

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

CAT/112

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O.A. No. = 487/88
T.A. No.

1988

DATE OF DECISION 26.8.1988.

Shri M.L. Lamba

Petitioner

In person

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.H. Ramchandani

Sr. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ad*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Ad*

MGIPRRND-12 CAT/86-3-12-86-15,000

(BIRBAL NATH)
Member.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION: 26.8.1988.

REGN. NO. O.A. 487/88.

Shri M.L. Lamba ... Applicant

Vs.

Union of India & Ors. ... Respondents.

MORAM: Hon'ble Mr. Birbal Nath, Administrative Member.

Applicant present in person.

For the respondents: Shri P.H. Ramchandani, Senior Standing Counsel for the Government.

JUDGMENT.

Per this application No. 487/88 filed on 17th March, 1988 under Section 19 of the Administrative Tribunals Act, 1985, the applicant Shri M.L. Lamba, working as Audit Office in the office of the Director of Audit, Commerce, Works & Miscellaneous II, New Delhi, has prayed that his date of birth be corrected in the official records from 28.9.1930 to 7.12.1931.

2. The facts leading to the application are that *according* the applicant used to study in Sanatam Dharam High School, Naushera, Distt. Peshawar, when the partition of the country took place and he migrated to Delhi in September, 1947. He had passed A.V. Middle standard examination in Peshawar. On migration, he sought admission in a school in Delhi and for this purpose, he got his date of birth recorded as 28.9.1930 because

his father and grand father had stayed back in the Peshawar areas, and he was not aware of his actual date of birth. Thus, this date of birth of 28.9.1930 is shown in the Matriculation certificate issued by the East Punjab University, Solan in March, 1949. This date of birth came to be recorded in his service record. However, the applicant while going through the old family papers in 1982, discovered the certificate issued with regard to his education in A.V. Middle School, which gave his date of birth as 7.12.1931. Accordingly, he applied to the Punjab University for change of his date of birth from 28.9.1930 to 7.12.1931 and the Punjab University, Chandigarh vide its proceeding of 25.5.1985 allowed this correction.

3. It is the case of the applicant that once the Punjab University has allowed this change in the date of birth, the respondents ought to make a similar change in his service records so that he can serve the Department till December, 1989. However, the respondents have not acceded to his request for change in his date of birth. The applicant had not only requested the Director of Audit, Commercial, Works & Misc. II for this correction in the date of birth (Annexure A-9) but also the Comptroller & Auditor-General of India, New Delhi, vide his letter dated 12.8.1987 (Annexure A-13) to effect similar change. Ultimately, he was informed on 19th October, 1987 that the Comptroller & Auditor-General of India had turned down his request (Annexure A-14).

4. It is the case of the respondents that no change in the date of birth is allowed in view of Note No. 5 below F.R. 56(m) which envisages a change in date of birth only in the following pre-conditions:

- (a) a request in this regard is made within 5 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 UPSC 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 respondents have also resisted the claim of the applicant on the ground that the certificate issued by the Education Department of North West Frontier Province (for short called 'the N.W.F.P.') to the effect that the applicant was a student of A.V. Middle School, Risalpur in Peshawar, was not genuine.

4. The court has heard the arguments addressed at the bar by the applicant in person and Shri P.H. Ramchandani, Senior Standing Counsel for the Government and perused the documents placed before it.

5. The first contention of the applicant is that once the Punjab University has agreed to the change in the date of birth of the applicant, the respondents were bound to effect a similar change in view of the rules on the subject, because Rule 79 of the General Financial Rules, lays down that every person newly appointed to a service or post under Government shall, at the time of

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appointment, declare the date of birth by the Christian era and provide confirmatory documentary evidence such as Matriculation certificate, Municipal birth certificate etc. Since the applicant had produced the documentary evidence for effecting change in his date of birth, the respondents were bound to do so in terms of the aforesaid Rule. It is found that this argument urged by the applicant lacks substance. Rule 79 of the G.F.R. lays down that any one who seeks Government employment shall, at the time of appointment, declare his date of birth and provide confirmatory documentary evidence. This Rule does not provide or contemplate the mechanism as to how an error in the date of birth is to be rectified. The Rule as laid down does not confer any right upon the applicant to seek a change in his date of birth subsequently. For that purpose, the provisions of Fundamental Rules 56(m) will be applicable. One of the contentions of the applicant is that he is being discriminated. Whereas the respondents have allowed change in the date of birth of Shri Balkishan Das, Clerk from 11.3.1933 to 11.3.1935 (Annexure A-15), that benefit is not being extended to him. This contention of the applicant stands answered in the following words reproduced from para. 6(v) of the counter affidavit filed by the respondents:

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"In the case of Shri Bal Krishan Dass, referred to, by the applicant in his application, it was clearly established beyond doubt that a genuine bonafide mistake had occurred in his date of birth. In the case of Shri Dass, he had submitted confirmatory documentary evidence to the Punjab University i.e. (i) original birth registration receipt issued by the Multan Municipal Committee and (ii) School leaving certificate from the Banarsi Das High School, Ambala Cantt. where he studied upto 9th class before coming over to Delhi. Before

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deciding the case of Shri Dass, certified copy of the birth certificate of Multan Municipal Committee from the Punjab University to which it had been submitted in original by Shri Dass was called for. The birth certificate as well as school leaving certificate was examined before arriving at a decision in the case of Shri Dass. In the case of applicant, no such confirmatory documentary evidence is available. Only Middle Standard Certificate has been produced which creates doubt as already explained in the preceding paras."

The Tribunal finds that the respondents have given cogent reasons for changing the date of birth of Shri Bal Krishan Dass and the charge of discrimination made ^{levelled} against them is wholly without substance. The applicant relied on the judgment of the Tribunal in the case of Shri Hira Lal Vs. Union of India¹, wherein the plea for correction in the date of birth was accepted. This judgment does entitle a Government servant to seek a change in the date of birth even subsequently than as provided in rule 79(2) of the General Financial Rules. The applicant cannot be estopped from seeking a change in date of birth on the ground of delay. However, we have to examine his case on the merits of the evidence he has produced.

6. The respondents have resisted the claim of the applicant on the ground that the sole evidence in this case is that of a certificate allegedly issued by the Registrar, Departmental Examinations of Education Department, N.W.F.P., Peshawar. The certificate shows that the date of birth of the applicant was 7th December, 1931. This certificate was purportedly issued on 1st July, 1946. In

their counter, the respondents have challenged the authenticity of this certificate. Their contention is reproduced below from the counter:-

"(b) The discrepancy in the name between the Middle Standard Certificate (Annexure I) and the Matriculation Certificate (Annexure II) also raises doubt about the genuineness of the applicant's request. The Middle Standard Certificate gives the name as 'MADAN LAL S/O L.SANT RAM' whereas in the Matriculation Certificate the name is given as 'MADAN LALL LAMBA S/O L.SANT RAM LAMBA'. The reason why in the Middle Standard Certificate the surname (Lamba) does not appear as a suffix either to the father's name or to the son's name is not clear. The name has also been spelt differently i.e. 'LAL' in one and 'Lall' in the other...."

The learned Sr. Standing Counsel for the respondents vehemently argued that a date of birth could be changed only when there was totally unimpeachable conclusive evidence showing that an error had taken place and not otherwise. He further went on to argue that even if it is assumed that the certificate issued by the Education Department, N.W.F.P. was genuine, unless there is collateral evidence by way of birth certificate, the date of birth accepted by both the parties for a very long time, could not be changed in the absence of material evidence such as birth certificate etc. and the applicant had failed to provide such corroborative evidence. According to him, the acceptance of change in the date of birth by the Syndicate of Punjab University was done in a casual and routine manner and the change accepted by the University does not show that the date of birth of the applicant was really 7th December, 1931. He argued that there should be positive, cogent and direct evidence and such a change in the date of birth

could not be based on a mere guess work. He also relied on the judgment of the Tribunal in the case of Shri P.L. Sethi Vs. Union of India (O.A. No. 1903/87) wherein it was held that a similar certificate issued by the Education Department, N.W.F.P. was not authentic. The Tribunal finds that the argument which held the certificate issued by the Education Department, N.W.F.P. as not authentic in the case of Shri P.L. Sethi Vs. UOI may not applicable to this case. In that case, the certificate was not accepted on the ground that the form of the certificate was printed on 30.10.1945 but the certificate was shown to be issued on 1.7.1945. On the print of the year on the certificate produced by the applicant, a stamp has been placed which does not enable one to decipher correctly the date on which the certificate was printed but the words 30/10⁴ are clearly legible. If the words "45" were there, the certificate of 1st July, 1946 in the name of the applicant will not suffer from the defect which was discovered in the case of P.L. Sethi. Since the words '5' or '6' has been covered by the stamp, no such doubt can be raised in respect of the certificate in possession of the applicant. However, the discrepancies pointed out by the respondents in their counter in para. 4.6 as reproduced above, would still apply to this case.

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7. A very serious discrepancy in this case is that the date of birth as given in the Matriculation Certificate issued on March 1, 1949 as 28th September, 1930 is entirely different from the date of birth given in the certificate issued by the Education Department, N.W.F.P. (7th December, 1931) and now accepted by the Punjab University Chandigarh. There have been cases where there has been a mistake about the year, i.e. in place of 31, it is recorded as 30. However, in the instant case, not only the year changes but the month also changes. Similarly, the date also changes. Thus, there is no co-relationship between the dates as entered in the certificate issued by the Education Department, N.W.F.P. and the one issued by the East Punjab University and recorded in his service record.

8. There is another facet of the case. The applicant states that when he sought admission to a school in Delhi, he gave his date of birth as 28th September, 1930. He did so as his father and grandfather were still in Pakistan. However, they must have migrated to Delhi or India within one or two months thereafter. In case the applicant had any doubt about this date, after making enquiry, he could have requested the School authorities to amend this date or even the East Punjab University could have been approached in 1948 or 1949 to effect the necessary change. His suddenly discovering the documents in 1982 and approaching the Punjab University is an event which is too sudden and would not carry conviction. There is weight in the

contention of the learned Sr. Standing Counsel for the Government that the applicant is seeking change without the help of any collateral evidence. He seeks to effect change in the date of birth on the ground that the Punjab University, Chandigarh has accepted his request.

It is not clear what investigations were made by the said University. Evidently, they could not have made any investigations. They have simply gone by the submissions made by the applicant in his request to the Registrar, Punjab University made on 4.9.1982 (Annexure A-3).

The relevant portion of his letter reads as under:-

..."At the time of my migration to India in 1947 my father and grand-father had to stay back due to the unavoidable circumstances and as such I had to come alone. In 1947 Govt. of India opened several schools in Delhi for refugee children and I got admission in Govt. High School for Refugees, Mori Gate, Delhi. At the time of my admission in the Govt. High School for Refugees, Delhi I had no documentary proof of my date of birth and as such one of my far relative, who had no idea of my date of birth, gave it as 28.9.1930 instead of 7.12.1931, which date has ultimately been recorded in my Matriculation Certificate (copy enclosed) which I passed from East Punjab University, Simla.

Although in the past I had very much doubt about the correctness of my date of birth as recorded in the Matriculation Certificate yet I was helpless in getting it corrected in the absence of documentary evidence to the contrary. Luckily, recently while sorting out old papers of my father I have found out my original A.V. Middle Standard Examination Certificate issued by N.W.F.P. Education Department. You would kindly notice from the copies of these certificates that there is difference in the date of birth in these two certificates. In view of the fact that Middle Standard Certificate was issued much earlier than Matriculation Examination it is apparent that the date of birth as given in the Middle Standard Certificate is my correct date of birth...."

The above submissions do not bear scrutiny inasmuch as nothing prevented the applicant from seeking a correction in his date of birth when he had come to know from his father or grand father in 1948 or 1949 that his date of birth as recorded in the Government High School for Refugees, Delhi.

was incorrect. He could have sought an entry from the Birth Register of his place through the Embassy or otherwise. Since there is no cogent or creditable evidence produced by the applicant, his prayer in the instant application for change in the date of his birth is found to be devoid of merit and liable to be rejected. The Application is accordingly rejected, with no order as to costs.

✓ 26/8/88
(BIRBAL NATH)
Member.