

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 2471/89

New Delhi 5 October, 1994.

HON'BLE MR.S.R.ADIGE, MEMBER (A)

Shri J.R.Gupta,
s/o Shri Siri Ram,
T-29, Atul Grove Road,
New Delhi- 110001

.....Applicant.

By Advocate Shri K.K.Rai.

Versus

1. Union of India,
through the Secretary,
Ministry of Communication,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi.

2. The Chief General Manager,
Delhi Telephones,
Mahanagar Telephone Nigam Ltd.,
Khurshid Lal Bhavan,
New Delhi.

3. The Director General (Telecom),
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan,
New Delhi

....Respondents.

By Advocate Shri Amit Prabhate.

JUDGMENT

In this application, Shri J.R.Gupta, Deputy General Manager, Mahanagar Telephone Nigam, has prayed for quashing of communication dated 16.12.88 (Annexure-F) and 2.2.89 conveying to the applicant rejection of his representation regarding change of date of birth and for a direction to the respondents to change date of birth of the applicant in the service record from 5.7.48 to 1.9.49, with consequential benefits.

2. The applicant's case is that he hails from a backward village in Haryana State and his father, who is illiterate, cannot even sign

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in Hindi. He can sign only in local script namely Mundi Hindi. The village in which the applicant was born, had a school with rudimentary teaching facilities, and that was only upto primary standard. It is stated that when he sought admission in that school, his date of birth was entered as 5.7.48 by the school teacher and not by his parents who never bothered about date of birth of their children. This date of birth was thereafter maintained in subsequent records including Matriculation Certificate (Annexure-B). However, in June, 1988, during ^{an} family function in the village, the applicant was surprised to be called a year younger than what his matriculation certificate disclosed. Upon making enquiry from the office of the Registrar of Birth and Death, he obtained a certificate on 29.7.88 (Annexure-A) District which was issued by the Additional Registrar under section 17 of the Registration of Birth and Death Act, showing his date of birth as 1.9.49 (Annexure-A) which had also been confirmed by his father's certificate dated 16.11.88 (Annexure-C). He states that on 1.9.88 he represented to respondent No.3 for correction of his date of birth and followed it up with reminders but was informed by the impugned Memo dated 16.12.88 (Annexure-F) cryptically that his representation could not be acceded to, compelling him to file this O.A.

3. On behalf of the applicant, Shri K.K. Rai besides reiterating the averments made above,

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has relied upon the ruling in Jaladhar Vs. Malati Dei AIR 1971 Orissa 230 in support of his contention that the Additional ^{as an} District Registrar, who is a public servant, has given a certificate in the discharge of his official duty, the probability of its being truly and correctly recorded is high, while that probability is reduced to a minimum when the public servant making ^{the} entry is an illiterate person, then that person has to depend on somebody else to make the entry. He has also relied upon Harpal Singh Vs. State of Himachal Pradesh AIR 1981 SC 361, to support his argument that the certificate given by the Additional District Registrar showing the applicant's date of birth as 1.9.49 is clearly admissible under section 35 of the Evidence Act as was given by the concerned official in performance of his official duties and, therefore, should be acted upon.

4. Shri Amit Prabhat for the respondents has invited attention to Note 6 below F.R. 56 which provides that even where it is established that a genuine bonafide mistake has occurred in recording the date of birth, an alteration is permissible ^{only} within five years from the date of entering into Government service. In the present case, the applicant joined service in 1972 and was making this prayer for alteration in date of birth since 1988 i.e. after passage of 16 years. It is contended that the applicant has put forward entirely a baseless and concocted story. Further it is stated that it is ^{an} established principle of law that entries are to be made in the service record on the basis of matriculation certificate, and in the present case, the applicant's matriculation

certificate clearly shows his date of birth to be 5.7.48. It has been denied that the reply to the applicant's representation is a cryptic one and it is stated that the same is based upon the provisions contained in Note to F.R.56.

5. In this connection, Shri Prabhat has also relied upon the ruling of the Hon'ble Supreme Court in Union of India Vs. Harnam Singh-
J.T 1993 (3) SC 711. In that case, the respondent joined Govt. service, as a peon on 22.2.56 and his date of birth was recorded as 20.5.34 in the service book and against the column of educational qualifications, words 'matric failed' were recorded. That applicant passed the matriculation examination in 1956 and he was appointed as a IDC in the Finance Ministry on 5.9.56. In his matriculation certificate, his date of birth was recorded as 7.4.38. On being notified about his date of superannuation i.e. 30.5.92 on the basis of his date of birth recorded in the Service Book, he represented for alteration of his date of birth, but the same was repeatedly rejected. That applicant thereafter challenged the action of those respondents in rejecting his application vide C.A. No.1252/92 dated 29.5.92 before the Central Administrative Tribunal who allowed that application and directed those respondents to correct the applicant's date of birth in his service record as per the date of birth recorded in matriculation certificate. Thereupon the UOI filed an ^{an} SLP in the Hon'ble Supreme Court

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who by their order dated 9.2.93 allowed the appeal and set aside the order of the Tribunal holding that the intention of the rule making authority in providing the period of limitation for seeking correction of the date of birth of the Government servants was to discourage the stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry. Those Govt. servants who were in service before 1979 and who intended to have their date of birth corrected after 1979, could seek the correction of date of birth within a reasonable time after 1979 but not later than five years after the incorporation of Note 6 to F.R.56 in 1979. In this connection, the following quotation from that judgment is extremely relevant:-

"A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age."

6. The above quotation provides a complete answer to the applicant's claim and under the circumstances, I do not see any

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reason to interfere with the impugned order. This application is accordingly dismissed. No costs.

Arfaq
(S. R. ADIGH)
MEMBER (A)