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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.65/2001

New Delhi this the 12th day of September, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri A. Manickam,
S/o Sh. Aladiyan,
Counsellor,
Embassy of India,
Jakarta - Indonesia,
C/o Ministry of External
Affairs, South Block,
New Delhi-110 011.

-Applicant

(By Advocate Dr. D.C. Vohra)

-Versus-

1. Union of India through
the Foreign Secretary
to the Govt. of India,
Ministry of External Affairs,
South Block,
New Delhi-110 011.

2. Head of Chancery,
Embassy of India,
Jakarta - Indonesia,
C/o Ministry of External Affairs,
South Block,
New Delhi-110 011.

-Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, a member of Indian Foreign Service, has assailed an order dated 2.8.2000 passed in pursuance of the decision of this Court in OA-1872/96, whereby the claim of the applicant for alteration in date of birth in his service record from 5.8.1954 to 8.8.1956, has been rejected. The applicant further prays for publishing the altered date of birth in the next Edition of the History of Service, published periodically by the respondents.

2. Briefly stated, the applicant claims to be
the third child of S. Aladiyan and Mrs. Parvathi Ammal,

who had nine children from their wedlock. The applicant is stated to be born on 8.8.1956 and his birth was reported to the municipal authorities by his father on 25.8.56 vide entries authenticated in the birth certificate issued by Veeravanallur Panchayat on 14.12.76, inter alia, incorporating that a male child was born at Door No.15-A, Nainarpacheri, Vadakku Veeravanallur Village, Ambassamudhram Taluk, Tirunelveli Katabomman District, Tamil Nadu. The records maintained by the Veeravanallur Town Panchayat for August 1956, purporting to be the extracts from the Register of Births during the month of August 1956 has been wrongly/erroneously issued as 1965. The applicant contended that his elder brother was born on 15.1.54 and as such there is no occasion for treating the date of birth as 5.8.1954. The applicant appeared in the Civil Services Examination (CSE) in the year 1979 and qualified for the same and was appointed thereafter. In 1982, at the time of his marriage negotiations the correct date of birth was detected in the old papers maintained by the family. The applicant made a representations within 5 years of his joining on 15.2.82 as well 24.3.82 to the respondents and also on 30.7.82 for alteration in date of birth in terms of Note 5 under FR 56 (m). As he fulfilled all the conditions yet the matter remained under consideration and ultimately the applicant filed OA-1872/96 before this Tribunal and by an order dated 4.5.2000, the respondents have been directed to examine the claim of the applicant for post-dating his date of birth in the official records and to pass a detailed and speaking order. The respondents passed an order on 2.8.2000, rejecting the

claim of the applicant, as the authenticity of the birth certificate issued by the Panchyat authorities on 14.12.76 was found doubtful.

3. The learned counsel for the applicant placing reliance on Note 5 under FR 56 stated that as per the guidelines on the subject three conditions are to be fulfilled before the date of birth is altered, which, inter alia, includes that the request should be made within five years of entry into the Government servant and there should have been a genuine bonafide mistake and thirdly 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. The learned counsel of the applicant further placed reliance on a decision of the Apex Court in G.M., Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad & Ors., JT 2000 (Suppl.2) SC 325, wherein the entire case-law on alteration of date of birth has been gone into by the Apex Court and the following observations have been made:

"17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained the due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth

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in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior."

4. In this background it is stated that the Tribunal is precluded from issuing a direction to alter the date of birth unless the prima facie evidence of un-impeachable character is produced. In this backdrop the learned counsel for the applicant stated that the respondents on their own verification sent to the Panchyat authorities have received a letter dated 28.12.93 addressed to them by the Executive Officer, Town Panchayat District wherein it has been stated that a male child was born to the parents of the applicant on 8.8.56 but the name has not been entered in the birth register and on enquiry it has been found that the applicant is the third child and the birth register relates to the applicant. It is stated that the respondents have misconstrued the birth register wherein the year has been construed as August 1965 whereas the same is 1956 which has been certified by the officer concerned after enquiry and also shown to him. A communication of the applicant dated 5.12.84, wherein the

date of birth has been stated to be 8.8.56, but as the same has not been made part of the record of the OA, the learned counsel of the respondents objected to its being considered in any manner. The learned counsel of the applicant states that the respondents themselves have stated in their reply to the representations that the applicant fulfils clause (a) and (c) of the conditions and condition (b) is not fulfilled as the applicant had failed to establish the genuine bonafide mistake in recording the date of birth. The applicant stated that the applicant's father has placed the certificate somewhere else and before that he applied to the UPSC for the post on the basis of school leaving certificate where the date of birth has been recorded as 5.8.1954 but the notification of the UPSC where the only proof for date of birth was school leaving certificate would not apply as per the instructions issued on the correction of date of birth vide OM dated 5.6.54. The satisfactory documentary evidence as prescribed is matriculation certificate or duly attested extracts of the birth register, as such birth register is also one of the important evidence to be considered for alteration of date of birth. The learned counsel further stated that the evidence of village panchayat is impeachable and the date of issue is August, 1956. The respondents could have held another enquiry into the validity of the certificate and the enquiry conducted by the Government authorities by referring the case to them with their doubts. But as the document is 30 years old of 1956 the same as per the Evidence cannot be questioned and is admissible. It is also stated that Section 22 (3) (d) of the Administrative Tribunals Act, 1985 makes applicability of the Evidence Act and as such if this document was in proper custody the

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presumption of its authenticity is to be drawn and cannot be rejected by the respondents arbitrarily. The learned counsel further stated that the applicant has still 16 years to go and by this alteration he would not be debarred for appearing in any examination and would also not gain any benefit within the service on account of alteration of date of birth as the post of Director is time bound promotion. The learned counsel further stated that the applicant has not concealed any thing and in fact it was a bona fide mistake in recording the date of birth and as he has been apprised of the same later on he has written to the respondents and being conforming to all the eligibility criteria of Note-5 under FR 56 he is legally entitled for alteration of his date of birth.

5. On the other hand, strongly rebutting the contentions of the learned counsel of the applicant, the learned counsel for the respondents stated that the applicant's prayer of alteration of date of birth has been rejected by a detailed and speaking order and as per the record available on the basis of secondary school leaving certificate treated the date of birth as disclosed by the applicant and the birth certificate issued in the month of August, 1965 is not correct as it is not possible that the birth of a child born on 8.8.56 is recorded in August, 1965. The learned counsel further stated that the father of the applicant at the time of issuance of secondary school certificate has himself declared that information regarding date of birth as 5.8.54 is correct and not change will be demanded in future. It is also stated that the certificate issued in 1965 may be with regard to other son as the name of the applicant does not figure in the birth

register. It is also stated that as the applicant has applied for UPSC examination in 1978 and by that time he was very much aware about the certificate issued in 1976. He could have applied for change of birth before that in the school record. It is stated that there is no bona fide mistake and in order to get extension of tenure for two years and also for promotional avenues the contention of the applicant is an after thought. It is also stated that the applicant having accepted the date of birth cannot challenge it later on. It is also stated that as per the instructions of DOPT for CSE the date of birth entered in the school leaving certificate is the only criteria as provided in the gazette notification dated 9.12.95 and no other document is admissible. The applicant has also failed to produce a character certificate from the Director of School Education, Madras (Chennai) to prove any bona fide mistake. Lastly, it is stated that no cogent evidence has been produced by the applicant to warrant interference with his date of birth

6. The applicant has reiterated his pleas taken in the OA by way of filing a rejoinder.

7. I have carefully considered the rival contentions of the parties and perused the material on record. The only ground on which the claim of the applicant has been rejected for alteration of date of birth is that he failed to fulfil criteria contained in condition (b) of Note-5 under FRO 56 (m) as he failed to establish a bona fide mistake in recording the date of birth in service record. The Panchayat certificate where the date of birth is shown as 8.8.56 was issued on 14.12.76 but the date in

the register is August, 1965 and the name of the child is also not figuring. On this the authenticity of the birth certificate was doubted. It is also the stand that as the birth certificate was issued in 1976 and the mistake was detected in 1982 at the time of marriage in 1982 is incorrect. Even during the CSE despite having possession of the birth certificate and having knowledge that the SSLC certificate was incorrect the applicant failed to declare the date of birth as 8.8.56 and this amounts to existence of 5.8.54 as correct date of birth. In this back drop the claim of the applicant was rejected. From the perusal of the relevant instructions on alternation of date of birth I find that it transpires that not only the school certificate but duly extracts of birth register is treated to be a satisfactory documentary evidence for date of birth.

8. As regards the bona fide mistake is concerned, I find that the birth certificate issued from Panchayat authorities is of August and the year is shown as 196 and thereafter figure 56 is mentioned. The aforesaid certificate has been issued on 14.12.76 and it has been mentioned that the applicant is the third son of his parents, as on account of customs the child is not named immediately, the name of the child has not been figured in. The respondents themselves sent an enquiry into this certificate issued to the Panchayat authorities and the concerned authorities after enquiring from the local authority stated to have come to understand that the applicant is the third son of his parents. The contention of the respondents that as an administrative authority there should have been a definite finding as to the

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authenticity of this birth certificate and the observation has been made only on the personal knowledge is not legally tenable. What is to be seen is that there exists a bona fide mistake. The applicant who applied for the CSE in 1978 and at that time the certificate was not available with him but on the occasion of his marriage and as the horoscope are to be matched and the age is to be ascertained that the certificate was found and thereafter he made a representation to the respondents. The contention of the respondents that as the applicant was aware of this certificate after 1976 he could have stated at the time when he was appointed in civil services is not valid. What is to be seen for the purpose of correction of date of birth in the school certificate to which the learned counsel of the respondents fairly submitted that in case the same is produced the respondents are ready to alter the date of birth is concerned, I find that it is open to the applicant to apply for the correction of date of birth in the school but to this the learned counsel for the applicant states that as the applicant is posted outside the counter it would be very difficult to pursue the matter with the school authorities at Madras (Chennai). However, I find that the certificate issued on enquiry referred to by the respondents the Executive Officer of the Panchyat has opined that the entry relates to the applicant requires re-consideration. In this view of the matter, the ends of justice would be met if the present OA is treated as a representation by the respondents and the enquiry regarding the birth certificate be sent to the officer concerned of the Panchyat District at Tamil Nadu by the respondents with their doubts and the matter be got inquired into. In case the authorities at Madras gives an



unimpeachable finding regarding the authenticity of the birth certificate and the identity of the applicant as third child to his parents the respondents shall alter the date of birth of the applicant in his service record as prayed by him. The above stated directions shall be complied with by the respondents within a period of six months from the date of receipt of a copy of this order. We order accordingly. No costs.

9. I am also aware of my constraints to interfere in the matter of issuing directions for correction of date as held by the Apex Court in Shib Kumar's case (supra), but in case the enquiry reveals the authenticity of the birth certificate the same can be acted upon by the respondents.



(Shanker Raju)
Member (J)

'San.'