

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 172-2000

New Delhi, this day the 19 January, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri R.N. Goel,
Asstt. Provident Fund Commissioner (Retd)
S/o Shri Rati Ram Goel,
R/o T-35A, Khirki Extn.
Malviya Nagar,
New Delhi Applicant
(By Advocate : Shri Shyam Babu)

VERSUS

1. Union of India through its
Secretary,
Ministry of Labour,
Shram Shakit Bhavan,
New Delhi
2. Central Provident Fund Commissioner,
Employee Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi
3. Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhawan
Sector 15, Faridabad,
Haryana Respondents
(By Advocate : Sh.S.C.Chopra)

O R D E R

The dispute in this OA is about the date of birth of the applicant entered in his Service Book.

2. The applicant joined the Employees Provident Fund Organisation (hereinafter EPFO) on 17.12.1962. On the basis of his Matriculation Certificate, the date of his birth was recorded in the Service Book as 1.4.1940. Subsequently the applicant discovered, on the basis of certain documents which came to his notice, that the actual date of his birth was 8.12.1940 and not 1.4.1940 as shown in his Matriculation Certificate. In follow up, he took up the matter with the Civil Surgeon, Rohtak, who was the competent authority for maintaining the record of

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births in his jurisdiction. The said Civil Surgeon, after checking the relevant records, issued a certificate to the applicant in which the date of his birth was shown as 8.12.1940. On this basis, he sought a change in the Matriculation Certificate and accordingly took up the matter with Punjab University. That does not seem to have materialised. He, thereafter, took up the matter with the Respondents who agreed to his request and accordingly the date of his birth in his Service Book was changed to 8.12.1940. Having entered the service on 17.12.1962 the applicant had secured the aforesaid change in the date of his birth as per the relevant Rules within a period of five years. Since the aforesaid change was made by the Respondents, the applicant is justified in raising the presumption that the respondents were satisfied with the genuineness of the certificate furnished by the Civil Surgeon and were convinced about the genuineness of the applicant's claim. According to the applicant, the aforesaid change did not entail any disability in terms of the provisions of Note 6 recorded below FR 56.

3. Much later, the applicant learnt that the date of his birth had been changed once again restoring the original date of 1.4.1940. According to the applicant, this was done on 31.8.1987 in a unilateral manner without any show cause notice served on him. Accordingly, the applicant did not sign the relevant entry made in his Service Book. The applicant himself became aware of the aforesaid change only in 1998 and as such he filed a

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representation on 2.3.1998 before the Respondent No.2. In the aforesaid representation the applicant inter alia alleged that his close association and active participation in the Union's activities has led to biased action on the part of the Respondents, who have, as stated, changed the date of his birth without any show cause and behind his back. Thereafter the applicant has filed a series of representations without any success in eliciting a response from the Respondents. However, as late as on 29.12.1999, the aforesaid representations have been rejected by the Respondent No.2 (Annexure-A) to which an Office Memo dated 5.3.1987 has been attached.

4. The Learned counsel appearing for the Respondents has raised two contentions. Of these, one is that the change in the date of birth of the applicant made in 1966 was not made by the authority competent to carry out such a change. The other is that the applicant was afforded an opportunity to be heard in the matter before the date of his birth was again corrected and restored as 1.4.1940 on the basis of the entry available in his Matriculation Certificate.

5. I have come across several problems with the contentions raised by the parties. Firstly, I find that the matter regarding competence of the Respondents to permit the change in the date of the applicant's birth has not been placed in the correct perspective. Note 6 placed below, FR 56 on which reliance has been placed by both the parties clearly stipulates that an alteration in

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the date of birth of a Govt. servant can be made only with the sanction of a Ministry or Department of the Central Govt. For some reason, the basis of which has not been explained nor any document produced in support thereof, the Respondents have averred that the Head of the Department, namely, the Central Provident Fund Commissioner (hereinafter CPFC) is competent to permit a change in the date of birth of employees enjoying the status of the applicant. This has not been controverted by the Learned counsel appearing for the applicant. All that he has stated is that although the aforesaid change was made by the Regional Provident Fund Commissioner (hereinafter RPFC), it has to be presumed that the said authority (RPFC) had sought and obtained the sanction of the CPFC before affecting the aforesaid change.

6. Insofar as the factual position is concerned, a perusal of the plethora of correspondence supplied by the Respondents as part of their MA No. 2942/2000 undoubtedly shows that the approval of the CPFC was not obtained. What comes out clearly from the aforesaid correspondence, however, is that the applicant cannot be blamed in any way insofar as the change in the date of his birth is concerned. Annexure R-16 to MA No. 2942-2000, which is a letter from the RPFC to the CPRC dated 15.12.1981 states inter alia that "the date of birth has been amended by the then R.P.F.C. Delhi on the basis of the said certificate submitted by him at that time. There is, therefore, no irregularities on the part of Shri Goel in this case" (emphasis supplied). The same

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letter also shows that the aforesaid change was made on the basis of the copy of a Certificate issued by the Supdt. Chief Medical Officer of Rohtak in which the date of the applicant's birth was shown as 8.12.1940. The aforesaid letter, therefore, clarifies once and for all that the change in the date of the applicant's birth first made in 1966 was made by the RPFC without seeking prior approval of the CPFC. The same letter also exonerates the applicant from any blame in the matter relating to the aforesaid change.

7. The correspondence referred to in the previous paragraph is not only numerous but is directionless. I find that the RPFC and CPFC both have kept on relying on each other for correcting the date of the applicant's birth without ever knowing as to who is really competent to do so. It was only on 17.11.1986 that the RPFC discovered that the date of birth of the applicant could not be altered without the previous orders of the Govt. department. The RPFC has said so for the first time clearly in his letter of 17.11.1986 (Annexure R-22 to MA No. 2942-2000) and has, on this basis, sought clear orders of the competent authority. Just a little later, on 28.11.1986 (Annexure R-23 to MA 2942-2000) the CPFC has again addressed the RPFC asking him to correct the entries in the service records of the applicant under advice to the CPFC. The same letter also lays down that in the event of the applicant wishing to make a representation in the matter, the case may be referred to the competent authority for appropriate orders. The





matter was thus again left to be dealt with by the RPFC. The Respondents have not placed any document on record to show that the applicant was given an opportunity to represent in the matter in accordance with the stipulation made in the aforesaid letter of 28.11.1986, and to this extent there seems to be substance in the averment of the applicant that adequate opportunity has not been given to him to represent in the matter. In this background, it will not assist the Respondents at all if they were to say, and indeed they have said so, that there have been complaints against the applicant in regard to the date of his birth and that the applicant was given due opportunity in the matter vide Office Memo dated 24.1.1986 and the reply of the applicant dated 27.1.1986 referred to in the impugned Office Memo dated 5.3.1987 attached to the impugned letter dated 29.12.1999 (Annexure-A). I thus find that reasonable and adequate opportunity was not given to the applicant to represent before the Respondents before they changed the date of his birth once again sometime in 1987 thereby restoring the date of his birth as 1.4.1940.

8. A perusal of the impugned order dated 29.12.1999 would show that the matter regarding the change in the date of the applicant's birth was finally settled by the Respondents vide Office Memo dated 5.3.1987 and it is this Memo which has to be seen, as pointed out by the learned counsel for the applicant, for determining whether a reasoned and a speaking order has been passed by the





Respondents. The aforesaid office memo provides as under:

"Attention of Sh R.N. Goel is invited towards this office memo dt. 24.1.86 and his reply to the said office memo dt. 27.1.86. It has been decided to record the date of birth as 1.4.40 in his service book for all purpose instead of 8.12.40. The date of birth as 1.4.1940 is taken on the basis of the matriculation certificate furnished by him at the time of his appointment in this organisation."

The statement extracted above is a bald statement devoid of any reasoning. The Respondents cannot rely on the applicant's letter dtd. 27.1.1986 referred to in the impugned Memo dated 5.3.1987 to contend that an effective opportunity to represent against it was given to the applicant. This is because, in the said letter of 27.1.1986, the applicant has merely stated that the office may decide as per rules. The respondents have not followed the rules scrupulously as has already been indicated in paragraph 5⁴ 7 above in which it has been pointed out that for affecting the change in the date of the applicant's birth, the Respondents have not obtained the orders of the Govt. Department as required in Note 6 placed below FR 56. Besides, while referring to the contents of the Respondents' letter of 28.11.1986 (Annexure R-23), it has again been pointed out that the applicant does not seem to have been given a proper opportunity to represent in the matter.

9. On the need for a speaking order in relation to the correction in the date of birth, the Learned counsel

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for the applicant has relied on N. Mondal Vs UOI and Ors reproduced as (1992) 20 ATC 469. The same in its paragraph 11 provides as under:

"On this back drop, the order dated 29.1.1985 rejecting the applicant's representation for correction of his date of birth, which is a non-speaking order, without giving any hearing to the applicant and which remained uncommunicated, cannot have any legal consequence and is infructuous"

The aforesaid principle up-held by the Culcutta Bench of this Tribunal is fully applicable in the present case. The impugned office memo dated 5.3.1987 constitutes a non-speaking order which has been passed without granting a proper hearing to the applicant. Further, it is applicant's contention that the aforesaid office memo of 5th March, 1987 remained uncommunicated until he became aware of its existence in 1998.

10. The Learned counsel appearing in support of the OA has further contended that CPFC does not possess the authority to review the decision already taken in 1966 in regard to the date of the applicant's birth. In support of this contention, the Learned counsel has relied on AIR (1970) SC 1273. The relevant extract taken there from is reproduced below:

"It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own

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order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order."

11. In the present case, I find that the correction in the date of the applicant's birth made by the CPFC vide Office Memo of 5.3.1987 constitutes a review of the order earlier passed in 1966. If one has regard to the aforesaid observation of the Supreme Court, the office memo, in question, must be regarded as an invalid document. It is different matter altogether that as already indicated in paragraph 5^{and 7} above, a decision to change the date of the applicant's birth, which is contained in the aforesaid office memo of 5.3.1987 could be taken properly and competently only by the department of the Government and not, in any case, by the CPFC, or for that matter by the RPFC.

12. In regard to the sanctity of the birth certificate on the basis of which the applicant is stated to have obtained the certificate of his birth from the Civil Surgeon of Rohtak, the Learned counsel for the applicant has relied on R. Sankaranarayanan Versus UOI and Others decided on 27.11.1990 and reproduced as (1991) 16 ATC 801. On the question of reliance placed on Birth Certificate, the aforesaid order provides as follows:

"The applicant having produced a birth certificate from the statutory authorities, being an extract of a contemporaneous document, fairly long before the date of his retirement, the principles of fairness and justice required that the respondents ought to have examined the document produced on merits. If the respondents had any reservation about the truth or accuracy

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of the birth certificate t Annexure 2, they could have conducted a proper verification of the same and then decided the representation, instead of rejecting the same outright, without even indicating any reason for the rejection. After all, the applicant has sought for a change of the date of birth involving only a few months." (emphasis supplied).

13. In the present case also the applicant had sought for a change in the date of his birth involving just about 8 months and he had sought the aforesaid change long before the date of his retirement. Thus, it was unfair on the part of the respondents to reject the applicant's representations without proper consideration and without caring to go into the genuineness of the certificate obtained by the applicant from the Civil Surgeon of Rohtak.

14. The Learned counsel appearing for the respondents has placed reliance on UOI & Ors Vs Mrs Saroj Bala decided by the Supreme Court on 13.12.1995 and reproduced as AIR (1996) SC 1000. Paragraph 5 of the aforesaid order of the Supreme Court inter alia provides as follows:

"It is unthinkable that having been born in an educated family and having remained in service for 18 years she discovered that her date of birth would be wrong. Under these circumstances, the Tribunal was wholly unjustified and obviously illegal in allowing the application and directing correction of the date of birth."

15. I find that the aforesaid case is distinguished from the present OA in an important respect. In the aforesaid case decided by the Supreme Court, the applicant had discovered the mistake in the date of her

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birth 18 years after she entered the service. That period was considered by the Supreme Court as a long period. In the present case the applicant discovered the mistake soon enough and got it rectified within about four years of his entry in service. Moreover, the rules (Note 6 below FR 56) also provide for correction in the date of birth within a period of five years.

16. In the background of the detailed discussions contained in the preceding paragraphs, and having regard to the fact noted in paragraphs 5 and 7 above that the matter regarding change in the date of birth of the applicant has admittedly not been considered at all by the Govt. department as required in Note 6 below FR 56, I have no desire, despite the several failings of the Respondents outlined in paragraphs 6 to 13 above, to annul the impugned letter dated 22.12.1999 and the office memo dated 5.3.1987 attached there-with. Since the basic requirement of obtaining the approval of the government department has not so far been met, I would like to dispose of this O A by directing the Respondents to place the various representations filed by the applicant before the competent authority to enable the said authority to consider the matter properly and carefully before passing a competent order in regard to the change in the date of the applicant's birth. I would expect the Respondents and the competent authority to consider equally carefully the observations contained in this order arising from the various Court decisions

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before a formal order is passed. I order accordingly. It is clarified that the Respondents will initiate action in the matter forthwith and decide it as expeditiously as possible and, in any event, within a period of three months from the date of receipt of a copy of this order.

17. The OA is disposed of in the aforeslated terms.
No costs.



(S.A.T. RIZVI)
MEMBER (A)

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