has been incorrectly shown, according to him and the grant of consequential benefits including promotions , while in service till 30.6.2002.

2. Heard S/Shri G.K. Aggarwal and S. Mohd. Arif learned counsel for the applicant and the respondents respectively.

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3. The applicant who belongs to Scheduled Caste, hailing from Himachal Pradesh, joined government service as Asstt. Executive Engineer on 3.4.69, on the basis of the result of combined Engineering Services Examination conducted by the UPSC in 1967. He has advanced in his career and has risen to the rank of Chief Engineer on 26.7.96, in which post he presently functions. According to the date of birth shown in official records he is to retire on superannuation 31.3.2002. As he felt that his age has been shown incorrectly as 14.3.42, instead of 4.10.1943 or 1.7.1943, he moved the Tribunal in OA No. 1501/2001 for rectification of the defect, which was disposed of on 29.1.2001 with the following directions to the respondents:

"4. However, Shri GK Aggarwal appearing for the applicant submits that a direction be given to the respondents to consider the request of the applicant on merits. Keeping in view the request made by the applicant during arguments, I find that this OA can be disposed of with a direction to the respondents to consider OA as representation for alteration in the date of birth in the service record of the applicant on merits and in accordance with the extent instructions applicable in such type of cases within a period of 2 months from the date of receipt of a copy of this order. No costs."

3. Accordingly the applicant's request was considered by the respondent No.1 but rejected by the impugned order dated 21.12.2001 raising the following objections :

- a) there is a difference in the name of the applicant's father indicated in the certificate and in the official records;
- b) the certificate produced is only approximate in that he refers 1943 instead of any date;

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c) reply dated 4.12.2001 from the Block Development Officer of the Area also had shown the birth as in 1943 and not any specific date. *Hence it is OA.*

4. Shri G K Aggarwal, learned counsel who appears for the applicant, states that view adopted by the respondents was incorrect as they should have ascertained that the *shown as the applicant's father's name* names Kaku Ram and Shiv Charan referred to the same person or not, which they had not done; that as only the approximate (anumanit) period is available as 1943 in terms of Govt. of India's instructions on the subject on date of birth and its subsequent alterations (annexed at A-7), the exact date of birth could be taken as First July of the year and that there were no discrepancies in the certificates produced and it is incumbent on the respondent to have got details verified, if they felt any discrepancy existed. The learned counsel for the applicant also states that he would produce any additional affidavit, supporting his claim. It is also pointed out that correcting his date of birth 1.4.1943, would not make him ineligible to any examination or any employment secured by him on the basis of officially recorded date of 14.3.1942. He also refers to the date of birth of his immediate younger *brother* ³ *brother* as 29.5.1945, in support of his claim that his date of birth should be taken as 1.7.1943. The only benefit that would accrue to him on account of

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the rectification of this mistake is that his date of superannuation would be postponed to 30.6.2003 from 31.3.2002.

6. During the oral submissions Shri G K Aggarwal learned counsel for the applicant states that the respondents' plea that the applicant has moved in for the rectification of date of birth on much a later date and that too , at the eve of his date of his retirement was not correct as the Tribunal's having disposed of his earlier OA 1501/2001 with the directions to the respondents to treat the OA as representation and examine it on merit, it should be presumed that Tribunal has removed the defect if any of limitation and what remained with the Tribunal was only examination of the issue on merit and not of limitation. The only course that is open to the Tribunal ^{now} to see whether the grounds raised by him and the evidence produced by him from Public Authority from Block Development Officer (B.D.O.) , were proper or not. As the letters / certificates issued by the BDO are authentic documents showing the year of birth as 1943 , the respondents should extend to the applicant benefit emanating therefrom and grant the applicant the benefit of rectification of date of birth with attendant reliefs, forcefully argues Shri G K Aggarwal. Shri Aggarwal also points out that the applicant , coming as ^{he} does from a deprived class , hailing from an underdeveloped area of Himachal Pradesh, which has seen changes of administration and jurisdiction several times ,should be excused even if there is delay in his coming up with the request for rectification of mistake in the date of birth in his case.

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7. The pleas on behalf of the respondents have been filed by way of a short reply dated 21.5.2002 and a detailed reply on 15.2.2002. While admitting the facts that the applicant had joined as a direct recruit Class I Officer in the rank of Asstt. Executive Engineer (Civil) in CPWD in 1967 had risen to the rank of Chief Engineer pm the basis of the examination conducted by the UPSC wherein his date of birth was recorded *14.3.1942, having served the Government in various capacities in Class-I/Group 'A' service for as long as 32 years, he cannot at this late stage and that too when he has reached the age of retirement on superannuation, claim that his date of birth needed modification.* In terms of the instructions of the Govt. of India issued from time to time, *the* change if felt necessary in this regard should have been applied for within 5 years of his joining service. The applicant at the fag end of his official career is coming up in this OA raising frivolous pleas, just to gain one more year of service. The Tribunal had, while disposing of OA 1501/2001 had directed the competent authority to consider the applicant's application in accordance with the extant instructions which they have done by the impugned order 21.2.2002, The same was a reasoned and speaking order and did not suffer from any infirmity.

8. According to the respondents, the applicant *had himself* furnished the evidence showing that his date of birth was 14.3.42 which has *been* ² entered in the Service Book with his own signature below it. He was therefore aware as to what exactly the date of birth given in the

records. As in terms of DoPT notification 30.11.79 a request, for altering the date of birth can be considered only within 5 years of his entry in the Government service, the present attempt was bound to fail in law. Further the Tribunal's order dated 21.9.2001 in OA No. 1501/2001 has been very carefully followed and implemented by the respondents, that too by a detailed and speaking order. This is not a case of an ignorant or illiterate junior employee seeking correction in his date of birth but ^{of} one who joined in the Class I/Group A Service and risen to the rank of Chief Engineer who is claiming that his date of birth was given incorrectly in the beginning. This cannot be accepted. Government had while prescribing a limit for fixing a reasonable time in altering change of date of birth/age has only acted in correct and proper exercise of his powers and the same cannot be called in question.

The respondents further state that on examining the documents produced by the applicant it was found that the name of the applicant's father is shown as Kaku Ram in one but as Shiv Charan in another, this has not been properly clarified. Even otherwise the date which appears in the additional documents produced by the applicant only refer to the year and not to the date and therefore, revision of the said date on the basis of the belated application cannot be considered. Further, on his joining the respondents organisation following his selection by the UPSC documents showing his date of birth 14.3.42 have been produced and accepted. The same cannot ~~be overlooked~~ be merely because it would give him the benefit of one more ^{year's} service. Shri Arif also relied upon the decisions of the Hon'ble Supreme Court in the case of Union of India

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and Others Vs Kanti Lal, Himmat Ram Pandaya [JT 1995(2)SC365] and Vishakhapatnam Doc Labour Board Vs E. Atchanna and Others [JT 1996 (3) SC 6] and the Tribunal decision dated 25.5.2001 in OA 1086/01 filed by Ram Rattan. According to Shri Arif, in view of the settled position in law and in the facts and the circumstances of the case the applicant's OA has no merit and deserved to be dismissed.

10. I have carefully considered the matter. The applicant in this case, a Chief Engineer in the CPWD, is seeking modification in his date of birth of 14.3.42 to 4.10.43 or 1.7.43, as the case may be, with consequential reliefs including promotion. According to him, the date of birth has been incorrectly shown earlier and as he came to realise the same, he had obtained certain records to support his claim that he was in fact born on a date much later to the date shown as his date of birth in official records and had therefore sought its correction. In support of his claim, he has also relied upon the decision of the Tribunal in OA 1501/01, wherein the respondents have been directed to consider his case for rectification in his date of birth on merits. He therefore states that he has crossed the hurdle of limitation and his case should only be dealt with on merit in which case, he would get justice. This is contested by the respondents, who state that his request for alteration in the date of birth at a very belated stage, indeed just prior to his date of superannuation, was based not on facts or law but only motivated by a desire for personal gain. Instructions on date of birth and its subsequent alterations, cited by the applicant themselves provide for as below:

"(a) If he is unable to state his exact date of birth but can state the year or year and month of birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth.

(b) If he is only able to state his approximate age, his date of birth shall be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment.

(c) When a person who first entered Military employ is subsequently employed in a Civil Department, the date of his birth for the purpose of the Civil employment shall be the date stated by him at the time of attestation, or if at the time of attestation he stated only his age, the date of birth shall be deducted with reference to that stage according to (b) above."

11. The above in fact, relates to the manner of indicating the date of birth in official records at the beginning of one's career or one's selection to Govt. service. Once such a date is indicated and taken in official records, the same shall remain valid throughout the career. That exactly is what has happened in this case. The applicant has while appearing for UPSC's Engineering Examination and while joining the service on the basis of selection has given 14.3.1942 as his date of birth, which has been duly entered in the Service Book, which he has also signed from time to time. This has been further endorsed by him on a number of times in the service books and in other related records. Only 31 years later, just 2 years from his date of retirement on superannuation, he comes up with the request that the same has been incorrectly recorded and it warrants a modification and postponement. This is against the instructions of the Govt. of India contained in DoPT's notification dated 30.11.79 *[On the inner]* which states as below:

a) a request in this regard is made within five years of his entry into Government service'

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b) it is clearly established that a genuine bonafide mistake had occurred; and

c) the date of birth so altered would not make him ineligible to appear in any school or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

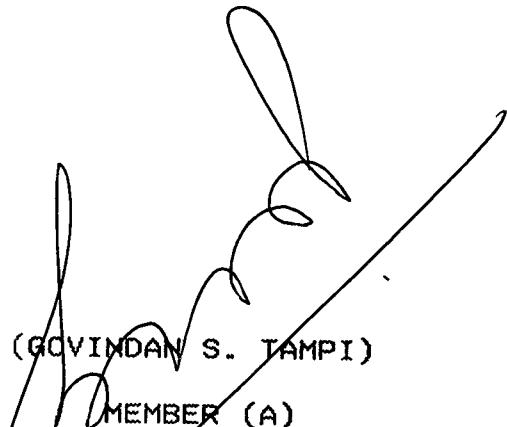
12. The only plea which the applicant raises in his defence is that the decision of the Tribunal in OA 1501/01 has enabled him to cross the above hurdle of limitation of 5 years and the case deserved to be considered on merit. This cannot be accepted. The relevant portion of the Tribunal's order relied upon by the applicant directs "the respondents to consider, OA as representation for alteration in the date of birth in the service records of the applicant on merit and in accordance with the extant instructions applicable in such type of cases within a period of 2 months". Obviously, therefore the directions of the Tribunal is to consider the representation on merits and in accordance with the extant instructions, within a period of 2 months. The Tribunal has not passed any order directing the respondents to take any decision overlooking the aspect of limitation even if the same was warranted in terms of extant instructions. The specific directions of the Tribunal was to dispose of the representation within period of 2 months, which the respondents have done. They have, while considering the applicant's representation, come to the conclusion that the same did not deserves endorsement, inspite of the additional documentary evidence produced by him. The facts that the name of the applicant's father was shown differently in different sets of documents and that the date of birth was not shown but only a

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reference to a year 1943 was also, weighed with the competent authority, while passing the impugned order. The validity of the same cannot be called in question, in view of the decisions of the Hon'ble Supreme Court in the case of Union of India Vs Kanti Lal Panday as well as Vishakhapatnam Doc. Labour Board Vs E. Atchanna & Others (supra) whereunder the authorities were precluded from entertaining request for alteration in the DOB unless the same is absolutely warranted. The circumstances of the case do not show it to be such an exceptional case where a clear bonafide mistake had taken place and the applicant was in any way prevented from making the necessary corrections well in time. In this regard, the background of the applicant also calls for . No doubt he belongs to Schedule Caste Category and has originally hailed from an underdeveloped area of the country, as the learned counsel for the applicant has stated: the facts remains however that he is a highly educated individual, who had graduated from Indian Institute of Technology, Madras whereafter he joined the service through UPSC combined Engineering Services examination as a direct recruit. It does not at all stand to reason that he did not know that his date of birth had been incorrectly given in the records, ^{more} as he has himself endorsed it over the years in the service book. This defence is clearly an after thought which cannot be countenanced in law . The applicant's move has only been characterised by the

motive to gain one more year in service by having his date of birth postponed to that extent. The respondents have not agreed to the same and the said decision cannot be called in question in law.

13. In the above view of the matter, I am convinced that the applicant has not made out any case for my intervention in the decision of the respondents, as communicated in the impugned order No. 8/7/201/EC-I/EW dated 21.12.2001. The OA fails and accordingly dismissed. No costs.



(GOVINDAN S. TAMPI)

MEMBER (A)

Patwal/