

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

26

22-12-98

O.A. No. 2291/97

Date of Decision:

Ram Lakhman Sudhir

..... Applicants

(By Advocate: Sh.A.K.Behra)

VERSUS

Union of India & Ors.

..... Respondents

(By Advocate: Sh. VSR Krishna)

CORAM

Hon'ble Shri T.N.Bhat, Member (J)
Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes.


(T. N. BHAT)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2291/97

(21)

New Delhi, this the 22nd day of December, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Ram Lekhan Sudhir
R/o C-II/16, Tilak Lane,
New Delhi-110001.
Presently working as Additional Secretary
to the Govt. of India,
Ministry of Human Development,
Department of Culture,
New Delhi-110011. Applicant
(By Advocate: Sh. A.K. Behera)

Vs.

1. Union of India
through Secretary to the Govt. of India
Ministry of Personnel, Public Grievances
and Pensions,
New Delhi-110001.
2. State of Haryana
through Chief Secretary,
Chandigarh-160001. Respondents
(By Advocate: Sh. V.S.R. Krishna)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

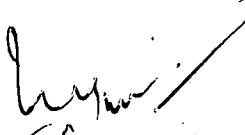
By this OA the applicant seeks correction in
his date of birth as recorded in his service records. The
applicant belongs to the All India Services and is
presently working as Additional Secretary to the Govt. of
India, Ministry of Human Development, Department of
Culture at New Delhi. He joined the All India Service
some time in the year 1966 and gave his date of birth as
10.2.40 which is also the date of birth recorded in his
High School Certificate. The respondents have accepted
the aforesaid date of birth of the applicant.

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2. The applicant states that he was later informed by his parents that the applicant was actually born some time in or around December 1941 and upon this information the applicant made efforts to ascertain his correct date of birth. The applicant was able to locate the "family register" in which his date of birth is shown to be 10.12.41. The applicant also addressed a letter dated 19.7.95 to the Secretary, Secondary Education Council, U.P.; Allahabad for correction of his date of birth in the High School Certificate. In reply, the Secretary, Secondary Education Board informed the applicant that as per their records the applicant's date of birth is 10.2.41. However, the aforesaid Board declined to correct the applicant's date of birth in the High School Certificate on the ground that the entries in family register are not admissible for correction of the date of birth and further that the Board could not correct the date of birth of Govt. servants.

3. Applicant made representations to the respondents also and the second respondent called for certain additional details/documents from the applicant, which he furnished. However, no decision has been coveyed by the second respondent to the applicant on his request for correction of the date of birth.

4. The applicant also made a representation to the concerned Establishment Officer under Resp. No.1 for correction of his date of birth but his request was turned down by the first respondent by the impugned letter dated 19.7.97, as at Annexure A-1 to the OA.

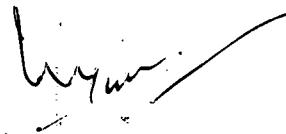


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5. According to the applicant his ~~case~~ is that of clerical error and this could be corrected at any time. It is further contended that the applicant is legally entitled to the correction of his date of birth in his service records.

6. The respondents have filed a detailed counter in which, relying upon Rule 16-A (4) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958, it has been stated that only clerical errors can be corrected and that the applicant's case is not one of clerical error. According to the respondents, only a bonafide clerical mistake which has been committed by the Government in accepting the date of birth under sub-rule (2) or sub-rule (3) of the aforesaid rules can be corrected and since the applicant had admittedly given 10.2.40 as his date of birth this could not be held to be a bonafide clerical mistake on the part of the respondents to accept the applicant's date of birth.

7. It is further averred by the respondents that the applicant cannot at the fag end of his career make a request for change of date of birth. The applicant, according to the respondents, was already 56 years of age and had completed about 30 years of service when he filed this OA. The earliest request for correction of the date of birth was also made by him some time in the year 1995 and on this ground his request was rightly rejected, the respondents would contend. The respondents have also placed reliance upon some judgments of the Apex Court and this Tribunal.



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8. No rejoinder has been filed by the applicant.

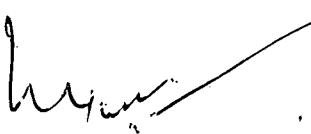
9. We have heard at length the arguments of the learned counsel for the parties and have perused the material on record.

10. The applicant being an All India Services Officer is governed by the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 (DCRB Rules, for short). According to provisions contained in Sub-rule (4) of Rules 16-A of these Rules the date of birth given by the officer and accepted by the Central Government is not subject to any alteration except in a case where it is established that there has been a bonafide clerical mistake while accepting the date of birth. A clerical mistake is a mistake in writing or typing. (See AIR 1966 Supreme Court 1047, Master Construction Company vs. State of Orissa). In the instant case it is admitted by the applicant that the date of birth mentioned in his High School Certificate was given by him and accepted by the respondents. Therefore, his case is not one of a bonafide clerical mistake so as to come within the ambit of Rule 16-A(4) of DCRB Rules.

11. It is, however, urged by the learned counsel for the applicant that the provision contained in Rule 3 of All India Services (Conditions of Service - Residuary Powers) Rules gives ample powers to the Central Govt. to correct the date of birth earlier accepted by it. This contention is vehemently controverted by the

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learned counsel for the respondents who states that in view of a specific provision in the DCRB Rules the Residuary Powers Rules cannot be resorted to. The applicant's counsel, however, seeks to rely on Amrik Singh vs. Union of India & Others, (1980) 3 Supreme Court Cases 393, to buttress his argument. We have carefully gone through the Apex Court Judgment (supra) and are of the view that it is not of much help to the applicant. The Apex Court in the case was dealing with an officer belonging to the All India Services whose year of allotment was fixed as 1965 while he was claiming the year 1961 to be the correct year of allotment. It was found by the Hon'ble Court that the officer had for some time been officiating in a cadre post when he was a non-cadre officer and that officiation had continued for more than six months without the State Government reporting the fact to the Central Govt., resulting in failure to consult the U.P.S.C. It was held that this fact would not be fatal to the period of officiation being counted for the purpose of fixing the year of allotment, as the officer concerned had nothing to do with the commission of the error, and, further, no senior of the officer would suffer, and, lastly, the Central Govt. had the power to relax the Rules in cases where it was found that non-relaxation would cause undue hardship. That case did not at all involve the question of date of birth, nor was it laid down that refusal to alter the date of birth accepted by the Central Govt. which had been given by the officer himself would cause any such undue hardship even though the officer might have raised the dispute regarding date of birth at the fag end of his career. We may mention that the aforesaid judgment has to be read alongwith the



judgment in R.R.Verma and others vs. Union of India and others, reported in (1980) 3 SCC 402, which the Hon'ble Supreme Court held to be "are appended to the judgment" in Amrik Singh (supra). In that case (R.R.Verma) it was held that the Central Govt. is vested with residuary powers to relax or even to dispense with rules and regulations in an appropriate case. But at the same time it was emphasized that these powers should be exercised in the public interest "when and only when undue hardship is caused by the application of the rules" (Emphasis added).

17. That leads us to the question as to whether the rejection of a request made by an officer for alteration/correction of his date of birth at the fag end of his service could be held to be a case of undue hardship. On this question we have no doubt in our mind that this would not be a case of undue hardship. On the contrary, entertaining such a request of the officer would amount to allowing the chances of promotion of the juniors ~~marred~~ to be marred and also encourage to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirement when due. We may in support of our view cite the judgment of the Apex Court in Burn Standard Co. Ltd. vs. Dinbandhu Majumdar, reported as (1995) 30 Administrative Tribunals cases 206 apart from the judgment in Union of India vs. Harnam Singh, (1993) 2 SCC 162 relied upon by the respondents' counsel. In the latter judgment it was held that delay or laches in seeking alteration in date of birth in service records would be fatal to the claim. We may mention here that as in the Dinbandhu Majumdar case (supra) so also in the instant

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case an entry in the records relating to the Matriculation Examination which had not been reflected in the certificate issued after the examination was relied upon but the request for correction was made after great delay when only about two years of service were left before superannuation.

13. To sum up, the applicant having admittedly given his date of birth to be 10.2.1940 at the time of his entry in service in 1966 and the same having been accepted by the respondents, the applicant's request for correction/alteration in the date of birth made for the first time in the year 1995, when he had only 2-3 years of service left before attaining superannuation was rightly not entertained. The grounds on the basis of which he sought the alteration do not appear to be valid. The applicant's contention that it was only some time in the year 1995 that his parents informed him for the first time that he was actually born on 10.12.1941 (or, is it 10.2.1941?) does not inspire confidence and is too much to swallow. The applicant is admittedly a graduate at least. He cannot be heard to say that he had never made the necessary inquiries from his parents earlier, more particularly at the time of giving the date of birth to the respondents initially.

13. The applicant even now does not seem to be sure about the actual date. In his representations made to the respondents and the letter addressed to the Secondary Education Council (or, is it "Board", as mentioned in some paras of the OA?) he has given two different dates, 10.2.1941 and 10.12.1941.

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14. In the conspectus of the facts and circumstances discussed above, we find no merit in the OA. The OA is accordingly dismissed, but without any order as to costs.

S. P. Biswas
 (S. P. BISWAS)
 Member (A)

'sd'

T. N. Bhat
 (T. N. BHAT)
 Member (J)

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