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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 559 of 1986
~~XXXXXX~~

DATE OF DECISION 1.5.87

Shri Hari Kishan Walia Petitioner

Shri J. S. Bali Advocate for the Petitioner(s)

Versus

Union of India Respondent

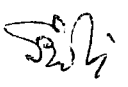
Shri P.H. Ramchandani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K. MADHAVA REDDY, CHAIRMAN

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER


(K. MADHAVA REDDY)
CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. 559/86

DATE OF DECISION : 1.5.87

Shri Hari Krishan Walia	. . Applicant
Vs.	
Union of India	. . Respondents
For Petitioner	. . Sh. J. S. Bali, Advocate.
For Respondents	. . Sh. P. H. Ramchandani. Advocate.

CORAM

Hon'ble Shri K. Madhava Reddy, Chairman

Hon'ble Shri S. P. Mukerji, Administrative Member

JUDGMENT

(Judgment delivered by Shri S. P. Mukerji,
Administrative Member)

The petitioner, Shri Hari Krishan Walia, who is an Architect in the Central Public Works Department, New Delhi, has moved this application under Section 19 of the Administrative Tribunal's Act, 1985, praying that his date of birth as recorded in the Service Book may be corrected in accordance with the revised Matriculation Certificate and the period of his service before attaining the age of 18 years should not count for pension etc.

2. The brief facts of the case can be narrated as follows. The petitioner joined service on September 4, 1947, as Junior Draftsman. At the time of his entry, he was a non-matriculate and he admittedly declared his date of birth as 15.4.1929 which was duly recorded in his Service Book. He passed his Matriculation Examination while in service from the Punjab University in 1951 and again got his date of birth recorded on the Matriculation Certificate also as 15.4.1929. He kept quiet for more than 33 years and for the first time in 1984 he applied to the respondents for changing the date of birth from 15.4.1929

to 15.11.1931. It appears that in 1980 he started moving into the matter and got certificates in 1980 and 1984 from the two schools where he had studied during the primary stage and one in 1984 from the Principal of the New Delhi Municipal Committee's Boy's Senior Secondary School, Mandir Marg, New Delhi, to the effect that his recorded date of birth ^{as per school records} was 15.11.1931. Thereafter, he ^{The school records have not been furnished} applied to the University authorities of Punjab to get this date of birth recorded in the Matriculation Certificate. The Registrar of the Punjab University on 6.9.1985 informed him that his request for the change of date of birth had been accepted and the original Matriculation Certificate had been cancelled and a new ^{Matriculation} Certificate issued on 24.8.1985 giving his date of birth as 15.11.1931. The applicant thereupon applied to the respondents for changing the date of birth on the basis of the revised Matriculation Certificate. However, his application was rejected mainly on the grounds that on the basis of the changed date of birth declared by him at the time of his entry in Government service in 1947, he would have been only 15 years 9 months and 20 days old at that time and thus not eligible for entry in Government service. The main contention of the applicant is that being immature and having lost his father to look after him, he had declared a wrong date at the time of entry in Government service which was got corrected by irrefutable evidence through the Punjab University which agreed to record the changed date of birth on the revised Matriculation Certificate, and since ^{the} Matriculation Certificate is the well recognised document on ^{the authority of a} which the date of birth is recorded in Service Book, there is no reason why the recorded wrong date of birth should not be corrected on

the basis of the revised Matriculation Certificate. The argument of the respondents is that the applicant had a motive in giving a wrong declaration of his date of birth so that he could be mistaken to be above 18 years of age and having slept over the matter for more than 30 years, he could not be allowed to get away with it and have the double advantage of entering service as a minor and getting about two years' extension by the revised date of birth.

3. One of us, namely, the Administrative Member, had heard the arguments of the learned counsel for both the parties while sitting with the Judicial Member late Shri H.P. Bagchi. Because of the sad demise of Shri Bagchi before the judgement could be pronounced, the case was called for re-hearing but the learned counsel for the Applicant stated that since detailed arguments of the case had been heard by one of us, he would be satisfied if this court decides the case on merits after going through the records, without de novo hearing. Accordingly, this judgement has been recorded by us on the basis of the oral arguments of both the parties as heard by the Administrative Member and on the basis of records and documents on file. The main point at issue is whether the applicant is entitled to modify the date of birth recorded in his service book which he had himself declared at the time of entry in service in 1947, himself corroborated it in the original Matriculation Certificate in 1951 and conceded it till 1980. From the catena of the various rulings of the courts it transpires that generally the government servant at any time of his career has the right to get his date of birth corrected provided there has been a bonafide omission or clerical mistake or the wrong date of birth was got recorded for reasons beyond the control

of the Government servant. The applicant knows these rulings and has persuasively cited them in his application. He has also gone to the extent of identifying two decided cases which according to him are on all fours with his case, to argue that like in those cases, his case also should be accepted.

4. Before considering the case law relied upon by him, we may notice that except for the school certificates which were obtained by him long after he entered service ^{and} on the basis of which he ~~also~~ got the Matriculation Certificate also corrected by the Punjab Versity, there is no document in the form of primary evidence produced before us to support his claim that his correct date of birth is 15.11.1931. Even the originals of the school records were not produced before us. Admittedly, before the alteration was made, the date of birth as originally entered in the matriculation certificate was 15.4.1929 which accords with the entry in the Service Register. If in the original school records the date of birth was even from the beginning mentioned as 15.11.1931, it is ununderstandable as to how he could have stated that it was 15.4.1929 when he entered service and got this date entered in the original Matriculation Certificate. In the absence of the original documents to support the petitioners, the revised entry in the revised Matriculation Certificate secured by the applicant thirty four years subsequent to his entry into service cannot have any evidentiary value. It is a self-serving document. If the entry in the school records is also based on his own declaration, there is no cogent reason to give it preference over the statement made by him while entering service. The petitioner has failed to establish that his correct date of birth is 15.11.1931 and not 15.4.1929. The claim must, therefore, be rejected.

5. We may now take up the two decided cases relied upon by the applicant. The judgement in the first case has been appended as Annexure-I, Brig. Prithvi Raj Vs. Union of India and Others in which the High Court of Punjab and Haryana in Civil Writ Petition No.3066 of 1985 allowed the date of birth to be changed in the service book on the basis of the revised Matriculation Certificate. The judgement in the second case, Shri C.R. Bhagwat Vs. Comptroller and Auditor General of India and another has been appended as Annexure-III to the petition in which the Bombay Bench of the Central Administrative Tribunal in their judgement dated 16.7.1986 allowed a long standing date of birth to be corrected.

6. We have gone through both these judgements carefully and find that there is a vital difference between these two cases and the case of the applicant. In the first case of Brigadier Prithvi Raj, when the petitioner joined the Indian Army as a boy he had no proof of his date of birth and "the recruiting officer after examining his physique and taking into account the report of his medical examination entered in the service record his date of birth as 1.3.1933". While in the Army he appeared in the Matriculation Examination and then also he entered his date of birth as 1.3.1933. Seventeen years after he joined the Army when he came to know of his corrected date of birth, he moved the university authorities for changing the date of birth and a revised Matriculation Certificate with the changed date of birth was issued. The High Court allowed the change.

7. In the instant case, however, unlike the Brigadier's case it is the applicant himself who

who declared his date of birth as 15.4.1929 and he allowed this date of birth to continue in the service records without protest for more than 30 years.

Unlike the Brigadier's case again the applicant would not have been eligible for entry in government service on the basis of the date of birth now claimed by him. Having been a party himself in getting the wrong date of birth entered in the service record for a purpose, he cannot claim the right to get it changed at the fag end of his service for getting his service extended.

8. In the second decided case of Shri Bhagwat, the applicant while applying for service, unlike the case before us, had indicated his date of birth as 11.10.1931 whereas the Matriculation Certificate had mistakenly bore the date as 5.8.1929. Unlike the case before us Shri Bhagwat even before joining the service had been moving the various authorities to get the date of birth corrected to 11.10.31. The authorities have been refusing to correct the date of birth from the very beginning unless he got the School Leaving Certificate and Matriculation Certificate corrected. This he could not do but the Central Administrative Tribunal in their judgment, on the basis of the vaccination certificate and the certificate issued by the City Magistrate and the fact that he had been moving various authorities even before ~~the~~ joining service, allowed the date of birth to be changed.

9. A bare survey ^{of facts} in the applicant's case and those in the two cases mentioned above would show that the applicant's case before us differs on a vital point from these cases. In the case before us, it is the applicant

himself who took the initiative in getting the wrong date of birth entered in the service Book with the obvious motive of concealing the fact of his being a minor on the date of his joining of the service. This was not the case in the two cases mentioned above. A document which prominently and ominously comes before us is Annexure-V to the petition, which is a certificate dated 17.2.1984 issued by the Principal N.P.Boy's Senior Secondary School Mandir Marg, New Delhi. According to this certificates the applicant had been a student of class IX in the year 1945 in that school and his date of birth was recorded as 15.11.1931. It is surprising that at the time of entry in government service on 4.9.1947 that is within two years of leaving that school the applicant should have forgotten his date of birth as recorded in that school and without any effort to get the date of birth verified, unilaterally declared an entirely different date of birth that is 15.4.1929. It is surprising that he could not have procured his correct date of birth from the School which was hardly a few kilometers away from the office where he entered service. There is only one conclusion that can be drawn and that is that the applicant consciously and deliberately wanted to conceal his date of birth as recorded in the school registers so that he may not be declared an ineligible being less than 18 years of age. The learned counsel for the applicant has given some instances of the colleagues of the petitioner who were recruited when they were less than 18 years of age but he has not produced any rule to show that the applicant would have been eligible to be recruited even at less than 18 years of age. In any case,

he cannot question the general impression that persons less than 18 years old cannot be recruited in government service and in that context the motive in the petitioner's mind in concealing his age is obvious. The fact that the petitioner himself has stated that having lost his father he was not properly guided shows on the other hand that he was himself the originator of the date of birth of 15.11.1931 as entered in the last school that he attended in New Delhi, as also of the wrong date of birth of 15.4.1929 which he declared himself at the time of joining service. Therefore, he has nobody else but himself to blame for the discrepancy the motive for creating which is also crystal clear.

10. The conduct of the applicant in declaring a wrong date of birth at the time of entry in service without ^{making} any effort to get an age certificate from the next door school attended by him and keeping mum over the wrong date of birth for three decades and also entering the same wrong date of birth in his Matriculation examination which he took in 1951 goes to show that the applicant himself planned to plant a wrong date of birth in his service record, get it corroborated by the Matriculation Certificate of 1951, keep his recruitment and service unchallenged for more than 30 years, to get the date of birth on the Matriculation Certificate revised on the basis of the irrefutable entries in the school registers and finally to get an extended lease of service by moving the authorities to change the date of birth on the basis of the revised Matriculation

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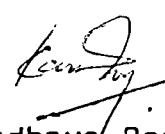
Certificate. The whole drama has been enacted in such an immaculate fashion that the various rulings of the courts would have leapt up to his assistance but for the fact that there was a grievous gap in his story. The gap^{is} between his leaving the Senior Secondary School in 1945 where he had entered 15.11.1931 as his date of birth and joining the government service hardly a few kilo metres away from that school within two years of his leaving the school and declaring another date of birth which would have by popular impression saved him from being declared ineligible as minor, and keeping quiet thereafter for more than thirty years.

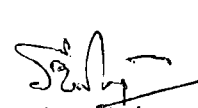
10. The applicant has also spun a specious story of his meeting one of his contemporaries in Afghanistan in 1980 to be suddenly awakened to his wrong date of birth. Having studied in a New Delhi school it is surprising that he should have waited for thirty years to meet one of his contemporaries in a foreign land to be told about his wrong date of birth. It is unbelievable that having worked for 33 years in Delhi where he had studied in the school he did not meet any of his class-mates and should have been kept innocent about his wrong date of birth till he launched the discovery of his correct date of birth from Afghanistan in 1980.

11. We are afraid we cannot accept this make-believe story as has been propounded by the applicant and get the impression that the applicant deliberately and purposely concealed his real date of birth and declared a wrong date of birth to mislead the

authorities. In this background we are fully convinced that the applicant is estopped from challenging the recorded date of birth which he had himself declared and continuously accepted for more than 30 years. Allowing the applicant to claim the benefits of the revised date of birth to our mind will encourage and embolden unscrupulous elements to declare wrong dates of birth at various stages of their career for reaping undue benefits. No bonafide mistake, no clerical error, no circumstances beyond the applicant's control could be identified by us in this case so as to allow him to get the benefit of the revised and correct date of birth at this stage. It is said that those who come to the fountain of justice to get relief must come with clean and untainted hands. We are afraid this is not the position in the present case. The applicant cannot be allowed to enjoy twice the fruits of his machinations by invoking this legal forum. The date of birth for the purpose of service matters cannot be made a weather-cock of certificates and declarations, irrespective of the circumstances and the character of the condition of mind of the government servant. Bonafide innocence and transparency in conduct may justify one's right to correct a wrong date of birth at any stage but when the date of birth is tainted by a conduct which is suspect or malafide or motivated, the tainted date of birth must be hoist with its own petard. The application has to be ^{and we order accordingly} rejected. There will be no order as to costs.

Announced in the open Court.


(K. Madhava Reddy)
Chairman


(S. P. Mukerji)
Administrative Member