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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

No. O.A. 798/1989.

DATE OF DECISION: February 19, 1990.

Rulia Ram	Applicant.
Shri M.R. Bhardwaj	Advocate for the Applicant.
	V/s.	
Union of India through Secretary, Deptt. of Personnel & Training	Respondent.
Shri N.S. Mehta	Senior Standing Counsel for the respondent.

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

1. Whether Reporters of local papers may be allowed to see the judgement? _____
2. To be referred to the Reporter or not? yes.
3. Whether his Lordship wishes to see the fair copy of the judgement? No.
4. To be circulated to all Benches of the Tribunal? No.

(Clean:
(P.C. JAIN)
Member(A)

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged Memorandum dated 19.1.1989 (Annexure A-1 to the application), by which he was informed with reference to his representation dated 16.12.1988 regarding change of his date of birth from 10.1.1933 to 12.10.1933 that his request could not be acceded to, and has prayed that the respondent be directed to change his date of birth from 10.1.1933 present^{ly} recorded in the service records to 12.10.1933.

2. Relevant facts, in brief, are that the applicant was appointed as L.D.C. in the Ministry of Home Affairs on 14.5.1954. He was promoted as J.D.C. in 1956 and as Assistant in 1977. He has been working as Desk Attache in the Department of Personnel & Training with effect from 1.5.1984. He applied on 9.10.1985 for correcting his date of birth to 12.10.1933 (Annexure A-4 to the application). He sent a reminder on 16.12.1988, to which a reply dated 19.1.1989 was sent to him.

3. I have perused the material on the record of this case and have heard the learned counsel for the parties.

4. The applicant's case, in brief, is that before the partition of the country in 1947, he was studying

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in 8th class in the D.B. High School, Chak Jhummara, District Lyallpur (renamed as Faisalabad) now in Pakistan, and that the school appears to have been renamed as Government High School, Chak Jhummara, District Faisalabad. His family was residing at Chak No.190-RB, Karari, near Chak Jhummara and migrated to India in September / October, 1947. In 1949, he was admitted in the 8th class in Government Middle School, Village Patti, District Hoshiarpur, Punjab. Due to disturbed conditions following the partition of the country, it was not possible for his parents to obtain his school leaving certificate from the school in Pakistan. For the same reason, he could not pursue his education in India for nearly two years. On the statement of his father, who was illiterate, to the effect that the applicant was about 15½ years of age, the Headmaster of the School in India worked out 1933 as the year of birth of the applicant and date and month were also fixed on an ad-hoc basis as 10th January. This was without reference to any documentary evidence as no such evidence was in possession of the father of the applicant at that time. He passed his Matriculation Examination in 1952 from the Punjab University and 10th January, 1933 is mentioned as his date of birth in the Matriculation Certificate.

5. In 1985, the applicant became suspicious about the correctness of the date of birth recorded ^{in the school} in India in 1949, when he had met one of his old class-mate who told him that he would retire in 1993 while the applicant was to retire on superannuation in January, 1991 as per the recorded date of birth. He wrote to the Headmaster, D.B. High School, Chack Jhummara in Pakistan on 31.7.1985 (Annexure A-2 to the application) and received from Pakistan a letter dated 29.8.85, along with true copy of "Ad/Withdrawal Reg." dated 18.8.85, which shows his

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date of birth as 12.10.1933 (Annexure A-3). He, therefore, contends that his date of birth entered by the School in District Hoshiarpur (India) was a bonafide mistake which resulted in incorrect date of birth/recorded in his Matriculation Certificate and subsequently in his service records after he joined the Government service.

6. The case of the respondents, in brief, is that in accordance with the rules / instructions on the subject of recording and subsequent alteration in the recorded date of birth of a person in the employment of Government of India, the applicant is not entitled to the relief prayed for. They have emphasised that the date of birth recorded in the service records on the basis of Matriculation Certificate should be upheld and that the documentary evidence now produced by the applicant is not authoritative as neither the same has been procured through Government agencies, i.e., Ministry of Home Affairs, Ministry of External Affairs, Indian High Commission in Pakistan or Pakistan High Commission in India, nor does it bear the seal of the issuing authority and, as such, it is of no evidentiary value.

7. It is not in dispute that the Matriculation Certificate shows the applicant's date of birth as 10.1.1933, which is also recorded in the service record of the applicant. It is also not in dispute that before 1985, the applicant never raised the matter of change in the recorded date of birth. The only evidence on which he has sought, during the last three years or so, a change in the recorded date of birth is a true copy of "Ad/Withdrawal Reg." dated 18.8.85, said to have been received by the applicant along with letter dated 29.8.85 from one Shri Muhammad Bakhsh from his residential address and prima-facie in his personal capacity, as it is not on the School letter-head and also does not bear his designation in the

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school, if any, or the stamp of the school. Thus, it has neither been received through the prescribed channels, nor has it been proved as such. If this information had been received through the Ministry of External Affairs from the concerned authorities in Pakistan or through India's High Commission in Pakistan, it could be read in evidence. In the facts of the case, as already stated, this is not a proven document and cannot be read as evidence. There is no other evidence filed by the applicant in support of his prayer. The learned counsel for the respondent cited para 7 of the judgement of the Hon'ble Supreme Court in the case of Ram Murti Vs. State of Haryana in Criminal Appeal No.62 (N) of 1967, decided on 14.4.1970 (AIR 1970 Supreme Court 1020). The cited SLP had arisen out of an appeal in a criminal case and may, therefore, be not directly relevant to the case before me, but the observation of the Supreme Court in that case to the effect that "unproved and unexhibited school certificate could not be treated as evidence in the case" is relevant for the case before me also.

8. The learned counsel for the applicant emphasised at the bar the nonapplicability of the grounds on which the representation of the applicant has been rejected. The two grounds mentioned in the impugned Memorandum dated 19.1.1989 are: -

- (a) The representation for change of date of birth has been made after 31 years of service, while it should have been made within five years of entry into Government service; and
- (b) the date of birth in the service records was entered on the basis of the Matriculation Certificate produced by him at the time of entry into Government service and no genuine bona-fide mistake has occurred.

The first ground is based on Notification dated 30.11.1979 (Annexure A-5 to the application) by which the then existing

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Note 5 below F.R. 56 was substituted by a fresh ^{Gu.} Note. This note specifies the circumstances in which the date of birth declared by a Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register, could be altered. Three conditions are specified therein as under: -

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bonafide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

The condition at (c) above is not in dispute in this case. As regards the condition of making the request within five years of entry into Government service, the learned counsel for the applicant relied on the judgement of the Central Administrative Tribunal in the case of Shri Hira Lal Vs. Union of India (A.T.R. 1987(1) CAT 414). In this case, it was held that the five years' period of limitation prescribed for the first time in the Notification of 30th November, 1979 cannot apply to those Government servants who were in service by that date for more than five years. However, the learned counsel for the respondent argued that if the provisions of the amended Note 5 below F.R. 56 are taken to be not applicable to the applicant, then he is necessarily to be governed by the rules / instructions in force prior to that date. The respondent has filed in reply relevant extracts from the

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General Financial Rules of the Central Government (Vol. I) as Annexure R-I; Ministry of Home Affairs O.M. No.55/3/54-Ests., dated 5.6.1954 (Annexure R-II); Ministry of Home Affairs Office Memorandum dated 17.11.1962 (Annexure R-III); and extracts of Rules 79 and 80 of the General Financial Rules (Annexure R-IV) which replaced the then existing General Financial Rules of the Central Government in 1963. Rules 116 and 117 of the General Financial Rules of the Central Government, Volume I, prevalent in 1954 when the applicant entered service provided for declaration of the date of birth by a person newly appointed to a service or a post under Government with possible confirmatory documentary evidence. Ministry of Home Affairs O.M. dated 5.6.1954 enumerated the criteria which were followed in considering requests for change in dates of birth already recorded. These were that requests for alteration of date of birth made within a year or two of the date of superannuation are not countenanced, but where such requests are not regarded as time-barred, they should be supported by satisfactory documentary evidence, such as the Matriculation or equivalent certificate or a duly attested extract of the birth register or baptismal certificate in original, together with a satisfactory explanation of the circumstances in which the wrong date came to be entered and that mistake should have occurred for one of these reasons. In O.M. dated 17.11.1962, it was provided that on review of the existing instructions, it had been decided that requests from Government servants for alteration of date of birth should not be entertained after the preparation of their Service Books and in any event not later than the completion of the probation period or declaration of quasi-permanency, whichever is earlier. The date of birth of a Government servant could, however, be altered at a later stage by the competent authority if he is satisfied that a bona-fide clerical mistake has been committed and that it should be rectified. Similarly,

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Rule 79 (2) of the General Financial Rules, 1963 provided that the actual date or the assumed date determined under Rule 80 shall be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and, once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of a Department of the Central Government or an Administrator.

9. A perusal of these provisions clearly shows that even prior to the amendment of 1979, the date of birth as recorded in the service records could be altered without any period of limitation as such, only on grounds of a clerical mistake or a genuine bonafide mistake. Thus, one of the two grounds of rejection of the application, i.e., the request should have been made within five years of the entry into Government service, cannot be held to be a valid ground in view of the above provisions and the judgement in the case of Shri Hira Lal Vs. Union of India (supra).

10. The other ground of rejection was that no genuine or bona-fide mistake had occurred. Obviously, the mistake has to be with reference to recording of the date of birth of a person appointed to Government service at the time of entry into service and to stretch it to cover cases of alleged mistake on the part of the applicant or his parents and that too after a period of more than 30 years and on the ground such as in this case, would not appear to be logical. Even if one were to take a different view, the applicant is not entitled to the relief prayed for because the document on which he relies is not a proven document and cannot be read as evidence.

11. The learned counsel for the applicant also cited the case of Shiv Parshad Vs. General Manager, Northern Railway and Ors. (A.T.R. 1987 (1) CAT 608). It was held

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in that case that merely by placing reliance on the entry relating to date of birth in the transfer certificate, it cannot be concluded that the date of birth of the applicant entered in the service record is wrong. This case, therefore, does not help the applicant.

12. The learned counsel for the respondents also relied on the judgement of a Division Bench of the Calcutta High Court in the case of Pramatha Nath Choudhury Vs. The State of West Bengal and Others (1981 (1) SLR 570) wherein it was held that the date of birth of the appellant as stated in the Matriculation Certificate must be accepted to be correct.

13. In view of the above discussion, the application is devoid of merit and is accordingly dismissed. Parties to bear their own costs.

19/2/99
(P.C. JAIN)
Member(A)