

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1839 of 1988

Date of decision: 6.4.1989

Shri Jilla Kanakiah

Applicant

Vs.

Union of India

Respondents

PRESENT

None for the applicant.

Shri P.P. Khurana, Counsel for the respondents.

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Jilla Kanakiah, Deputy Chief Labour Commissioner (Central), Ministry of Labour, against impugned order No. A-19011/35/84-CLT/PLO dated 8.6.88 passed by the Under Secretary, Ministry of Labour, rejecting the applicant's representation for change in the date of birth.

2. Shri D.V. Ramachandran, counsel for the applicant, was present at the time of admission of the case and at the time of filing of the rejoinder, but neither the applicant nor his counsel have appeared thereafter. The case, is therefore, being decided on the basis of the pleadings.

3. Brief facts of the case, as stated in the application, are that the applicant was born on 10th October, 1939 at Chadala-wada Village in Andhra Pradesh. His illiterate father by mistake entered his date of birth in School records as 1st May, 1937 and the same mistaken date has continued in the service records. His father recently informed him about his mistake. Therefore, he approached the District authorities in Andhra Pradesh and obtained a birth certificate issued by the Registrar of Births and Deaths. Copy of the certificate is at Annexure A-1. Thereafter the applicant made a representation on 16.2.88. His representation to the Labour Ministry has been rejected on the grounds that such change in date of birth is not permissible under the extant rules and orders

on the subject. The rejection order also states that if the date is taken as 10.10.1939, the applicant would not have been eligible to take the SSLC Examination in April 1954 for which the candidate should have completed 15 years of age.

4. The applicant joined Government service as Labour Enforcement Officer on 25.10.1962 and his date of birth has been recorded in the service record based on the date of birth mentioned in the school records, including the SSLC certificate. The case of the applicant is that since his father was illiterate, he had made a mistake in mentioning the applicant's date of birth to the school authorities and as he has a right to get the date of birth changed at any time, and as the correct date of birth is mentioned in the birth certificate issued by the Registrar of Births and Deaths, the same has to be corrected and the respondents have wrongly refused to make the correction.

5. The respondents in their reply have confirmed that the date of birth entered in the Secondary School Leaving Certificate and records produced by the applicant at the time of entry into Govt. service showed the date of birth as 1.5.1937 and the same was, therefore, recorded in the service book. The applicant made his first representation only on 16.2.1988, long after joining Government service. The photostat copy of the birth register produced by the applicant cannot be relied upon. Normally, alteration in date of birth is done if a request is made within five years ^{bonafide} of joining service or where it is established that a genuine/mistake has occurred. It has also been pointed out that on the basis of date of birth now claimed by the applicant, he could not have appeared ^{at} the School Leaving Certificate Examination or entered into Government service. It was also pointed out that under Rules 116 and 117 of the General Financial Rules, the date once recorded in the service records could not be altered except in the case of a clerical error, without previous orders of Central Government. In February 1975, the executive instructions were given a statutory form by inserting a Note below F.R. 56 which provided that the date of birth declared by a Government servant and accepted by

the appropriate authority shall not be subject to change.

6. The learned counsel for the respondents emphasised that even ^{if} it may be accepted that Note 5 below F.R. 56 does not apply to persons recruited before 15.12.197ⁿ9, there is no overwhelming evidence in support of the contention of the applicant that he was born on 10.10.1939.

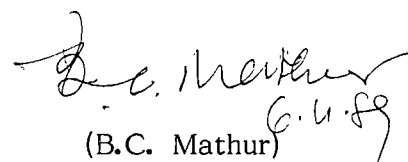
7. I have gone through the pleadings in this case, including the original application, the reply filed by the respondents and the rejoinder by the applicant. It is well established that a Government servant has a right to serve till the age of superannuation and it has also been decided in the case of Hira Lal Vs. U.O.I. - 1987(1) CAT 414 - that the limitation of five years would not apply in the present case. However, there must be overwhelming evidence to establish that the date given in the village records can be relied upon in preference to the age given in the service records or the School Leaving Certificate which have not been challenged by the applicant for a very long time. As brought out, the applicant joined service on 25.10.1962 and he made his representation only on 16.2.1988 which is more than 25 years after joining service. It is not clear why his father did not tell him the correct date of birth all these years. If his father was illiterate, as made out by the applicant, it is not clear how recently he was able to remember the correct date of birth which is 10.10.39 when he had earlier given the date of birth as 1.5.1937. The applicant himself had not challenged earlier the date of birth given in the school records. He has accepted that the minimum date of birth for appearing at the SLC Examination is 15 years, but he says that relaxations have been given and could have been given in his case. He himself produced the rules which indicate that a person should have completed 15 years of age on or before the 1st day of the month in which the examination is to be held. It shall, however, be competent to the authorities to relax this rule. The applicant has stated that he would have completed 14 years and 6 months in April 1954 and would have been given

exemption by the District Education Officer. He has cited two cases, but has not mentioned that he ever applied for such relaxation or that such relaxation was ever given. This means that he was relying on the date of birth given in the school records, namely, 1.5.1937 under which he was eligible. Whether relaxation would have been given to him or not is a matter which can hardly be decided at this stage. A number of cases have been cited in OA 1538/88 - Karam Singh Vs. U.O.I. - decided by this Bench on 3.4.1989. It has been held by this Tribunal in the case of Shri Faquir Chand Vs. U.O.I. - ATR 1987 (1) 15 - that entries in service record which remained unchallenged for a very long period cannot be challenged at the fag end which may also mean that after a very long period. A similar finding was given by the Tribunal in Modi Rahaso Vs. U.O.I. - SLJ 1987(3) CAT 440 - where it was held that the date of birth which has been relied upon by the applicant for a long time cannot be changed during the last days of service. In M. Rachaiah Vs. Southern Railway - 1986 (4) SLR 23 - it has been held by the Tribunal that where change of date of birth has been made after 24 years, it should be considered as highly belated and not accepted.

8. The Madras Bench in M. Asokan alias Munuswamy Vs. General Manager and Others - ATR 1986(2) CAT 142 - has held that a Birth Register entry is not of much evidentiary value and its entry denotes its factum of birth but not of date of birth. It has been stated that normally the school authorities make the entries regarding date of birth on information furnished either by the parent or to the other relations who accompany the child admitting him to a school. Therefore, the entry is made by the school authorities based on information furnished to them by others. The Madras Bench has held that birth extracts have been held to be not of much evidentiary value for the reason that the entry in the birth register is also based on information furnished by the parents or third parties and the correctness of the entry will have to depend on the correctness of their information. In the circumstances, courts have normally taken the view that the birth

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extract is only an evidence of factum of birth and not the date of birth. If the School Leaving Certificate or the birth register cannot be taken as conclusive proof of one's correct date of birth, it would be normal to rely upon the entry in the service record which has been accepted ^{by} the applicant as well as the respondents for a very long time. As an evidentiary value, I would place greater reliance on the date of birth given in the SSLC and the service record rather than a village register extract which has been produced at a very belated stage. In the circumstances, I see no merit in the application which is rejected. There will be no orders as to costs.


(B.C. Mathur)
Vice-Chairman