

(S)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

**O.A. No. 1069**  
**T.A. No.**

**1986.**

**DATE OF DECISION** July 23, 1987.

Shri R.R. Yadav,

**Petitioner**

Shri E.X. Joseph,

**Advocate for the Petitioner(s)**

**Versus**

Union of India & Ors.

**Respondent s.**

Shri M.K.Gupta, proxy counsel  
for Shri K.C.Mittal,

**Advocate for the Respondent(s)**

**CORAM :**

**The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.**

**The Hon'ble Mr. Kaushal Kumar, Member.**

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

kaushal

(Kaushal Kumar)  
Member  
23.7.1987.

K.Madhava Reddy

(K.Madhava Reddy)  
Chairman  
23.7.1987.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

REGN. NO. OA 1069/86.

July 23, 1987.

Shri R.R.Yadav

...

Applicant.

Versus

Union of India & Ors ...

Respondents.

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant ...

Shri E.X.Joseph, counsel.

For the respondents ...

Shri M.K.Gupta, proxy  
counsel for Shri K.C.Mittal,  
counsel for the respondents.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice K.Madhava Reddy, Chairman).

This is an application under Section 19 of the  
Administrative Tribunals Act, 1985, for correction of date of  
birth in the service record wherein it is shown as 15.7.1929.

The applicant claims his correct date of birth to be 11.7.1931.

The applicant entered the service as a Constable in  
the erstwhile Alwar State Police on 4.11.1947 after passing  
the Middle Class Examination in April, 1947. The applicant  
was later selected as Assistant Sub Inspector, Wireless Police,  
Rajasthan in February, 1951. He joined the Intelligence Bureau  
of Government of India on deputation on 14.2.1960 and continued  
on deputation upto 31.3.1975. He was permanently absorbed in the  
Intelligence Bureau and his lien in the Rajasthan State Police  
Service was terminated with effect from 1.4.1975. The service  
book prepared by the Superintendent, Alwar Police and Superintendent,  
Wireless, Jaipur records his date of birth as 15.7.1929. That  
entry was carried forward in the service book when he was



permanently absorbed in the Intelligence Bureau, Government of India. It is the case of the applicant that when he noticed this wrong entry in his service book in the year 1979, he immediately submitted a representation on 12.10.1979 (Annexure-H), but the same was rejected on 7.2.1986 (Annexure 'Z') on the ground that:

he first appeared at such examination or on the date

" according to Note 5(c), under F.R. 56 , the date of birth so altered should not make a Government servant ineligible for entry into Government service on the date on which he entered Government service; // He entered Government service as a Constable in the Alwar State Police (Rajasthan) on 4.11.1947 and if his date of birth is changed to 11.7.1931 , he would become underage and ineligible for entry into Government service ".

The applicant made a further representation (Annexure 'Z-1') in this regard. That was also rejected on 5.9.1986 (Annexure Z-2) on the ground already mentioned and also on the following further two grounds:

(i) Recording of 15.7.1929 as his date of birth was by design rather than a bonafide error.

(ii) He did not put in his application for the change in his date of birth within five years of his entry into Government service as required under the rules.

It is clear from the above two orders of rejection that the claim of the applicant for correction of date of birth was not examined on merits. There is no determination by the respondents whether the applicant's date of birth is 15.7.1929 or 11.7.1931.

So far as his claim that he was born on 11.7.1931 is concerned, it is fully supported by the documents filed by him, which are as under:

(i) Alwar State Middle Examination 1947 issued on 15.10.1949 (Annexure 'A').

(ii) Matriculation Examination, 1951 issued by the Panjab University on 10.6.1951.

*Abdul*

(iii) Certificate of the Head Master, Govt. Higher Secondary School, Tijara (Alwar) dated 22.7.1986, and

(iv) Certificate of Municipal Committee, Tijara (Alwar) dated 21.7.1986.

While documents (1) to (iii) which are extracts of school record kept in the official course of business and are unimpeachable and show the date of birth of the applicant to be 11.7.1931, the certificate issued by the Municipal Committee which also supports the applicant's claim is not of much evidential value. It is not an extract of Birth Register. It is not shown on what basis and under what provision of law the Municipal Committee has issued such a certificate. However, the three other certificates referred to above unequivocally establish that this/his date of birth is 11.7.1931 and not 15.7.1929, as entered in the service record. No evidence in rebuttal has been adduced. The respondents merely rely upon the fact that this entry as to date of birth was made on the statement of the applicant himself and that entry stood unchallenged for well over 30 years. But that by itself cannot lead to the conclusion that the date of birth as evidenced by that entry is the correct date of birth of the applicant. There is no rule which declares that an entry of date of birth in the service record is conclusive. On the contrary, provision made by the Government itself for correction of the entry as to date of birth recognises that such entries are not always correct. Generally, Matriculation certificate is taken to be sufficient proof of the date of birth. If the applicant had passed the Matriculation prior to his entry into service, undoubtedly any claim which is at variance with

*Abdul Karim*

(a)

the entry in the Matriculation certificate could not have been easily accepted and the entry in the service record would not have been changed. In this case, admittedly, the applicant had passed the Middle School Examination in 1947 before he entered the service i.e. on 4.11.1947. The service record shows that by then he was in 9th Class. Only because the Middle Examination Certificate was not issued and that was issued on 15.10.1949, that certificate could not be produced. The authenticity of the Middle School Certificate is not disputed and this certificate shows that the applicant's date of birth is 11.7.1931. It is that entry that finds a place in the subsequent two certificates. The entry in the service record not being conclusive and although it may raise a strong presumption of correctness because it stood undisputed for over 30 years, still it raises only a rebuttal presumption. However, in the absence of any evidence to the contrary to support the entry in the service record and in the face of the unimpeachable school record produced before the respondents and now before the Tribunal, we are clearly of the view that this presumption is effectively that ~~XXXX~~ rebutted and leads us to the conclusion that the correct date of birth of the applicant is 11.7.1931.

It is, however, contended that if this date of birth were to be accepted as correct, then the applicant would have been ineligible for appointment as a Constable. If the applicant's date of birth is accepted as 11.7.1931, he would have been just above 16 years of age when he entered Alwar State Police service on 4.11.1947. Although it is pleaded by the respondents that

*M. Murali*

since he was then below 16 years, he was ineligible for appointment, no such rule has been placed before us.

On the contrary, the Rajasthan Service Rules which came into force with effect from 1.4.1951 were applied to all persons appointed by the Government of Rajasthan to posts or services under its administrative control or in connection with the affairs of the State of Rajasthan on or after the seventh day of April, 1949. Though those Rules have no application to the case of the applicant who was appointed on 4.11.1947, they also support the contention that he being 16 years of age was duly qualified to be appointed.

Rule 8(1) in Part II- Chapter III-General Conditions of Service reads as under:

"Age on first appointment (1) Unless otherwise provided in the rules or the orders of the Government governing recruitment to any post or class of posts the minimum and the maximum age for entry into Government service shall be 16 and 25 years respectively".

No Rule has been brought to our notice which made a person, whose age was 16 years ineligible for appointment to Government service in the erstwhile Alwar State. On the contrary, this Rule framed in 1951 would raise a presumption that earlier, in the year 1947 also that must have been the prevailing practice and persons aged 16 years were not ineligible for entry into Government service. A decision under ~~xxx~~ Rule 8 would also support our inference. That decision of the Rajasthan Government is as under:

"RAJASTHAN STATE SERVICE RULES, 1951 (Annexure A-1/91). Rule 8(10) In accordance with provisions of



Rule 8 of Rajasthan Service Rules, the minimum and maximum age for entry into Government service is 16 and 25 years. Cases have been brought to the notice of the Government for regularisation of under age appointments of Government servants which were made by Government of Covenanted States/Pre-re-organisation States of Rajasthan. The matter has been considered and it has/ordered that cases of all under age appointments made by Government of Covenanted States/Pre-re-organisation States of Rajasthan may be deemed, under this order, to bear the sanction of Government".

In view of the above, we do not find any valid basis for not considering the claim of the applicant for correction of date of birth.

The further ground mentioned in the final order of rejection dated 5th September, 1986 (Annexure Z-2) that this entry of date of birth "was by design rather than a bonafide error" has no basis for when the applicant even though aged 16 years was not ineligible for being appointed as Constable, there could be no valid reason for him to give his age as 18 years. It could have been only due to a bonafide error.

The only other ground mentioned in the final order of rejection is that the application was not made within 5 years of his entry into Government service. There was no such rule in the Rajasthan State Service prescribing a period of limitation on such claims for correction of date of birth in the service record. By the time the applicant was absorbed permanently in the Intelligence Bureau, Government of India, more than 5 years had elapsed from the date of his entry into Government service.

As held by this Bench in HIRA LAL Vs. UNION OF INDIA (1)

-----  
1. ATR 1987 (1) CAT (P8) 414.

*Abdul*

wherein we held:

"the five year period of limitation prescribed for the first time under the said S.O, 3997 dated 15.12.1979 cannot apply to those Government servants who were in service by that day for more than 5 years..... that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

In this view of the matter, orders dated 7.2.1986 (Annexure 'Z') and 5.9.1986 (Annexure Z-2) are quashed and the application is allowed. There shall be a direction to the respondents to record the applicant's date of birth as 11.7.1931 instead of 15.7.1929 in his Service Book. There shall be a declaration that the applicant will attain the age of superannuation on 11.7.1989 and, therefore, he would retire on 31.7.1989 (A.N). There shall be a further direction that he shall not be retired on 31.7.1987 on the basis of the present entry of date of birth in the Service Record. This application is accordingly allowed but in the circumstances with no order as to costs.

K. Madhava Reddy

(KAUSHAL KUMAR)  
MEMBER  
23.7.1987.

K. Madhava Reddy

(K. MADHAVA REDDY)  
CHAIRMAN  
23.7.1987.