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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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Regn. No. OA 1764 of 1989

Date of decision: 4.5.1990

J.S. Malhotra

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Applicant.

Vs.

Union of India & Others

Respondents.

PRESENT

Shri K.K. Rai, counsel for the applicant.

Shri R. Saraf, counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri G. Sreedharan Nair, Vice-Chairman.

(Judgement of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

Judgement

Application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Jagdish Sagar Malhotra against the orders dated 21.6.1989 (Annexure A-1 to the application) rejecting his claim for changing his date of birth from 1.1.1933 to 1.1.1934. The brief facts of this case are that the applicant joined the Government service in the year 1954 and his date of birth was recorded as 1.1.1933 based on the Matriculation Certificate produced by the applicant and the same date of birth was entered in the service records. He received a copy of a letter dated 27.8.87 issued by the General Manager, Telephones, giving notice of retirement to a number of employees, including the applicant. This memo indicated that he was to retire on 31.12.1990. While going through the papers of his father which were required to be submitted to the Railway authorities in Ferozepur, in connection

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with the ex-gratia pension of his widow mother who was entitled to it with effect from January, 1986, the applicant came across a duplicate copy of his School Leaving Certificate of S.D.S.E. High School, Patiala, wherein he was a student of Class VII and which he left on 19.1.1946 due to the transfer of his father from Patiala to Lahore before partition of the country. This Certificate showed his date of birth as 1.1.1934. He submitted the original copy of this Certificate at the time of admission in the S.D. High School, Lahore, in 1946. On knowing his correct date of birth, after recovering the duplicate copy of the School Leaving Certificate, he applied for change in the date of birth by representation dated 22.12.1988, but the same has been rejected. Although he has produced not only the duplicate copy of the School Leaving Certificate, it was also confirmed by the Pakistani authorities through the Indian High Commission and also recommended by the Area Manager (South), Mahanagar Telephones Nigam Ltd. vide his letter dated 23.12.1988 (Annexure A-6 to the application).

2. The case of the applicant is that he did not know that his date of birth as recorded in the High School Certificate or in the service record was not correct until he accidentally came across a duplicate copy of the School Certificate found in the papers of his father which he was searching in connection with the pension of his widow mother. The applicant pleads that the respondents should have accepted this certificate and corrected his date of birth, but they did not do so illegally.

3. The respondents in their reply have denied the claim of the applicant and said that the date of birth submitted and declared by him at the time of joining service and which was corroborated by the High School Certificate produced by the applicant and entered in his service record cannot be changed at the fag end of his service. He joined service in 1954 but did not apply for change in the date of birth till 1988 and that too after he had received a notice about the date of his retirement.

4. The learned counsel for the applicant said that it is well established in law that a person has a right to superannuate at the age of 58 years and that a person can get his date of birth corrected any time according to various judgements of the Tribunal as well as the Hon'ble Supreme Court of India. He said that the School Leaving Certificate issued by the High School at Patiala is the first certificate about the date of birth and, therefore, more authentic than the High School Certificate which gives the wrong date of birth. He cited several cases in support of his claim:

1. Hira Lal Vs. U.O.I. - 1987 (1) A.T.R. C.A.T. 414. In this case it was held that employees can seek corrections at a later date and there would be no estoppel under the Fundamental Rules.
2. K.U. Jain Vs. U.O.I. - 1989 (Vol. 11) A.T.C. 365. In this case, Jabalpur Bench of the CAT has held that delay in seeking correction in the date of birth cannot be a bar, but the evidence on record is more important.
3. State of Assam Vs. D.P. Deka, AIR 1971 SC 173. In this case the Supreme Court relied on the School Certificate in place of the Matriculation Certificate under the Children's Act.
4. R.R. Yadav Vs. Union of India - 1987(4) ATC 337 and
5. Mohar Singh Vs. U.O.I. - 1987(3) ATC 377. In these cases

it has been held that correction can be done even at a later stage if the evidence is convincing.

5. The learned counsel for the respondents said that he does not contest that the date of birth can be changed at a later date and there is no estoppel as provided under the Fundamental Rules, but he said that there are a number of decided cases to hold that where a date of birth has been accepted by both the parties for a long time and they have acted upon it, it cannot be changed at the far end of one's career. He also mentioned that although the applicant had filed a High School Certificate in respect of his brother, it cannot be established that the Certificate is authentic or the date of birth mentioned there is ^{the} correct date. He also mentioned that ^{the} School Leaving Certificate does not give the full name of the applicant, but he was not relying on these circumstances, but on the fact that the applicant had himself given his date of birth and corroborated the same by producing the High School Certificate which was in his possession at the time of joining service in 1954.

6. We have gone through the pleadings and the arguments by the learned counsel on both sides. There is no doubt that the date of birth can be altered even at a later stage provided there is strong evidence to support the change in the date of birth. In this case, the applicant took no action to seek change in the date of birth till he had received the notice for retirement and relies on a solitary document, which is the duplicate copy of the Certificate issued by the School where he was studying before going over to Pakistan. His date of birth in the Matriculation Certificate has been recorded as 1.1.1933. The applicant claims that some distant relative gave this date of birth wrongly. It could also be that the date of birth recorded

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in the High School Certificate might have been copied from the original School Leaving Certificate received by the school authorities in Pakistan. In any case, the School Certificate cannot be treated as authentic in preference to the High School Certificate. *in the circumstances of this case* The Madras Bench of the CAT in T. Ramaswamy Vs. General Manager, Southern Railway - 1987 ATLT 62 - has held that since the dates of birth are recorded on the basis of information given by someone, their evidentiary value is not absolutely reliable. In that case, as in this case, no affidavit was filed on behalf of the Headmaster of the School regarding the date of birth of the applicant. In another case Jena Vs. Union of India - 1988 (1) ATLT CAT 182 - the Cuttack Bench of the CAT relied on the matriculation certificate in preference to School Certificate where the applicant accidentally found that his elder brother was younger to him in the School Register. In the present case also, it is stated by the applicant that according to the High School Certificate the elder brother was only 9 days older than him and this is not possible. It is clear that each case will have to be examined on its own merits. We feel that in the instant case, the applicant had in his possession a copy of the High School Certificate as well as the School Leaving Certificate which was issued in 1953, but when he declared his age, he ^{apparently} relied on the High School Certificate and the same was not challenged throughout his service career. We do not, therefore, find the evidentiary value of the duplicate copy of the School Leaving Certificate alleged to have been found accidentally as very convincing in order to alter the service records of the applicant which

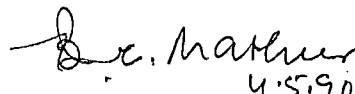
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have been relied upon by the applicant as well as the respondents throughout his service career. In the circumstances, we see no merit in the application and the same is dismissed. Parties to bear their own costs.


(G. Sreedharan Nair)
Vice-Chairman
4-5-1990


(B.C. Mathur)
Vice-Chairman
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