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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 212 of 1988 198
T.A. No.

DATE OF DECISION 29.3.1988

Shri P.S. Nanaya Petitioner

In person. Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri RN Gupta, Asstt. Director, and Shri

~~Advocate for the Respondent(s)~~

P.P. Nautayal, Section Officer, in the Intelligence Bureau on behalf of the respondents.

CORAM :

The Hon'ble Mr.

B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *ce*



(B.C. Mathur)

Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. OA 212 of 1988 Date of decision 29.3.88

Shri P.S. Nanaya Applicant

Vs.

Union of India Respondents

PRESENT

Applicant in person.

Shri R.N. Gupta, Asstt. Director, and Shri P.P. Nautayal, Section Officer, in the Intelligence Bureau on behalf of the respondents.

CORAM

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

This case was argued today by the parties on both sides. They did not want to get the case adjourned to enable the case to be argued by their respective lawyers.

2. This is an application under Section 19 of the Administrative Tribunals Act 1985 against the impugned orders No.7/C-III/86(47)-4437 dated 18.12.87 (Annexure A-1 to the application) and No. 7/C-III/86 (47)-217 dated 20.1.1988 (Annexure 'A' to the application) passed by the Assistant Director, Intelligence Bureau, giving notice of retirement to the applicant with effect from 31.3.88 and that unless he produces the original School Leaving Certificate containing his date of birth, his request for change of date of birth cannot be considered, respectively.

3. The brief facts of the case as stated by the applicant as stated by the applicant are that he joined his service career as a constable in the Hyderabad Police on 26.6.1950. He was appointed as Junior Intelligence Officer in the I.B., New Delhi, on 2.2.1959 and is now serving as Deputy Central Intelligence Officer in the same office. According to the applicant, his correct date of birth is 1.4.1933 and he has produced certificates dated 19.12.87

obtained from the Principal, Government Junior College, Madikeri Kodagu, Distt. Mercara, and the date of birth certificate dated 4.11.1987, as found in the School Admission Register (Annexures 'D' and 'E' to the application). Both the certificates indicate the date of birth as 1.4.1933. The applicant states that the original Senior School Leaving Certificate granted by the Education Authority, Coorg, in the year 1947, was handed over to the Hyderabad Police at the time of joining service which has not been returned to the applicant so far. The applicant states that it is not feasible for him to recall as to what was the date of birth recorded in his service book and how the date of birth was recorded there. At the time of joining the Hyderabad Police, he was 17 years and 2 months old and there was no bar for persons under 18 years of age to join as constables in Hyderabad Police. A dispute arose when a memorandum was issued to the applicant on 8.10.1986 (Annexure 'F') indicating that the date of birth in various official records was 1.4.1930 instead of 1.4.1933 and that the date of birth indicated at page 3 of the service book opened by the IB had been tampered with. The applicant has stated that he was unaware about the basis on which the date 1.4.30 was recorded and how the same could be tampered and altered to read as 1.4.1934. In a state of shock and confusion, the applicant accepted his date of birth as 1.4.1930 recorded in the service documents. He was, however, administered a warning on 26.12.86 (to be careful in future). The applicant thereafter wrote to the Principal, Higher Secondary School at his native place, Mercara (Coorg) and he received a birth certificate mentioning his date of birth as 1.4.33. He made a representation for correction of his date of birth, but the same was rejected in the absence of the original School Leaving Certificate for re-examination. The applicant has argued that he has a right to superannuate on 1.4.1991 on the basis of his correct date of birth and as there has been a bonafide clerical error in recording his correct date of birth, the same must be corrected. He has argued that the limitation for altering the date of birth contained in Note 5 below F.R. 56 applies only to those who joined service after the Note was issued and not in his case. He cited cases where the date of birth could be corrected at any time.

4. In his arguments the applicant stated that his service book was not opened for four years after joining service. He was then called to put his finger prints on the service record where the date of birth was mentioned as 1.4.1933 which was his correct date of birth as given in the School Certificate. In 1973, he had joined another unit and he gave his personal data to the officer concerned in the Intelligence Bureau where he showed his date of birth as 1.4.1933. The officer, however, told him that according to service book his date of birth was 1.4.1934 and henceforth he should give that date. Since then the applicant has been giving his date of birth as 1.4.34 even though his correct date of birth is 1.4.33. Since an inquiry was made against him for giving a wrong date, he accepted his date of birth as 1.4.30 on 10.12.1986, but as this was not the correct date of birth, he moved the respondents for correcting the date to 1.4.1933 and having failed to get justice, he has come to the Tribunal.

5. In their reply, the respondents have stated that the application should be dismissed as the applicant has not approached the Tribunal with clean hands. In the service book of the applicant, the date of birth recorded is 1.4.1930. Vide memo dated 5.12.1986, a chargesheet was issued to the applicant for tampering with his date of birth from 1.4.1930 to 1.4.1934 and in reply to the chargesheet the applicant accepted the charge. The disciplinary authority on his frank admission of the guilt took an extremely lenient view since the applicant was to retire after a short period and issued a written warning to the applicant on 29.12.1986 and dropped the proceedings. The applicant having admitted his date of birth in writing as 1.4.1930 cannot be allowed to change the same once again. He was asked to produce his original School Leaving Certificate, but he took no action to obtain the same. The applicant joined service in June, 1950 and if his date of birth is taken as 1.4.1933, he would be ineligible for Government service in 1950 having not completed 18 years of age. The applicant has signed his service book at a number of places and the date of birth in the service book is mentioned as 1.4.1930. A seniority list was circulated in 1981 which shows the date of birth of the applicant

as on 1.4.1930 and the applicant did not dispute that seniority list. It was brought out that in his reply dated 10.12.1986, the applicant has admitted as under:

"The date of birth 1.4.1930 is shown in my date of birth is absolutely correct....I am sorry to note that the date of birth has been tampered in the I.B. Service Book I sincerely state that I have not made any attempt to do such act because I am fully aware that I joined the State Govt. Service in Hyderabad through Employment Exchange in June 1950 and shall attain the retirement age in the mid of year 1988.....I am extremely sorry for all this happenings and inconvenience caused."

It was argued on behalf of the respondents that after the disciplinary proceedings against the applicant were dropped purely on compassionate grounds of his approaching retirement, he cannot be allowed to change the date of birth in order to get advantage of further service. The applicant had not filed any appeal against the written warning issued to him. It was stated that a perusal of two different papers, purported to be an original school certificate and date of birth certificate would clearly show that these are fabricated documents and obtained within a span of short period from two different persons. One certificate is supposed to have been issued by the Vice-Principal of the School. While one is signed on 4.11.87, the photo copy seems to have been signed on 6.11.87. On the other hand, he has accepted in writing on 10.12.1986 that his date of birth was 1.4.1930. It cannot, therefore, be said that he did not know his correct date of birth and the School Certificate obtained nearly 36 years after joining service cannot be relied upon. It was argued that the cases upon which the applicant has relied are not applicable to the applicant. In the case of Shri R.R. Yadav where the change in the date of birth was allowed by the Tribunal was on the basis of Matriculation Certificate which the applicant has not been able to produce. It was claimed that the application should be dismissed as he cannot enjoy double benefit, firstly to

join service being underage and then to get his service extended by changing date of birth. The application also deserves to be dismissed on grounds of estoppel. It was argued that the applicant has signed his service book on a number of occasions. As late as 10.12.86 he attested his date of birth as 1.4.1930. He also did not dispute the seniority list circulated in 1981 showing his date of birth as 1.4.1930.

6. The applicant has filed written arguments and also argued his case personally. It is not very material whether the case of the applicant would be considered under FR or General Financial Rules; it is a well-established principle now that the date of birth can be changed at any time if there has been a bonafide mistake, but the facts of the date of birth must be firmly established beyond doubt, especially if the application for such a change is made belatedly. In the present case, there are three different dates of birth, as far as the applicant is concerned. The service book shows the date of birth as 1.4.1930. According to the tampered records, it is shown as 1.4.1934. The applicant was also indicating the same date after 1973. The correct date of birth claimed is 1.4.1933. One has, however, to place a lot of reliance on the entries in the service book. It is noticed that the date of birth 1.4.1930 has been mentioned at least at three places both in English as well as in Urdu and it has been signed by the applicant. It is very difficult to accept the contention of the applicant that he did not know how in the service book the date of birth was recorded as 1.4.1930. When he was chargesheeted, he gave in writing his date of birth as 1.4.1930 and even expressed regrets. He categorically stated on 10.12.1986 that he would attain the retirement age in the middle of the year 1988 and as such, he should not be allowed to change his date of birth once again. Besides, the certificates obtained from Coorg 36 years after joining his service cannot be relied upon and greater reliance must be placed on the entries in the service record of the applicant. The Computerised Personnel Admission Register which shows that he passed the S.S.L.C. Examination in 1949 (page 58^o of Annexure R-8) whereas

according to the certificate at Annexure R-13 as well as Annexure D to the application, he left the School in May, 1948. If the Principal had certified that he left the School in May, 1948, it becomes immediately unreliable as he is supposed to have passed the High School in 1949 from the same place. As long back as 24.7.79 the applicant has signed the service book indicating the date of birth as 1.4.1930. He knew very well at that time what was contained in the service book. In the circumstances, the applicant has failed completely to establish that his correct date of birth is 1.4.1933. He has failed to produce any reliable document like the Matriculation Certificate to support his case and has no case to get his services extended by three years at this stage. The respondents have correctly refused to alter the date of birth which has been recorded in his service book for over 36 years without any dispute. In the circumstances, the application is rejected. There will be no order as to costs.



(B.C. Mathur)
Vice-Chairman