

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 806/98

199

T.A. No.

DATE OF DECISION 9-4-99

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Mrs. Usha Khare

....Petitioner

Sh.K.K.Rai

....Advocate for the
Petitioner(s)

VERSUS

UOI through Genl.Manager
(NR) and Ors.

....Respondent

Sh.R.P. Aggarwal

....Advocate for the
Respondents.

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

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

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

(2)

O.A. 806/98

New Delhi this the 9 th day of April, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Mrs. Usha Khare,
W/o late Shri G.D. Khare,
R/o M-101, Anupam Apartment,
East Arjun Nagar,
Delhi-110032.

Applicant.

By Advocate Shri K.K. Rai.

Versus

1. Union of India, through
its General Manager,
Northern Railway, Headquarters Office,
Baroda House, New Delhi-110001.
2. The Chief Personnel Officer,
Northern Railway, Headquarters Office,
Baroda House, New Delhi-110001.

Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant is aggrieved by the order passed by the respondents dated 8.9.1994 rejecting her application for change of date of birth and a notice of the same date retiring her from service on 30.9.1994 taking the date of birth as 17.9.1936.

2. The brief facts of the case are that she joined as Hindi Assistant with the respondents on 16.1.1985 on compassionate grounds after the death of her husband. According to her, her date of birth was wrongly recorded as 17.9.1936 in her Matriculation Certificate which was also shown in her Service records. She has contended that her actual date of birth is 17.9.1937. She states that she had applied for change of date of birth on 16.1.1985 i.e. on the

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same day she joined the service which was rejected on 27.6.1986. Thereafter, she filed a Suit No. 451/1988 in the court of Addl. Munsif at Lucknow which was decreed in her favour by an ex-parte order dated 30.1.1992 declaring her date of birth as 17.9.1937. She states that she made a representation to the respondents on 1.3.1993 requesting for change of date of birth as 17.9.1937 followed by several further requests. Thereafter, the aforesaid impugned orders have been passed rejecting her representation, which she has submitted has been done by a non-speaking order. The applicant had filed an earlier application in the Tribunal (OA 1919/94) challenging the aforesaid impugned orders which was dismissed on 7.6.1996. Review Application (RA 125/96) filed by the applicant against this order has also been rejected by the learned Single Member on 6.12.1996. Thereafter, the applicant had filed an SLP in the Hon'ble Supreme Court against these orders which was disposed of by order dated 12.1.1998 by allowing the applicant to withdraw the petition.

3. Shri K.K. Rai, learned counsel for the applicant, has submitted that the applicant has been granted the correct date of birth by the Board of High School and Intermediate Education, Allahabad on the basis of the decree in her favour by the learned Addl. Munsif, Lucknow, in his order dated 30.1.1992. He has also relied on the Birth certificate issued to the applicant dated 7.7.1995 showing her date of birth as 17.9.1937 and other documents annexed in the paper book (Annexures A-19-A-20). Learned counsel has submitted that the applicant is, therefore, entitled for change of date of birth in the Service records which entitles her for retirement on 30.9.1995 instead of 30.9.1994.

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4. The respondents in their reply have taken a preliminary objection on the ground of limitation. They have stated that the applicant's representation for change of date of birth dated 27.1.1986 had already been rejected by letter dated 27.5.1986, followed by the rejection of her representation dated 5.9.1994 by letter dated 8.9.1994. According to them, as the date of birth recorded in the Matriculation Certification is treated to be authentic, there is no merit in the applicant's case. They have also submitted that the matter being agitated by the applicant in this O.A. has already been decided by the Tribunal in the order dated 7.6.1996 in O.A. 1919/94. Shri R.P. Aggarwal, learned counsel for the respondents, states that in the light of this order read with the order of the Supreme Court dated 12.1.1998, the applicant cannot reagitate this matter again by way of this application as it is not only barred by limitation but is also not maintainable on the principles of res judicata.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The reliance placed by the applicant on the decision of the learned Additional Munsif, Lucknow dated 30.1.1992 for change of date of birth is misplaced. This decision has already been considered in detail by the learned Member of the Tribunal in O.A. 1919/94, against which the applicant had also filed an SLP in the Supreme Court which was later on withdrawn by him. The applicant has joined service on 16.1.1985 and this application has been filed ^{nearby 13} ~~nearby~~ after 13 years on 13.4.1998 followed by an amendment to the application on 3.8.1998, seeking amendment of the date of birth in the Service records. Her representation to the respondents for change of date of

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birth has been rejected as far back as on 27.6.1986. In the circumstances, this O.A. suffers from laches and ~~the~~ delay ^{is 18} and hopelessly barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 (See Union of India Vs. Harnam Singh (1993(2) SCC 162, State of Orissa Vs. R. Patnaik (JT 1997 (4) SC 660) and Union of India & Ors. Vs. K.H. Pandiya (JT 1995 (2) SC 365). There is not even a Miscellaneous Application for condonation of delay and in the circumstances the O.A. is liable to be dismissed on this ground alone.

6. Apart from this, considering the fact that the applicant had earlier filed an SLP before the Apex Court which was disposed of ^{as 18} having been withdrawn on 12.1.1998 against the order of this Tribunal in O.A. 1919/94, it is not open to the applicant to reagitate the matter. In the facts and circumstances of the case, we do not find that the order of the learned Addl. Munsif, Lucknow will assist the applicant for a direction to the respondents to have the service records altered.

7. For the reasons given above, the application fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member(J)

Arulige
(S.R. Adige)
Vice Chairman (A)

"SRD"