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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGD. No. OA-129/86

Date of Decision 27-11-87.

Shri T. Rajagopalan

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Applicant.

Vs.

Contoller General of  
Defence Accounts

....

Respondent.

Coram:- Mr. Justice J.D. Jain, Vice Chairman

For the applicant

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Shri R.L.Sethi, Advocate

For the Respondents

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Shri M.L.Verma, Advocate

JUDGEMENT

The petitioner has made this application under Section 19 of the Administrative Tribunals Act (hereinafter referred to as the " Act") challenging the order dated 23rd January 1986 passed by the respondent - Controller General of Defence Accounts rejecting his application for rectification of his date of birth from 1.4.1944 as entered in his service book to 1.4.1946, which was claimed by the petitioner, to be correct date of his birth.

2. The facts germane to the decision of this application succinctly are that the father of the petitioner was employed in the same department in which the applicant is now employed as a Section Officer (Accounts). His father died way back on 6.10.1954 while in harness, so the applicant was appointed in the same department in a clerical post on compassionate ground. He joined the service on 29.1.1964 and on the basis of his Secondary School Leaving Certificate his date of birth was recorded as 1.4.1944 in his service

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book. However, he applied for correction of date of birth on 14-8-1968 (Annexure E-7) stating that his father having died at an early age and his mother being illiterate, she gave his date of birth wrongly as 1.4.1944 instead of 1.4.1946 at the time of his opening of his S.S.L.C. book in 1958 when he was still a minor. However, later on he discovered from his horoscope and other documents that his correct date of birth was 1.4.1946. His prayer was rejected by the concerned authority vide letter dated 29th August, 1969 addressed to the Deputy Controller of Defence Accounts (Administration), (Copy Annexure E-19) and he was told that unless the date of birth recorded in the S.S.L.C was got amended by him, the authorities could not do anything in the matter. It appears that in the meanwhile he had also made an application to the Director of School Education, Madras for alteration of his date of birth in his S.S.L.C certificate. However, vide letter dated 11-6-1969 (Copy Annexure E-17) he was informed that the request for correction of date of birth could not be entertained after a pupil had completed his school education and sat for the S.S.L.C. public examination. Thereupon, the applicant instituted a civil suit in the Court of District Munsif for declaration that his correct date of birth was 1.4.1946 and also direction to the Defendant No. 1 viz. Director of School Education, Madras to correct the date of birth given in the S.S.L.C book. The suit was decreed on 14th September, 1971 (Annexure E-26) and a direction was issued to the defendant No.1 to correct the date of birth of the plaintiff in the S.S.L.C. book as 1.4.1946. Accordingly,

the Director corrected the date of his birth in his S.S.L.C. certificate as 1.4.1946 (Annexure E-27).

3. Armed with the decree of the Civil Court and the amended S.S.L.C. certificate the applicant again applied to the respondents for rectification of his date of birth in the service book. However, his application was rejected vide reply dated 5-5-75 (Annexure E-31) on the short ground that his request for alteration in the date of birth had already been considered by the higher authorities but the same had not been agreed to by them. The applicant went on representing against the said order to the higher authorities and eventually his prayer was rejected vide order dated 23-1-1986 (Annexure E-40). Hence this application for quashing the said order and directing the respondents to rectify his date of birth in his service book.

4. The application is hotly contested by the respondents, who have stated that his date of birth was correctly recorded as 1.4.1944 on the basis of S.S.L.C. certificate. The service book was duly signed by the applicant and even in the declaration given by him at that time under Rule 79 of Compilation of General Financial Rules (Annexure R-1) he had given his date of birth as 1.4.1944. According to them Head of the Department was competent to change the date of birth of a government servant as entered in the service book if he was satisfied that there was a bonafide clerical mistake. <sup>the instant case</sup> In the date of birth had been recorded as given by the applicant himself. It

was further pointed out that if altered date of birth viz. 1.4.46 was accepted, the applicant would not have been eligible for appointment to the service as the minimum age limit was 18 years and he would have been under age. Further, according to them the applicant would be gaining double benefit by increasing his age of superannuation by two years by seeking alteration of his date of birth. In other words, the applicant gets double advantage and he is estopped from claiming the same in view of the advantage already obtained by him at the time of his appointment to service on the basis of alleged incorrect date of birth.

5. I have heard the counsel for the parties at length. The applicant has placed on record the copy of decree of the Civil Court dated 14th September, 1971 (Annexure E-26). He has also placed on record the photo-stat copies of (1) ~~xxxx xx~~ letter dated 14th June 1972 of the Director of School Education, Madras informing him that his S.S.L. . certificate was <sup>respect of his</sup> being returned after necessary correction in/date of birth as 1.4.46, (ii) his S.S.L.Certificate duly corrected (iii) a certificate dated 31st July, 1968 issued by the Headmaster, Saraswati Vidyalaya Union Primary School (Annexure E-3) showing that his date of birth as entered in the General Register of the school was 1.4.1946 and (v) Application dated 24th October, 1957 countersigned by Magistrate on 27.11.57 (Annexure E-6) made by the mother of the applicant on her own behalf and also on behalf of the children namely the applicant and one unmarried daughter T.Bhama to the concerned authority for grant of

family pension/death gratuity for the family of her late husband Shri K.Thiagarajan. The date of birth of the applicant as recorded therein is 1.4.46. Considering all these documents and especially seeing the relevant service file of the applicant in which the copy of the application dated 24.10.57 (Annexure E-6) for grant of pensionary benefit etc. duly certified by Accounts Officer, C.D.A.(O) Poona and bearing the seal of the office dated 13th August, 1968 is available and the Secondary School Leaving Certificate in which the correction has been effected by the Director of School Education, Madras, I have no hesitation to hold that actual date of birth of the applicant was 1.4.46 as claimed and not as 1.4.44 as recorded in the service record of the applicant. It is to be noticed that document E-6 was submitted by the applicant and his mother etc. at the time when his appointment to the service was not even under contemplation because he became eligible for appointment to the service only after he acquired the requisite qualification viz. S.S.L.C. So I see no reason to doubt <sup>the</sup> veracity of the date of birth as recorded therein. Further the certificate issued by the school Headmaster (Annexure E-3) corroborates this fact and it appears it was only after the primary stage that somehow his date of birth was recorded as 1.4.44 in the school records. Obviously that entry persisted in the school register and was duly reflected in the S.S.L.C and it was on the basis of that entry <sup>that</sup> he had given his date of birth as 1.4.44 at the time of joining the service. He cannot, therefore, be stopped from pleading that his actual date of birth was different from that recorded in the service book as per information which came to his notice later on.

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6. Learned Counsel for the respondents has urged vehemently that the applicant is estopped from taking this position now because he gained the advantage in the matter of appointment to the service even though he was under-age because of the date of birth as shown in the S.S.L.C which rendered him eligible for the appointment. However, I do not think that he will be precluded on the plea of estoppel from agitating the question of his correct date of birth, unless there is some evidence of misrepresentation on his part. Reference in this connection may be made with advantage to a decision of Madras Bench of this Tribunal in P.V. Jagadeesan Vs. Union of India TA-708/1986 decided on 3rd April, 1986 and reported in G.B.Singh's Case Book of Central Administrative Tribunal Decisions- 1986-Vol. II at page 22. It is apparently a case where he himself bonafide believed that his date of birth was 1.4.1944 as recorded in his S.S.L.C and it was only subsequently, <sup>that</sup> true facts came to light.

7. Next contention of the counsel for the respondents is that respondents were not bound by the decree of Civil Court because they were not party to it. It is no doubt true that respondents were not a party to the civil suit, However, one cannot over-look the fact that the relief sought in the Civil suit was directed against the Director of School Education, Madras who alone could have rectified the entry in the S.S.L. certificate and not against the present respondents because no relief ~~xxx~~ for rectification of the entry in the service record was sought. That apart it is well settled that decree of competent court of jurisdiction is to be given due weight irrespective of <sup>Unless of course it can be termed as collusive</sup> whether it is legally binding on a party or not. Surely it constitutes an important piece of evidence

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especially when the suit was duly contested by the defendants thereto who were represented by a counsel named in the decree. So this objection too is not at all tenable. Yet another contention raised by the counsel for the respondents is that this application is barred by time. This argument is to be stated to be rejected for the simple reason that the applicant is still in service and it is open to him to challenge the date of birth as recorded in the service book at any time till he retires on superannuation or even thereafter within the period of prescribed limitation. The impugned order was itself passed on 23rd January 1986 (Annexure E-40), so the application is well within time.

8. To sum up, therefore, I find that there is over whelming evidence to lend support to the contention of the applicant that his actual date of birth was 1.4.1946 and not 1.4.1944 as recorded in his service book. Hence I direct the respondents to rectify the same and treat 1st April, 1946 as his date of birth for all future benefits including his age of superannuation etc. Under the circumstances, no order is made as to costs.

Dated:- 27-11-1987.

Announced in open court.

  
( J. B. Jain )  
Vice Chairman