

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A. NO.125/96
in OA No.1919/94

(9)

HON. SHRI R.K. AHOOJA, MEMBER 'A'

New Delhi, this the 6th day of December, 1996

USHA KHARE
W/o Lt. Shri G.D. Khare
Hindi Assistant Grade I
Northern Railway Hqrs. Office
Baroda House, New Delhi. APPLICANT

'By advocate Shri M.L. Sharma'

Versus

1. General Manager
Northern Railway
Headquarters Office
Baroda House
NEW DELHI.
2. Chief Personnel Officer
Northern Railway Hqrs. Office
Baroda House
NEW DELHI. RESPONDENTS

'By advocate Shri Rajeev Sharma'

ORDER

In O.A. No.1919/94, the applicant's date of birth in the Service Book was 17.9.1936 on the basis of her Matriculation Certificate. The applicant had, however, challenged the date in a civil suit instituted in the court of Additional Munsif III, Lucknow, and got a decree that the correct date of birth was 17.9.37 instead of 17.9.36.

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The respondents did not carry out the change in the service record in terms of the order of the civil court, which led to the filing of the Application. The same was disposed of vide the impugned order dated 7th June 1996 concluding that a change in the date of birth based on an ex parte decision in the civil court is not a binding decision on the respondents to effect the change of the date of birth which had been recorded on the basis of matriculation certificate.

2. The applicant has come again in this Review Petition on the ground that there are factual errors apparent on the face of record. The petitioner states that the Tribunal has held that the correct date of birth of the applicant is 17.9.37 but the resultant relief has not been granted. It is also stated that the Tribunal did not appreciate the fact that the Civil court has jurisdiction to declare the correct date and also the power to issue directions to respondents to let the applicant continue in service according to the correct date of birth. Further, the Tribunal has wrongly observed that the applicant seeks the execution of the decree passed by the Civil Court when in fact no such prayer had been made by the applicant.

3. When the matter came up, I heard the learned counsel on both sides. The learned counsel for the applicant/review petitioner led me again through the main OA and submitted that it has been held in AIR 1991 SC 1546 ISHAR SINGH VS. NATIONAL FERTILIZERS & ANR. that a suit for correcting the date of birth in the record will be

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maintainable in civil court. Further more, it has been held that the civil court would have jurisdiction to give injunction against superannuation or the other ancillary reliefs, since the law is equally settled that if for part of the reliefs the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor for the rest of the relief. The learned counsel further stated that it has been held in the **State of Kerala Vs. M.K. Kunhikannan Manjeri Manikoth Naduvil & Ors. '1996' 1 SCC 435** that even a void order or decision rendered between parties cannot be said to be non-existent in all cases in all situations. Ordinarily, such an order will in fact be effective inter partes until it is successfully avoided or challenged in a higher forum. Thus, in the present case, the civil court was fully competent to decide on the correctness of the date of birth and since the respondents had been served notice, the decision of the civil court was binding to the parties unless it was set aside by a higher forum. The ld. counsel also submitted that this Tribunal has held in **S.K. Vardarajan Vs. UOI & Ors. 1992 ATC '20' 848 'II'** that the date of birth in service record for all purposes should be the real one and that a civil court is a competent authority to decide the status of a person including his age, and when the applicant has obtained a direction from a civil court, it must be given effect to.

4. The learned counsel submitted that in spite of the above decided cases of the Apex Court and this ~~tribunal~~ Tribunal, there has been an error apparent on the face of record as the Bench has ~~overruled~~ overlooked the legal position. He submitted that even if the order of the civil court was to be deemed void, in terms of the judgement of the Apex Court in **State of Kerala Vs. M.K. Kunhikannan 'Supra'**, this could be overlooked only after it has been set aside by a higher forum. Further more, in the decision relied

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upon by the Tribunal, i.e., T.V. Venugopalan, referred to a change of date of birth at the fag end of the service career of the employee. In the present case, this was not so since the applicant had joined service only in 1984.

5. I have carefully considered the arguments advanced by the learned counsel. What has been agitated is not any omission or error which is patent on the face of record but an error of interpretation of the legal pronouncements of the Apex Court and of the coordinate Benches of this Tribunal. This cannot be the basis of a review since this is the domain of an appellate authority to decide whether the interpretation of the factual and legal position of the lower court is correct and justified. The issues raised by the review petitioner have been discussed in the impugned order. As held in **Chandrakanta & Anr. Vs. Sheik Habib AIR 1975 SC 1500** AIR, resort to a review of a judgement is proper only where a glaring omission or patent mistake has crept in earlier due to judicial fallibility. Similarly it has been held in **Toogabbadra Industries Ltd. Vs. Government of Andhra Pradesh AIR 1964 SC 1372** that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. In this case the Supreme Court held that where without any elaborate arguments one could point to that and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, only then a clear case of error patent on the face of record may be made out.

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6. I find that the present Review Application does not come up to the test laid down by the Supreme Court for exercise of the review jurisdiction. In the light of the above discussion, the RA is dismissed.

No order as to costs.

R.K. Andoja
R.K. ANDOJA
MEMBER 'A'

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