

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

(20)

O.A. No. 1154/1986.

T.A. No.

199

DATE OF DECISION 31.5.1991.

Shri Kameshwar Nath	Petitioner
Shri G.D. Gupta	Advocate for the Petitioner(s)
Versus	
Union of India & Others	Respondents.
None	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Pasgotra, Member (A).

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

*Ad*  
 (AMITAV BANERJI)  
 CHAIRMAN  
 31.5.1991.

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

D.A. No. 1154/1986.

Date of decision: 31.5.1991.

Shri Kameshwar Nath ..... Applicant.

Vs.

Union of India & Others ... Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicant ... shri G.D. Gupta,  
counsel.

For the respondents ... None.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman).

The applicant, Shri Kameshwar Nath, who retired as Chief, Rehabilitation Services Delhi Administration, New Delhi on 31.7.1985. On 24.12.1982, he had made a representation saying that his date of birth has been incorrectly recorded as 2.7.1927 and it may be amended to 2.7.1929. His representation was rejected by the administrator, Delhi Administration. His representation to the Government of India, Ministry of Home Affairs, regarding correction of the date of birth was rejected on 23.7.1985. His representation/appeal to the Lt. Governor was rejected and the matter was closed. Even the memorial/petition of the applicant was rejected by the President vide letter dated 25.9.1986. He has thereafter come before this Tribunal and filed this Original Application (OA) under

089

(22)

Section 19 of the Administrative Tribunals Act, 1985 on 16.12.1986 praying for quashing of the impugned order of retirement dated 31.7.1985; declaring the date of birth of the applicant as unilaterally determined by the department as 2.7.1927 as illegal and further declaring the correct date of birth of the applicant as 2.7.1929 and further declaring that the act of the respondents in seeking to retire the applicant from service on the basis of the date of birth as 2.7.1927 on 31.7.1985 as illegal and declaring that the applicant is entitled to be retired/superannuated only on the basis of his date of birth as 2.7.1929; allow the applicant to continue in service till the superannuation on the basis of his date of birth as 2.7.1929 with all consequential benefits, like arrears of pay, allowances, promotions, seniority etc.

An interim relief was asked for viz., the applicant may not be dispossessed <sup>from</sup> the accommodation at 6, Mahadev Road New Delhi. For this the Director of Estates was impleaded as respondent No.5. The latter filed a reply to the O.A. taking up the plea that what has not been asked for in the main petition cannot be asked for by way of an interim relief.

The matter of interim relief was considered by a Division Bench and by their order dated 6.1.1987, they declined to grant an interim relief so far as the eviction proceedings were concerned.

ca

93

It is also necessary to state here that the applicant retired from service on superannuation with effect from 31.7.1985. The question that arises now for consideration of this Bench is whether the applicant was entitled to have his date of birth amended/changed from 2.7.1927 to 2.7.1929. If the answer <sup>is</sup> in the affirmative, then the applicant will also be entitled to consequential benefits arising out of the order. In case he does not succeed, he would get no relief at all.

There is no dispute that the applicant was initially appointed as a Conciliation Officer in the U.P. Labour service w.e.f. 9.1.1953 on the basis of selection through U.P. Public Service Commission. He was subsequently appointed as a Senior Specialist in Management, in the National Productivity Council under the Government of India with effect from February, 1962 through open selection. Later, the applicant was appointed as Director, Social Welfare & Rehabilitation Directorate by the Govt. of India. He was concurrently also appointed as Secretary, Central Social Welfare Board, in August, 1965. He held the concurrent charge of the said post till November, 1966. He was duly confirmed in the aforesaid post of Director of social & Welfare Rehabilitation w.e.f. December, 1969. His services were transferred to Delhi Administration as Chief, Social Welfare and Rehabilitation Directorate in December, 1974.

The applicant claims that while working as

08

(24)

such, in or about 1977, he came to know that his correct date of birth was 2.7.1929 and not 2.7.1927 which was entered in his Matriculation Certificate and the service record. He also learnt that the date of birth that was entered in Matriculation certificate pertained to his elder sister and not to him and there was an error in entering the date of birth in his Matriculation Certificate.

The applicant's case further is that he made enquiries from the Municipal Board, Moradabad where he was told that he was born there and learnt that no date of birth was entered there as 2.7.1927 in the name of the applicant. On this basis he submitted on 24.12.1982 a representation to the Chief Secretary, Delhi Administration bringing to his notice the aforesaid fact that his correct date of birth was 2.7.1929 and not 2.7.1927. He also stated that this was supported by the fact that even the date of birth of his elder sister was 19.9.1927 and it was, therefore, impossible that both the applicant and his elder sister must have been born within a gap of 2½ months. The aforesaid representation was rejected by the Delhi Administration vide letter dated 24.2.1983 (Annexure P-2). It is stated that no reasons have been given therein.

The applicant thereafter filed a detailed representation to the Secretary, Training & Technical Education, Delhi Administration on 21.5.1983, a copy of the same was also given to the Chief Secretary, Delhi

(25)

Administration. The applicant did not receive any reply.

He thereafter submitted a detailed representation on 25.4.1985 to the President of India that his many representations regarding various issues including the representation dated 21.5.1983 regarding change of date of birth were not being answered by the concerned authorities of the Delhi Administration. He was, however, informed by a letter dated 26.7.1985 that his representation had been considered and that the request of the applicant for change of birth was untenable. No reasons had been given in this letter. He thereafter retired from service.

The applicant thereafter submitted a fresh representation to the Lt. Governor on 9.8.1985 (Annexure P-8). The applicant received a birth certificate from Bahraich Municipal Board registering the date of birth of the applicant as 2.7.1929. He submitted a copy of the said certificate to the Secretary, Social Welfare and to the Chief Secretary, Delhi Administration vide his letter dated 31.7.1985 (Annexure P-9). The applicant had also sought personal interviews from the Chief Secretary and Lt. Governor and also met them on 31.7.1985. The said authorities promised the applicant to look into the matter and restore justice to him but ultimately nothing was heard from them. The Joint Secretary in the Ministry of Home Affairs vide his letter dated 22.5.1986 informed the applicant that the copy of the certificate of

ag

registration of birth produced by the applicant bore the date 30th July, 1985 and as such there was no proof of his birth having taken place in 1929 instead of 1927 and registered in that year. This has been marked as Annexure P-13.

The applicant wrote to the Registrar General of India vide his letter dated 22.5.1986 seeking clarification as to whether a birth occurring prior to the enforcement of the Registration of Births and Deaths Act, 1969 and a certificate to that effect, issued much thereafter i.e., on 30th July, 1985 was valid for certifying the date of birth. The Registrar General, India, informed the applicant vide letter dated 2.6.1986 that a birth or death which had not been registered within one year of its occurrence was permissible to be registered only on an order made by the Executive Magistrate and on payment of prescribed fee and even the old event occurring prior to the enforcement of the R.B.D. Act, 1969 could also be registered on an order made by Executive Magistrate and an extract (Birth/Death Certificate) issued by the Registrar from the relevant register would be valid and admissible in evidence for the purpose of proving the birth or death. The applicant's case is that the certificate of birth of the applicant as issued by the Registrar, Municipal Board, Baharaich was issued after compliance of all the requirements of the provisions of the R.B.D. Act of 1969. A copy of the above letter was marked as

(u)

(27)

Annexure P-15. A copy of the above letter was also sent to the Joint Secretary, Ministry of Home Affairs. The applicant had filed an affidavit to the effect that the concerned Executive Magistrate, Bahraich had authorised the issue of registration certificate in respect of the date of birth of the applicant. The applicant thereafter had sent another representation to the Ministry of Home Affairs on 6.9.1986. However, the Ministry of Home Affairs informed the applicant on 25.9.1986 that his request for change of date of birth had been rejected (Annexure P-20). Consequently, the applicant has filed the present O.A. before the Principal Bench of the Tribunal.

Reply has been filed on behalf of the respondents 1 to 4 in which it has been stated that the matter has been considered and examined and the applicant's case for amendment of the date of his birth could not be allowed. It has been considered at different levels and conclusion was the same. His representation to the Lt. Governor and the President had also been rejected. Various dates were mentioned when the orders were communicated to the applicant. Lastly, it was stated that there was no merit in the O.A.

A Government servant has a right under the existing law to make a representation for the correction of his date of birth. This position does not require elaborate arguments.

(6)



(28)

In the case of MANAK CHAND VAIDYA V. STATE OF HIMACHAL PRADESH AND OTHERS (1976 (1)SLR 402), a Division Bench of the Himachal Pradesh High Court presided over by the then Chief Justice R.S.Pathak held:

"On the merits the question is whether the petitioner is entitled to a consideration by the respondents of his application for the determination of his true age and for a consequent rectification of his service record. The case of the petitioner is that he is entitled as of right to continue in service until the age of superannuation is reached. That, he urges, is a guarantee conferred on a government servant by law, and in case he is made to retire before he reaches the age of superannuation (except where the rules provide for compulsory retirement) the infringement of the guaranteed right brings the case within the terms of Article 311 (2) of the Constitution. The respondents rely on what is described as a Government of India decision under Rule 79 of the General Financial Rules, 1963, it reads:

"Requests for alteration of date of birth should not be entertained after the preparation of service books of the Government servants concerned, and in any event not later than the completion of the probation period or declaration of quasi-permanency, whichever is earlier. The date of birth may, however, be altered at a later stage by a competent authority if that authority is satisfied that a bona fide clerical mistake has been committed and that it should be rectified. Efforts should, however, be made to settle the matter within the period stated above."

It is urged by the learned Advocate General, on behalf of the respondents that the late stage at which the petitioner applied for the alteration of his date of birth called for a rejection of the petitioner's application. Our attention has been invited to the opening words of the aforesaid

4

Government of India decision, where the period is specified after which a request for alteration of the date of birth is not to be entertained. Now, Government servant has the right to continue in service until he attains the age of superannuation except where the rules validly provide for compulsory retirement at an earlier age. In order to determine the period for which such Government servant is entitled to continue, it is necessary to determine his true date of birth. If his service record indicates a particular date as his date of birth, that date of birth must be accepted for the purpose of determining whether he has reached the age of superannuation. As has been observed by the Supreme Court in *THE STATE OF ASSAM V. DAKSHA PRASAD DEKA* (AIR 1971 SC 173) until that record is corrected the Government servant cannot claim that he has been deprived of the guarantee under Article 311 (2) of the Constitution by being compulsorily retired before attaining the true age of superannuation. 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. He is entitled to show that the recorded entry, which determines the date on which he attains the age of superannuation, does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service. Therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If an 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. Now, the Government of India decision, on which the respondents rely, does not have the status of a statutory rule and, therefore, cannot defeat the legal right of the Government servant mentioned above. So far as it affects the determination of the true date of birth it must be considered ultra vires for the reasons set out above."

A Division Bench of the Tribunal in the case of HIRA LAL V. UNION OF INDIA AND OTHERS ((1987) 3 ATC 130)

agreed with the above view. It held:

"Rule 79(2) of the General Financial Rules, therefore, cannot stand in the way of the applicant getting the entry in the service record corrected. He has taken steps to get the entry corrected more than 4 years before his date of retirement according to the entry in the service record."

In the present case, the applicant had taken steps to correct his date of birth more than three years before his retirement on the basis of recorded entries. It is, therefore, clear that it was open to the applicant to approach the Government for the correction of his recorded date of birth any time before his retirement.

The next question pertains to the merits of his case and going to the facts. It is well settled that in the writ jurisdiction, the High Courts usually do not go

into disputed questions of fact. A question arises: whether this Tribunal will go into the question of disputed facts?

In the STATE OF ORISSA V. DR. (MISS) BINAPANI DEI AND OTHERS (AIR 1967 SC 1269) J.C. Shah, J. speaking for the Division Bench held that under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petitioner. It was held:

"Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court....."

It has been repeatedly held by the Supreme Court that the Central Administrative Tribunal is a substitute of the High Court in respect of service matters. Our jurisdiction to interfere in an Application under Section 19 of the Administrative Tribunals Act proceeds on the same footing as if it was a writ petition in High Court.

In the case of A. PADMAVALLEY V. C.P.W.D. and others connected cases, decided on 30.10.1990, a five-Member Bench of the Tribunal, at Hyderabad took the same view and restated as follows:

"The powers of the Administrative Tribunal are the same as that of the High Court under Art. 226 of the Constitution and the exercise of that discretionary power would depend upon the facts and circumstances of each case as well as on the principles laid down in the case of Rohtas Industries (AIR 1976 SC 425)."

We are, therefore, called upon to consider whether we will exercise our discretion to go into the disputed questions of fact

(32)

in the present case relating to the date of birth of the applicant.

Having looked into the papers on the record, we are of the view that the discretion needs to be exercised in favour of the applicant for looking into the disputed questions of fact to do complete justice.

We will, therefore, now refer to those facts which are necessary, in our opinion, for the effective consideration of the question of date of birth. The applicant's date of birth recorded in Matriculation certificate as well as in the service record was 2.7.1927. This was said to be incorrect by the applicant on the ground that his elder sister was born on 19.9.1927. Her High School (containing her date of birth) certificate was also available. Consequently, his mother could not have given birth to another child on 2.7.1927.

If the mother ~~was~~ common, then this was physically not possible. But this fact alone may not be conclusive. It would require some supportive evidence. The applicant was able to produce a certified copy of letter from the Executive Officer, Municipal Board, Moradabad which indicated that no birth in the family of late Shri Parmeshwar Dayal father of the applicant had taken place on 2.7.1927. (Annexure P-1). This also does not establish by itself that he was born on some other date. It could be that he was not born in Moradabad and may have <sup>been</sup> born <sup>at</sup> elsewhere. We thereafter come across another piece of evidence which is exhibited Annexure P-9 (collectively)

at page 71-72 of the paper book which shows that the applicant was born on 2.7.1929 and father's name is mentioned as Shri Parmeshwar Dayal. The certificate was issued by the Municipal Health Officer, Bahraich. This certificate was issued under Section 12/Section 17 of the Registration of Birth & Death Act, 1969 on 30.7.1985. This has been held to be unacceptable by the respondents on the ground that this was a certificate of 30.7.1985 whereas the applicant has claimed that he was born on 2.7.1929.

On behalf of the respondents (Annexure P-13), Shri K.S.Oberai, Desk Officer, Ministry of Home Affairs on 22.5.1986 has written to the applicant "that the copy of the certificate of registration of birth produced by you bears the date 30th July, 1985. As such, it is no proof of your birth having taken place in 1929 instead of 1927 and registered in that year."

Similar view was taken by Mrs. P.N.Singh, Director (CPS) in her letter to the applicant dated 25/26th September, 1986 (Annexure P-20). In paragraphs 4 and 5 it has been stated:

"4. The fresh claim for change in date of birth is now based on a certificate of registration issued by the Health Department of Municipal Committee, Bahraich in which the date of your birth has been indicated as 2.7.1929. But this registration was done on the 30th July, 1985 and as such it is not a registration of birth in the year in which it had taken place.

5. Your memorial in this regard has been considered and rejected by the President."

66

A perusal of the legal position will be necessary.

The legislation known as the Registration of Births and Deaths Act, 1969 came into existence from 1.11.1970.

Section 13 of the Act reads as follows:

Delayed registration of births and deaths.

13.(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

Sub-Section(3) of Section 13 of the Act is of significant relevance. It requires an order by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the date of birth or death and on payment of the prescribed fee. In the present case, the applicant has produced a couple of papers.

The applicant has filed Annexure P-14 and Annexure P-15 which make the position clear. In Annexure P-14, the applicant wrote a letter to the Registrar General, India for clarification regarding registration of a birth<sup>that</sup> occurred prior to the enforcement of the RBD Act, 1969. This letter reads as under:

"To

The Registrar General, India,  
O/o the Registrar General, India,  
2 A Man Singh Road, New Delhi.

Sub: Clarification regarding registration of a birth occurred prior to the enforcement of the RBD Act, 1969.

...

Sir,

A birth took place on 2.7.1929 and the birth entry was made in the Municipal Board to this effect accordingly. The Municipal Board was requested to issue a certificate of birth subsequently to this effect and the certificate was issued by the Municipal Board on 30.7.1985, confirming the date of birth as 2.7.1929. Kindly clarify whether a birth occurred prior to the enforcement of the Registration of Births & Deaths Act, 1969 and a certificate to that effect issued recently is valid for certifying the date of birth.

Yours faithfully,

(K.NATH) 22.5.86  
6, Mahadev Road,  
New Delhi. "

On behalf of the Registrar General India, Shri

M.K. Ahuja, Deputy Director of Census Operations gave a reply on 2.6.1986 which is relevant and reproduced (Annexure P-15):

"No.1/13/86-VS(Cord)  
Government of India  
Ministry of Home Affairs/Grih Mantralaya  
OFFICE OF THE REGISTRAR GENERAL INDIA  
V.S. Division, West Block-I, R.K.PURAM,  
New Delhi, the 2.6.1986.

To

Shri K.Nath,  
6, Mahadev Road, New Delhi.

(40)



Sub: Clarification regarding registration of a birth occurred prior to the enforcement of the RBD Act, 1969.

Sir,

With reference to your letter dated 22.5.1986 on the above mentioned subject I have to say that a birth or death which has not been registered within one year of its occurrence is permissible to be registered only on an order made by Executive Magistrate and on payment of prescribed fees. Even the old event occurred prior to the enforcement of the RBD Act, 1969, could also be registered on an order made by Executive Magistrate and an extract (Birth/Death Certificate) issued by the Registrar from the relevant register would be valid and admissible in evidence for the purpose of proving the birth or death.

Yours faithfully,

Sd/-

(M.K.Ahuja)

Deputy Director of Census Operations."

Reference may be made to another letter dated 4.7.1986 written by the applicant to the Joint Secretary (Shri Ashok Nath), Ministry of Home Affairs, New Delhi regarding the issue of Registration Certificate by the Executive Magistrate, Baharaich (Annexure P-17). He had filed an affidavit also saying "that the certificate of Birth issued by the Municipal Board Bahraich vide Registration No.372 dated 30.7.85 in respect of the date of birth of the deponent i.e. 2.9.1929 (photo copy attached) and already submitted to Govt. of India was issued by the Board after obtaining due orders of the concerned Executive Magistrate.."

This shows that there is some evidence of recording of a birth taken place on 2.7.1929 and an entry being made in the Municipal record on 30.7.1985. However, it is significant that in the letter (Annex. p.14) the name of the Municipal Board is not disclosed.

Before we come to a conclusion, it will

(37)

be relevant to refer to Section 17 of the R.B.D. Act, 1969 which reads as under:

Search of births and deaths register.

17.(1) Subject to any rules made in this behalf by the State government, including rules relating to the payment of fees and postal charges, any person may-

- (a) cause a search to be made by the Registrar for any entry in a register of births and deaths; and
- (b) obtain an extract from such register relating to any birth or death:

Provided that no extract relating to any death, issued to any person, shall disclose the particulars regarding the cause of death as entered in the register.

(2) All extracts given under this section shall be certified by the Registrar or any other officer authorised by the State government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates."

It was urged that since what had been forwarded to the Government was an extract of the entry existing in the Municipal Register. It was in accordance with law. It was proving the date of birth of the applicant to which the entry relates. In other words, the argument was that the applicant had been able to prove that his date of birth as given in the Municipal extract was admissible in evidence and since it had been given after verifying the correctness of the entry under section 13(3) of the R.B.D. Act, 1969, it proved that the date of birth of the applicant was 2.7.1929.

CC

The stand of the respondents on the contrary is that this piece of evidence is not conclusive for it is not an extract for an entry made in the year of the birth but an entry made after 55 years. Sub-Section (3) of Section 13 of the R.B.D. Act, 1969 provided that an entry could be made even after the expiry of one year of the date of birth or death provided an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

Learned counsel argued that the entry made in the Municipal register would ~~xxx~~ be admissible in evidence and its correctness has to be presumed since it has been verified by the Executive Magistrate. ~~before the entry was made. xxxxxx~~ A pertinent question arises at this stage. An entry made in the year of the birth or even within a period of one year or immediately thereafter could be certified and admitted in evidence. <sup>It will be</sup> ~~It will be~~ admissible evidence even under the provisions of Section 90 of the Evidence Act provided ~~the extract~~ <sup>the extract</sup> was 30 or more years old. A paper which was not even a year old and was obtained during the pendency of the matter before the Government, even though admissible will not have the same force, for the reason that it is not an old paper recording the date of birth of the applicant. It appears that the entry was got made in the year 1985 and that it is not borne out from the record that such entry existed in the ~~record~~ of the Municipality of Bahraich of 1929 or thereafter.

and had been extracted therefrom.

We have given our anxious consideration to this matter and we feel that the only material that the applicant has been able to produce is that his elder sister was born on September 19, 1927 and none was born to his parents on 2.7.1927. As a matter of fact the applicant was not able to establish where he was born. Further, there is no evidence that an entry of birth relating to the applicant was recorded in any Municipal Register in 1929. The entry on which the reliance was placed was admittedly made only in 1985. The said entry does not conclusively prove that the applicant was born on that date. It was not made by his father or any elderly relative. It was an entry made by the applicant. It must be remembered that this evidence has been brought into effect after the rejection of the representations of the applicant by the respondents at various stages and is based upon an entry made for the first time on 30.7.1985. It is not an old entry, nor a paper of 1929 or thereabout. What is the value of such an entry? In our opinion, it has no evidentiary value.

Further, there is delay in filing the O.A. The cause of action arose on 24.2.1983 and the O.A. was filed in December, 1986. It is also well settled that repeated representations do not extend limitation.

3

(40)

Apart from the above, his case commences on the basis that he came to know in 1983 that his elder sister was born in 1927. This too is not convincing. If he knew this earlier what prevented him from moving for correction of entry in his Service Book and Matriculation Certificate.

Having exercised the discretion to consider the evidence on record, we have come to the conclusion that the evidence produced by the applicant is not sufficient to give a finding that the applicant was born on 2.7.1929. A long standing entry in the service book based upon the entry in the Matriculation certificate which has not been corrected does not give any justification for interfering with the recorded entry in the service book. Further, there is no positive evidence of 1929 or near about period to indicate that the applicant was born in the year 1929. The evidence which has been relied upon by the applicant is one made recently i.e. in 1985, as noticed above.

Before we conclude we need to mention a matter. This O.A. is fixed for judgement today. Shri G.D. Gupta with Shri S.M. Rattanpal wanted some more papers to be considered by the Bench. We declined to take them unless the learned counsel for the respondents was also heard on this point.

4

Shri P.P. Khurana, learned counsel for the Respondents, came and saw the papers and submitted that he cannot make any comment on the evidentiary value of the papers sought to be filed, without obtaining instructions from the Respondents except to say that no indulgence be shown to the applicant at the late hour to take on the file further papers. Shri Gupta stated that due to riots etc. relevant papers could not be collected earlier. These papers pertain to the date of birth of the brother and sisters of the applicant and the original certificate issued by the Nagar Swastha Adhikari, Bahraich to the applicant.

We have looked into the papers. These are not direct evidence of the applicant's date of birth, except the original certificate issued by the Bahraich, Nagar Swasth Adhikari. This matter we have referred to in our order and this paper need not detain us. The other four papers include a horoscope and its copy relating to one daughter born in 1913, one copy of High School Certificate, 1937 of Gopinath Srivastava born on 19.1.1920, and another copy of High School Certificate of 1951 of a sister Smt. Nanda Srivastava born on 1.9.1925. None of the above papers has any relation to the date of birth of the applicant.

For the reasons indicated above, we are not satisfied that any interference is called for in the present case. The O.A. is accordingly dismissed.

(42)

However, we leave the parties to bear their  
own costs.

*I. K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER (A) 31/5/91

*AMITAV BANERJI*  
(AMITAV BANERJI)  
CHAIRMAN

'SKS'