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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1013/99

New Delhi this the 3rd day of May, 2000.

Hon'ble Dr. A. Vedavalli, Member(J)

Sh. Som Nath Soni,
S/o Sh. Daulat Ram,
R/o 331, Krishi Kunj,
Pusa, New Delhi-12.

..... Applicant

(through Sh. B.B. Raval, Advocate)

versus

1. Indian Council of Agricultural Research
through its Director General,
Krishi Bhawan,
New Delhi-1.
2. The Director,
Indian Agricultural Research Institute,
Pusa, New Delhi-12. Respondents

(through Ms. Gitanjali Goyal, Advocate)

ORDER

The applicant, Som Nath Soni, is aggrieved by the order of the respondents dated 11.03.99 (Annexure-A) rejecting his representation dated 18.02.99 (Annexure A-2) seeking correction of his date of birth which is recorded in the service record. He has challenged the aforesaid order in this O.A.

2. Facts of this case, briefly, are that the applicant is working as a Jeep Driver in Indian Agricultural Research Institute, Pusa, New Delhi. His date of birth as recorded in the service record is 06.05.40. He is due to retire on attaining the age of superannuation on 31.05.2000. It is stated by the applicant that he remained on medical leave

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during the period from October 1997 to March 1998 due to eye ailment and he visited his mother in village Dehlan, District Una, Himachal Pradesh. His mother consulted an Astrologer in the village who prepared his horoscope allegedly at the time of his birth and on going through the said horoscope it was found that he was born on 06.05.43 and not on 06.05.40 as recorded in his service book. A copy of the said horoscope has been filed by the applicant alongwith the affidavit of the Astrologer dated 16.03.99 who has prepared it (Annexure A-1). The applicant thereafter submitted the aforesaid representation to Respondent No.1 seeking correction/modification of his date of birth in the service records on the basis of the said horoscope. The said representation was rejected by the impugned order. The applicant is seeking the following reliefs in this O.A.:-

- "(i) To quash the impugned Annexure "A" dated 11th March, 1999 as being arbitrary, illegal, non-speaking one and having been signed on the dotted line.
- (ii) Consequent to relief at (1) being granted, direct the respondents to modify the actual age/date of birth of the applicant as 6th May, 1943 and his date of superannuation as 31st May, 2003.
- (iii) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit and proper in the light of the facts and circumstances of the case."



3. Learned counsel for both the parties have been heard. Pleadings, relevant materials and documents placed on record have been perused.

4. Learned counsel for the applicant submitted that the impugned order is illegal and arbitrary. He contended that the order is non-speaking and does not indicate any application of mind and hence deserves to be quashed and set aside on this ground alone. He has also stated that the representation was submitted quite advance from the date of his retirement and that the same turned as belated. He has also contended that the correction/modification of his date of birth was sought on genuine and legal grounds and should not have been rejected by the respondents. In this case he relied upon the orders of this Tribunal in R.R. Yadav Vs. U.O.I. & Ors. (ATR 1987(2) CAT 506(PB)), Hira Lal Vs. U.O.I. & Ors. (ATR 1987(1)CAT 414(B)) and judgement of the Himachal Pradesh High Court in Manak Chand Vaidya Vs. State of Himachal Pradesh (1976(1) SLR 402).

5. Learned counsel for the respondents submitted that the date of birth of a Government employee can be changed with the sanction of the concerned authorities only under the provisions of FR 56 alone. While so, the applicant submitted a representation after serving for nearly for 32 years and that as per the decisions of the Supreme Court in

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a catena of cases, date of birth should not be allowed to be corrected/modified towards the fag end of service or at the verge of retirement. She relied on the decisions of the Supreme Court in the case of State of Tamil Nadu Vs. Tiv. Venugopalan (1994(6) SCC 302), Secretary and Commissioner, Home Department and Ors. Vs. R. Kirubakaran (AIR 1995 SC 850) (1994 Suppl. (1) SCC 155 and Chief Medical Officer Vs. Khadeer Khadri (AIR 1995 SC 850). She has also submitted that the applicant sought change in date of birth only on the basis of a horoscope which is not considered as an authenticated document for recording a date of birth as official document. His date of birth at the time of his entry into Government service, he might have submitted certain documents on the basis of which his date of birth was recorded as 06.05.40 in the service book. Further, on the basis of his passing the Primary School standard examination, his date of birth is recorded as 06.05.40 as per the School leaving certificate in the service book and not as per his grandmother's memory as stated by him in his rejoinder. She also stated that the applicant failed to submit sufficient documentary evidence to justify the change of his date of birth. She contended that the impugned order is perfectly valid and legal and the O.A. should be dismissed as unsustainable.

6. I have considered the matter carefully. It is seen that the relevant rule regarding the

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change/modification of the date of birth of a Government servant, viz. Note 6 under FR 56 provides as under:-

"Note 6.-The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if-

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has 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 entered Government service."

7. While so, the applicant submitted his

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representation only on 18.02.99 towards the fag end of his service. The only document submitted by him alongwith his representation is only the horoscope. The applicant has not given any reasons as to why the said affidavit was not submitted to the respondents alongwith a fresh written representation. His statement that the recording of his date of birth in the school records on the basis of which his date of birth is recorded in the service book is based upon the memory of his mother is not correct as per the respondents reply since the same was recorded on the basis of his Primary School Leaving Certificate. The aforesaid horoscope submitted by the applicant as noted already has not been accepted by the respondents stating that the same cannot be considered to be an authenticated and sufficient evidence for changing the date of birth. No other material has been produced by the applicant to show that the stand taken by the respondents is wrong or illegal. the cases noted above (supra) on which he placed reliance also do not help him as they are based on entirely different set of facts. The decisions of the Supreme Court noted (supra) on which the respondents rely clearly indicate that the change or modification of date of birth should be in accordance with the relevant Rules and should not be allowed at the fag end of the career of a Government servant.

8. In the facts and circumstances of this case and in view of the foregoing discussion, I am of

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the opinion that the applicant has failed to establish the violation of any his vested legal rights by the respondents on any valid and tenable grounds. He has also not been able to justify his case for the grant of the reliefs sought by him on any legally sustainable grounds. The impugned order, therefore, does not warrant interference by this Tribunal as the O.A. is devoid of any merit.

9. In the result, the O.A. is dismissed.

No costs.

A. Vedavalli
3/5/2000

(Dr. A. Vedavalli)
Member(J)

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