

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1713/ 198 9.

DATE OF DECISION October 6, 1989.

Shri M.L. TIKKU Applicant (s)

Shri Surinder N. Karnail Advocate for the Applicant (s)

Union of India Versus Respondent (s)

Mrs. Raj Kumari Chopra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

Shri M.L. Tikku, who was working as Executive Engineer (Electrical) and posted in P.W.D. Zone II, Delhi Administration, New Delhi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging Office Memorandum dated 30th June / 3rd July, 1989 (Annexure VIII to the application) by which his request for change of date of birth from 8.8.31 to 23.11.1931 made in his letter dated 08.31.89 was rejected after careful consideration on the ground that it could not be acceded to at this belated stage as per extant rules. He has prayed for an order for making necessary correction in his date of birth.

2. Relevant material facts of the case are as below: -

The applicant was appointed as Junior Engineer (Electric) in 1956 and was working as Executive Engineer (Electrical) at the time of his retirement on superannuation. The applicant's case is that at the time of his initial appointment, he was asked to produce the original Matriculation Certificate for

Recd

recording the date of birth in his Service Book. It is stated that the date of birth on the certificate is recorded in Bikrami Samat as 8.8.1988 and not in Christian era. He received an Office Order dated 6.3.89 (Annexure I to the application) in which he was informed that he will complete 58 years of age on 8.8.89 and would accordingly retire from Government service on the afternoon of 31.8.1989. It is at this stage that he detected the error in the date of his birth, which he believes to be a bonafide clerical mistake which has occurred while converting date of birth from Bikrami Samat to Christian era. He accepts 8.8.1988 in Bikrami Samat as his correct date of birth and challenges inadvertent wrong conversion into Christian era only in regard to the date and month, but not the year. According to him, the correct conversion date is 23.11.1931 and not 8.8.1931. He has filed a copy of the Discharge Certificate from the Principal, Gandhi Memorial College, Srinagar (Annexure II to the application which shows his date of birth as 'Eighth Maghar N.H. Eight Eight (8.8.1988)'; in the bracket below (8.8.1988), 23.11.31 is also mentioned. This is, however, in a different ink and apparently in a different hand-writing and not initialled by anyone. It may be noted that this is the certificate pertaining to the applicant having passed the Intermediate Examination in the year 1949 and does not pertain to Matriculation Examination. He has also filed a copy of the certificate dated 22.8.1988 (Annexure III to the application) from the Principal, Gandhi Memorial College, Srinagar, to the effect that the applicant was a student of that college reading in the 1st year in the year 1948 and that his date of birth according to the College records is 8.8.1988 (Bikrami). He has also filed an extract from 'affamarize of Bikrami Samat 1988' and according to him, his date of birth

(Enc)

in Christian era on this basis should have been recorded as 23.11.31 instead of 8.8.31.

3. The applicant made a representation to the Director General (Works), C.P.W.D., New Delhi, on 8.3.89 for making necessary correction in the date of birth. He was directed vide letter dated 15.5.1989 to produce the original Matriculation Certificate, which he has not been able to produce till the date of oral hearing in the Tribunal on 25.9.1989. His representation was rejected vide O.M. dated 30th June/3rd July, 1989 on the ground that it could not be acceded to at this belated stage as per extant rules. He made another representation addressed to the Secretary, Ministry of Urban Development, on 5th July, 1989 which is stated to be pending. The main contention of the applicant is that he came to know of the inaccuracy in his date of birth as taken by the respondents only after Office Order dated 6.3.1989 intimating his date of retirement from Government service was received by him. This contention of the applicant has been vehemently contested by the respondents.

4. The case of the respondents is that the service records of the applicant records his date of birth as 8.8.1931. This was being maintained by AG, CN&M / AG, J&K from 31.1.1962 to 1.3.1976. The CPWD started maintaining his Service Book from 1.3.1976 and in the Part II of the Service Book, 8.8.1931 has been shown as the date of birth of the applicant in Christian Era. The Service Book entries including the date of birth as stated had been verified by the applicant from time to time. Further, attested copy of the Medical Fitness Certificate dated 16.4.56 contains the date of birth in Christian era as 8.8.1931. Again, in the seniority list of Assistant Engineers (Electrical), the date of birth of the applicant was indicated as 8.8.31 and the said seniority list was

(Signature)

circulated to all concerned vide C.M. dated 11th December, 1982. It has also been stated that from 26.4.71 to 31.3.81, in the self appraisal recorded by the applicant himself for ten confidential reports, the date of birth has been shown by him as 8.8.1931. The same is the case in the second confidential report for the year 1957-58. However, from 16.9.1981 to 31.3.1987 (during the period the applicant submitted his self appraisal reports as Executive Engineer (Electrical), he misrecorded his date of birth as 8.8.1934. In 1978, while applying for CGHS card, he indicated his date of birth as 1934. Similarly, while applying for issue of 'No Objection Certificate' for purpose of Passport, on 12.2.87, he indicated his date of birth as 8.8.1934. Copies of all these documents have been filed by the respondents.

5. In these circumstances, the applicant was asked by letter dated 2.12.1985 to declare his correct date of birth and in reply thereto, he in his letter dated 9.12.85 intimated that his correct date of birth is 8.8.1931 (Annexure X to the counter-affidavit).

6. Thus, on the facts of the case before me and which have been mentioned above, the contention of the applicant that he came to know of the alleged incorrectness in his date of birth as recorded in the service records etc. only after receipt of intimation of his date of retirement on superannuation vide Office Order dated 6.3.89, cannot be accepted as factually correct. He has not been able to produce his original Matriculation Certificate. The certificate of the Principal, Gandhi Memorial College, Srinagar (Annexure III to the application) produced by him was issued only on 22.8.1988. In any case, this does not pertain to the Matriculation Examination. Similarly, the Discharge Certificate at Annexure II to the application is for passing the Intermediate Examination. As already stated above, the date of 23.11.31 mentioned in another bracket below the bracket mentioning 8.8.1988

is not a part of the original Discharge Certificate and has been mentioned by somebody later on and thus cannot be relied upon. Extract from 'affamarize of Bikrami Samat 1988' filed as Annexure IV to the application does not indicate even the book / publication from which it has been extracted and no affidavit of any expert on this issue has been filed. The applicant has declared on a number of occasions under his own signatures his date of birth in Christian era to be 8.8.1931 and now it does not lie in his mouth to come out with a totally new date and that too only about six months before his due date of retirement.

7. Legally also, as per the instructions contained in Note (5) under F.R. 56, the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority shall not be subject to any alteration except as specified in that Note which provides for consideration of such a change if a request is made within five years of entry into Government service and it is clearly established that a genuine bonafide mistake has occurred. These requirements are also not fulfilled in the instant case. The applicant has been mentioning himself his date of birth either as 8.8.1931 or 8.8.1934 and for the first time in March, 1989, he came with the request for a change in the date of birth, giving a new date as 23.11.1931. It cannot be said that he has come to the Court with clean hands and by his own statements and conduct, he is legally estopped from now claiming 23.11.1931 to be his correct date of birth.

8. The applicant has cited two judgements in support of his case. These do not help the applicant inasmuch as

* (1) S.S. Sandhu Vs. Union of India and Another
(1983 (1) SLJ p. 475).

(2) Bachhittar Singh Vs. Union of India
(1987 (1) SLR p. 415).

(See)

in both these cases, the respondents therein had changed the date of birth without any substantive reasons. In the case of S.S. Sandhu, the respondents had altered the date of birth recorded in the service records after a span of nearly 26 years on the basis of the date of birth recorded in the Military Service Book, which itself was not based on the Matriculation Certificate. The Delhi High Court thus granted the writ and struck down the order of the respondents altering the petitioner's date of birth. Similarly, in the case of Bachhitar Singh, the date of birth which was originally declared by the applicant on the basis of his Matriculation Certificate, was changed by the respondents without any cause in support thereof and as a result, the Chandigarh Bench of this Tribunal allowed the application and quashed the order of the respondents by which the representation of the applicant for correcting his date of birth was rejected. Thus, the instant case of the applicant does not, in any way, fall in line with the two cases cited by him.

9. The learned counsel for the respondents also cited a number of judgements in support of the case of the respondents. It is not necessary to go into detail in all those judgements. In Sami Ahmad's case, the conduct of the Government servant from 1949 when he entered service till 1981 established that he fully knew his date of birth entered in his service record and for almost 30 years he did not make any representation and the change in the date of birth after such a long period even on the basis of Matriculation Certificate was not permitted. In Bhagirathi Yadav's case, the main issue considered was

** (1) Shanti Prasad Thapliyal Vs. Union of India & Others (1987 (3) ATC 954).
(2) Ganpat Rai Vs. Union of India (1987 (3) ATC 659).
(3) M. Arumugam Vs. Central Public Works Department. (1987 (3) ATC 607).
(4) Bhagirathi Yadav Vs. Union of India & Others (1987 (3) ATC 307).
(5) Sami Ahmad Vs. Union of India & Others (1987 (3) ATC 102).

(i.e.)

S

whether the entry as to the age of the plaintiff had been wrongly made or not and in that case also, the date of birth as recorded in the Medical Certificate obtained by the employer immediately after appointment was held to be authentic, and the plaintiff's claim was rejected. In M. Arumugam's case, it was inter-alia held that the positive proof was required for impugning the entry of date of birth in the service records. In Ganpat Rai's case, correction in the date of birth sought on the basis of original Matriculation Certificate after about 32 years of service was disallowed. In Shanti Prasad Thapliyal's case, it was inter-alia held that the horoscope is not a public document and the entry of the date of birth in Life Insurance Policy based on the statement of the assured person himself was not an acceptable evidence.

10. In the case before me, no Matriculation Certificate has been produced and the applicant's claim is solely based on his date of birth in Bikrami Samat given in the School Discharge Certificate to be converted in accordance with an extract from 'affamarize of Bikrami Samat 1988'. As already mentioned above, this extract is not admissible in evidence as neither the source has been indicated, nor it has been proved by evidence or an affidavit of an expert to enable the respondents to rebut it. He has claimed 23.11.31 in Christian era to be his date of birth for the first time only in March, 1989 i.e., after a gap of nearly 33 years' service. The evidence filed by the respondents in support of the applicant's date of birth being 8.8.1931 is overwhelming and cannot be ignored. As late as on 9.12.1985, the applicant, under his own signatures, intimated to the Superintending Engineer, P.W.D. Electrical Circle No. II, Delhi Administration, New Delhi that his correct date of birth is 8.8.1931 (Annexure X to the written statement). For these reasons and in view of the above discussion, I see no merit in this application which has to be rejected.

11. Vide Tribunal's order dated 30.8.89, it was directed that the applicant may not be retired till the next date of

hearing. This was obviously done because the applicant had filed this application on 29.8.89 and it came up for admission on 30.8.89, i.e., one day prior to the due date of retirement. However, vide Tribunal's order dated 7.9.89, the interim direction was not extended and the applicant is said to have been relieved on 8.9.89.

11. In the facts and circumstances of the case, the application is hereby rejected with no order as to costs.

(P.C. JAIN) 4/989
MEMBER (A)