

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1880/87

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~~T.A. No.~~DATE OF DECISION 6.12.1991

SHRI S. RAMASWAMY

~~Petitioner~~ APPLICANT

SHRI K.N.R. PILLAI

Advocate for the ~~Petitioner(s)~~  
APPLICANT

Versus

UNION OF INDIA & ~~ANOTHER~~

Respondents

SHRI N.S. MEHTA

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. D.K. AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. --

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal? ✗

JUDGEMENT

The prayer in this application is for change of date of birth as recorded in the service records from 26-12-1929 to 27-7-1931, as directed by Department of Industrial Development on 13-X-87, as contained in annexure IX to the claim petition.

2. Briefly stated, the facts are that the applicant entered into service as Assistant Chemist on 2-11-1953 and declared his date of birth as 26-12-1929 as entered in the Secondary School Leaving Certificate, issued in the year 1944. It is alleged by the applicant that there did not exist any entry about his date of birth in the Birth and Death Register and, therefore, an application dated 6-9-1980 was moved before Judicial Magistrate 1st Class

*D.K. Agarwal*

seeking relief to the effect that 27-7-31 be entered his date of birth in the Birth and Death Register. The Judicial Magistrate, Devakottai, it is alleged, ordered that 27-7-31 be recorded as date of birth of the applicant. The applicant further alleges that, however, the Director(Education) did not agree to amend this Secondary School Leaving Certificate, Therefore, the applicant filed a suit before the District Munsif, Devakottai, who passed an order on 31-7-86 declaring the applicant's date of birth as 27-7-31. On the basis of the said <sup>✓</sup>degree, it is alleged that Tamil Nadu Government vide their G.O.No. 908 dated 16-6-87 directed the School Leaving Certificate to be amended recording applicant's date of birth as 27-7-31. On the basis thereof, the Department of Industrial Development vide order dated 13-10-87 acceded to change the applicant's date of birth from 26-12-1929 to 27-7-1931. However, the Director-General, Technical Development, New Delhi, did not agree to make a change. The applicant thereafter filed the present claim petition on 22-12-87 praying that the decision of the Department of Industrial Development dated 13-10-87 be directed to be implemented, <sup>recorded</sup> i.e., the applicant's date of birth be/as 27-7-1931.

3. The respondents in their written reply have pleaded that the order dated 13-10-87 passed by Department of Industrial Development, has already been superseded by an order of Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) dated 29-12-87 whereby a decision has been taken that alteration in the applicant's date of birth cannot be made. It has been further pleaded that on the basis of the order of the above said Government order, Ministry of Industry, Department of Industrial Development, has also passed an order on 30-12-87 rejecting the applicant's prayer for alteration in date of birth as entered in service records.

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Therefore, it is alleged on behalf of the respondents that the petition as framed is infructuous and deserves to be dismissed.

4. The learned counsel of the parties have been heard at length. The applicant places reliance on the amended School Leaving Certificate which has <sup>not</sup> been filed on record. However, assuming that the Secondary School Leaving Certificate has been amended by the Education Department of Tamil Nadu Government, the question is whether alteration in date of birth can be directed on the sole basis thereof. As the facts are borne out from record, <sup>✓</sup> the applicant's date of birth was not recorded in the records of the municipality of Devakottai. The applicant alleges that he suggested his date of birth as 27-7-31 and the Judicial Magistrate, Devakottai ordered the same to be recorded in the Birth and Death Register. The suit was also decreed by Munsif, Devakottai on 31-7-86 on the basis thereof. It is also an admitted fact that Union Government was not a party to the said suit. Reliance has been placed by the respondents on a judgement of a Andhra Pradesh High Court in Writ Petition No.4655 of 1982 decided on 6-9-1982 in the case of T.Pundurangam Vs. General Manager, South-Central Railway, Secundrabad. The facts of the said case were similar. The petition <sup>✓</sup> prayed for correction of School Leaving Certificate. The State Government was a party. The Railway, i.e., the Union Government was not a party. The Railway Board did not agree to place reliance on the amended School Leaving Certificate. Therefore, the Writ Petition was filed before Andhra Pradesh High Court. The High Court held that the <sup>✓</sup> degree was not a <sup>✓</sup> degree in rem. Hence, the Railway Department was not bound by the said <sup>✓</sup> degree. Reliance has also been placed on behalf of the respondents

*DK Aggarwal*

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as contained in Annexures R-I and R-II passed by the Ministry of Industry and the Department of Personnel & Training.

5. The legal position is that despite note 5 of F.R.56, the date of birth can be altered provided it is found that there has been a bonafide and genuine mistake in recording the same at the time of entry into service. However, in the instant case, no material has been put on record to warrant a change in date of birth. The sole basis is that the Secondary School Leaving Certificate has been amended. Assuming that it is so, the question is whether in the absence of any other material, can alteration in date of birth be ordered? In my considered opinion, the answer is <sup>in</sup> negative. The reason is that if a person seeks alteration in date of birth at the fag end of his service career, the same is ordinarily not acceded to. In the instant case, the applicant entered in service on 2-11-53. He made an application for the first time on 6-9-80. In the case of Dharampal V. Union of India<sup>1</sup>, the Delhi Bench of the Tribunal dismissed the petition as barred under doctrine of laches and delay, despite the fact that the change in date of birth was sought on the basis of matriculation certificate. The pre-dominant reason was that a person who joined service in 1950 and was to retire in 1987, wanted alteration in the date of birth at the fag end of his service career. Jabalpur Bench of the Tribunal in the case Ghasite Lal Vs. Union of India<sup>2</sup> rejected the claim for changing of date of birth on the ground that when date of birth was recorded on an employee's own declaration and accepted by him, he is estopped from changing it. The Calcutta Bench of the Tribunal, in the case of Saryu Prasad v. Union of India<sup>3</sup> rejected the claim for change in date of birth on the ground that the change was desired at the fag end of service career after receiving notice of retirement. In the case of U.S. Bajpayee v. Union of India<sup>4</sup> the Delhi Bench of the Tribunal, laid-down the rule that an entry in the

service-book about the date of birth renders an element of

1. (1989) 11 ATC 236; (1989) 1 AILT (CAT) 312.

2. (1988) 6 ATC 224

3. (1989) 9 ATC 93

4. (1989) 9 ATC 540.

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Dr. A. S. Mehta

inviolability to it.

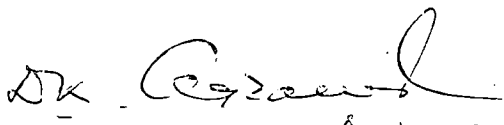
6. Taking into account the legal position mentioned above and the fact that the applicant has not placed material before the Tribunal to arrive at a finding that his date of birth, as entered in the service records, was incorrect, I am of the opinion that the applicant is not entitled to any relief. The change in date of birth cannot be ordered only on the basis that the date of birth has been amended in the Secondary School Leaving Certificate particularly because it is not known as to what was the material before the Judicial Magistrate to pass an order that the applicant's date of birth is actually 27-7-31 and not 26-12-29. It is also not known that the Judicial Magistrate was in know of the fact that the applicant had declared his date of birth as 26-12-1929 at the time of entry into service, The proper course for the applicant was to place proof before the Tribunal about the genuine and bonafide mistake which was made in recording his date of birth as 26-12-1929 instead of 27-7-1931. The applicant has not done so for the reasons best known to him. Instead, he chose the course of getting recorded his date of birth as 27-7-1931 in the Death and Birth Register and the Secondary School Leaving Certificate behind the back of the employer. The Tribunal is certainly entitled to look into the material on the basis of which a finding can be arrived at that the applicant's date of birth is 27-7-1931. The applicant is not entitled to an order from the Tribunal without placing material in respect thereof. The applicant cannot secure an order in his favour from the Tribunal reversing the final order of the Central Government dated 29-12-87 and 30-12-87 simply on the basis of an allegation that his date of birth has been changed in the Secondary School Leaving Certificate. It is also a material fact that the applicant has not challenged the order

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of the Central Government dated 29-12-87 and 30-12-87 whereby the Central Government has rejected the prayer of the applicant for change in date of birth as recorded in the service records. Thus, taking into account all the facts and circumstances, this application is liable to be dismissed.

In the result, the application is dismissed, without any order as to costs.

  
(D.K. AGGARWAL) 6.12.91.  
JUDICIAL MEMBER.

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