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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

...

16-12-87

DATE OF DECISION:

Regn. No. D.A. 847/86.

Shri Ram Dhan

...

Applicant

Vs.

Union of India

...

Respondent

CORAM:

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Nene. Shri G. D. Chopra

For the respondents:

Smt. Raj Kumari Chopra, counsel.

J U D G M E N T

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed in October, 1986, wherein the applicant, Shri Ram Dhan, who was working as Fitter, M.E.S. under A.G.E. E & M (North), Delhi Cantt. has prayed for change of date of his birth from 16.7.1927 to 7.10.1930. It is the applicant's case per his application that in 1984, he had come to know that his date of birth has been wrongly recorded in his service record as 16.7.1927 whereas it was 7.10.1930 as per the record kept by the District authorities, Distt. Gurgaon, Haryana. Accordingly, he addressed letter dated 26.4.1984 (Annexure 'A') wherein he pleaded that there was a variation of three years in his age. In reply to the said letter, the respondent authorities asked him to produce the school certificate/authenticated

document from the Deputy Commissioner of the District and, accordingly, he got a letter issued from the office of the Chief Medical Officer, Gurgaon (copy at Annexure 'C') showing that he was born on 7.10.1930 and he filed an affidavit to this effect on 14.11.1984. The respondent considered his case but did not change his date of birth. The applicant pleaded that he was illiterate and he could not read and thus, the verification in the service roll should not be used to deny him correction of date of birth.

2. It is the case of the respondent that the applicant had signed the service book at the time of his appointment as well as later on not only once but several times without raising any objection. The entries were re-attested by a gazetted officer and the applicant had been signing in English which shows that he had the knowledge of English. He had also re-confirmed the date of his birth as 10.7.1927 when he had filed another certificate in the year 1964. It was contended that seeking correction of date of birth after 39 years on the eve of retirement was not warranted by any evidence.

3. In the rejoinder, the applicant has maintained that the correction of date of birth is an important legal right and cannot be denied merely on the basis of administrative instructions and he cited a number of decisions of the courts in this regard. He further maintained that the officers had given his date of birth of 1927 on the basis of their own estimation. It was further urged that several others were given opportunity to change their

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date of birth while the applicant was being denied the same opportunity.

4. Now, it is well settled at law that the Government servants can seek correction of date of birth any time till the date of their retirement. Correction of date of birth cannot be denied only on the ground of delay or in view of the administrative instructions. In the case of Shri Manak Chand Vaidya Vs. State of Himachal Pradesh and others¹, it has been observed as follows:-

"A Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. If on application made by the Government servant, the Government finds that there is substance in the claim it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law. If it does not have the force of law and is merely an executive direction without sanction of law, it cannot affect the exercise of the Government servant's right to show that the recorded entry is erroneous...."

In view of the aforesaid judgment of the Himachal Pradesh High Court, the change of date of birth cannot be denied on the ground of delay only.

5. The applicant has sought change in his date of birth primarily on the ground that it has been stated to be 7.10.1930 in the certificate issued by the Chief Medical Officer, Gurgaon. He has attached an attested copy of the said certificate. The applicant submitted copy of the aforesaid certificate in response to letter dated 28.8.1984 from the respondent (Ann.'B') which reads as under:-

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"1. Ref your letter No. 110/256/EM dt. 26.4.84 & 110/XY/EM dt. 23.6.84.

2. Please obtain school certificate/authenticated document from the above named individual from the Dy. Commissioner of District & forward the same for our further action please."

The above letter clearly shows that the respondent was willing to consider change in the date of birth of the applicant if there was proper certificate from the Deputy Commissioner of the District, Gurgaon. Now that the certificate has been produced by the applicant, the respondent cannot take the plea that the change of the date of birth is being sought belatedly. As such, this plea is not open to the respondent. The Tribunal has examined the record where the case of the applicant for change of date of birth was examined and the case was rejected in the following words:-

"2. From the perusal of record of service it is observed that the individual at the time of joining the service has already given the declaration of his age as 16.7.1927, which was signed by the individual and attested by an officer. Thereafter, the service book was seen several times by the individual and his signatures in token of having seen the service book obtained and entries recorded therein already exist. The individual had never pointed this change before this. Now the arguments put forward by the individual as mentioned in Paras. 3 and 5 of Appx 'A' to E-in-C's or Amy HQ. letter No. 32979/EID(1) dt. 24 Mar 55 are not convincing."

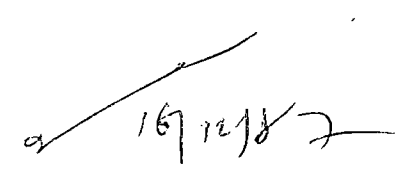
It will, therefore, be seen that the plea of the applicant for change of date of birth has been rejected on a technical ground of delay and not on examining the merit of the certificate produced by him. In the interest of justice, it is incumbent upon the respondent to check the authenticity of the certificate produced by the applicant from the Chief Medical Officer, Gurgaon. It is, therefore, directed that the respondent shall hold enquiry into the claim of the applicant for change of date of birth and make suitable enquiries from the office of the

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Chief Medical Officer, Gurgaon and examine the relevant records maintained regarding the births and if the records maintained and the certificate issued by the Chief Medical Officer are found to be authentic, the respondent will allow the necessary change of the date of birth of the applicant and afford him all consequential reliefs. In case, the respondent finds the certificate to be un-reliable or has any other doubt with regard to the records maintained, he will pass a reasoned order rejecting the claim of the applicant. This order be implemented within three months of its receipt.

6. The application stands disposed of accordingly, with no order as to costs.

 16/12/87

(BIRBAL NATH)
Member (A)
16.12.1987.