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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2245/2002

New Delhi, this the 7th day of April, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Virbhan Singh Tanwar, IFS
S/o Shri Chandu Lal Tanwar
Working as Deputy Conservator of Forests
Community Forestry Project
Jatusana, District Rewari (Haryana). ... Applicant

(By Advocate: Sh. L.R.Khattana)

Versus

1. Union of India
Through Secretary to the Govt. of India
Ministry of Environment & Forests
Paryavaran Bhavan
CGO Complex
Lodi Road
New Delhi.
2. Commissioner & Secretary
Government of Haryana
Forest Department, Civil Secretariat
Chandigarh.
3. Principal Chief Conservator of Forests
Government of Haryana, Van Bhavan
Sector 6, Panchkula (Haryana). .. Respondents

(By Advocate: Sh. N.K.Aggarwal with Sh. Sunder Khatri)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicant (Virbhan Singh Tanwar), by virtue of the present application, seeks setting aside of the order passed by Respondent No.1 dated 31.10.2001 and for change of his date of birth from 6.1.1962 to 13.10.1962. He further seeks that sub-rule (4) of Rule



16(A) of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971 (for short 'Rules of 1971') should be read down to provide for genuine mistakes or it should be declared as illegal and unconstitutional.

2. Some of the relevant facts are that the applicant joined Indian Forest Service on 06.07.1987 after qualifying the Indian Forest Service Examination conducted by the Union Public Service Commission. He has been allotted the State of Haryana as his cadre. His plea is that he belongs to extremely Backward area of Haryana. When he was admitted in School, his parents were illiterate. They did not have any idea about the correct date of birth and, therefore, they filled the date 6.1.1962 as his date of birth. In September 1992, the applicant visited his native village and when the family members and the elders were sitting, it transpired that the applicant was in fact born on 13.10.1962. The name of the applicant was recorded in the birth register as Ramphal but it was later on recorded as Virbhan Singh when he was admitted to School. It is contended that this is a mistake that had occurred. He seeks correction of his date of birth. In the alternative, he prays to declare Rule 16(A), to which we have referred above, as arbitrary and unreasonable because it is irrational. Hence, the present application has been filed.

3. In the reply filed, the respondents plead that the application is barred by time. It is further stated that Rule 16(A) is valid and is not discriminatory. Otherwise also, respondents' contention is that there is no ground to correct the date of birth as

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is claimed by the applicant. Once he has entered into the service on the basis of the declared date of birth, request for change of said date of birth can legitimately be denied and principles of estoppel would apply.

4. We have heard the parties' counsel and have seen the relevant record.

5. The first and foremost question that comes up for consideration is as to whether the correction in the date of birth at this stage is permitted or not?

6. Before proceeding further, it may be appropriate and in the fitness of things, to refer to Rule 16(A) of the aforesaid Rules, 1971. It reads:

"16A - Acceptance of date of birth,- For the purpose of determination of the date of superannuation of a member of service, such date shall be calculated with reference to the date of his birth as accepted by the Central Government under this rule.

(2) In relation of a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971:

- (a) the Indian Administrative Service under clause (a) or clause (aa) of subrule (1) of Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954; or
- (b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954 or
- (c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) of Rule 6 of the Indian Forest Service (Recruitment) Rules, 1966, the date of birth as declared by such person in the application for recruitment to the service shall

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be accepted by the Central Government as date of birth of such person.

(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document mentioned by the concerned Government shall be accepted by the Central government, as the date of such person.

(4) the date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)."

7. Sub-rule (4) of Rule 16 clearly provides that the date of birth, as accepted by the Central Government, shall not be subject to any alteration except where it is established that a bona fide clerical mistake has been committed in accepting the date of birth. The Apex Court had already considered as to what is the bonafide clerical mistake, therefore, further discussion on the same hardly requires any reconsideration. In the case of UNION OF INDIA v. C. RAMA SWAMY AND OTHERS, (1997) 4 SCC 647, this question was considered and the Supreme Court held:

"22. It was faintly submitted that on the basis of the birth certificate obtained from the Sub-Registrar's Office by the respondents as well as his horoscope it should be held that there was a bona fide clerical mistake and, therefore, the date of birth could be corrected. We are unable to accept the submission. Bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded. In the present case admittedly the date of birth indicated in the application form filled in for the purpose of taking the competitive examination was that of 17-6-1939. This date was then

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incorporated in his descriptive roll kept in his service record and this was duly signed by the respondent. Admittedly the respondent also believe this to be his correct date of birth, therefore, it was not a case where the date of 17-6-1939 had been incorrectly recorded in the service-book as a result of any bona fide clerical mistake. In fact in his original representation it was not even suggested by the respondent that there had been any clerical mistake. The positive case put forth by the respondent was that it is after the demise of his mother that he had discovered that his real date of birth was 15-6-1941 and not 17-6-1939."

8. Clearly the present case does not fall in the category of bonafide clerical mistake. Even it is not a mistake made by the Office.

9. Regarding the subsequent fact as to if, at this stage, correction could be effected, the Supreme Court in the case of **C. RAMA SWAMY (supra)**, had again gone into the said controversy and held:

"25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date

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of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

26. In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken for consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable for relief of change of date of birth can be legitimately denied. To that extent, the decision in **Manak Chand case** [(1976) 1 SLR 402 (HP)] does not lay down the correct law."

10. This clearly answers the fact so much thought of by the applicant. When the applicant communicated his date of birth, which is based on the matriculation certificate, it is too late in the day now to seek correction of the same. The principle of estoppel was made applicable.

11. Not only that, even in the School certificate, till date, the date of birth of the applicant had not been corrected by any attempt on behalf of the applicant. He got his date of birth recorded on the basis of that School certificate, therefore, this particular contention that there has been a clerical mistake and

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that the date of birth, therefore, should be allowed to be corrected, must fail.

12. Confronted with that position, the learned counsel urged that Rule 16(A) and more particularly sub-rule(4) of Rule 16(A) is arbitrary, illegal and unreasonable. According to the learned counsel, when there was an authenticated principle that was available, the said Rule cannot withstand in correction of the date of birth. It is discriminatory because in cases of other civil servants, change of date of birth is allowed liberally.

13. We know from the decision of the Supreme Court in the case of MOTI RAM DEKA & OTHERS v. GENERAL MANAGER, NORTH EAST FRONTIER RAILWAY & OTHERS, AIR 1964 SC 600 that the nature of services rendered by employees in different sectors of public service may differ but there has to be reasonable classification. The findings of the Supreme Court are:

"56. We appreciate the argument that the nature of services rendered by employees in different sectors of public service may differ and the terms and conditions governing employment in all public sectors may not necessarily be the same or uniform; but in regard to the question of terminating the services of a civil servant after serving him with a notice for specified period, we are unable to see how the Railways can be regarded as constituting a separate and distinct class by reference to which the impugned Rule can be justified in the light of Art. 14. If there is any rational connection between the making of such a Rule and the object intended to be achieved by it, that connection would clearly be in existence in several other sectors of public service. What has happened is that a provision like R. 148 (3) or R. 149 (3) was first made by the Railways was a purely commercial matter governed by the ordinary rules of contract. After the Railways

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were taken over by the State, that position has essentially altered, and so, the validity of the Rule is now exposed to the challenge under Art. 14. Therefore, we are satisfied that the challenge to the validity of the impugned Rules on the ground that they contravene Art. 14 must also succeed."

14. It is patent that decision is distinguishable because in the cited case, a provision like Rule 148 or R. 149 was first made by the Railway Companies when employment with the Railways was a purely commercial matter. After the Railways were taken over by the State, the position had altered. It was in this backdrop, that the said Rule was challenged and the above said observation came into being. This is not the position in the present case. Other service necessarily has its own peculiar facts. When a person is selected in Govt. service, his date of birth and various other factors are taken into consideration. One of the relevant factors is the age of a person. It is difficult to state, as held by the Supreme Court in the case of **C. RAMA SWAMY (supra)**, as to what advantage has been secured at the relevant time. The Supreme Court in the cited case, went on to hold that even in the absence of statutory rules like Rule 16(A), to which we have referred to above, the principle of estoppel would apply. We find, therefore, that discussion in this regard is academic. In any case, the Rule cannot be stated to be discriminatory because keeping in view the peculiar facts of the Indian Forest Service and particularly Clause (a) or Clause (aa) of sub-rule (2) of Rule 6 of the Indian Forest Service (Recruitment) Rules, 1966, which had taken care of the date of birth as declared by such person in the application for

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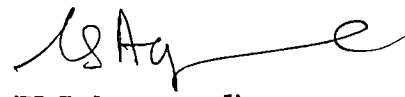
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recruitment to the service, shall be accepted by the Central Government as date of birth of such person and only bona fide clerical mistake, if any, committed could be corrected. The same cannot be stated to be arbitrary because Indian Forest Service is a separate service. They have their own Rules, to which we have referred to above, i.e., Indian Forest Service Recruitment Rules, 1966. It is applicable to all the members of the said service. It cannot be that all services in India must have the same conditions. We find that it is, therefore, not arbitrary or discriminatory.

15. For these reasons, we record and hold that Rule 16(A) is valid and is not discriminating as alleged.

16. Resultantly, the OA being without merit must fail and is dismissed.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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