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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1897/1987.

DATE OF DECISION: March 14, 1990.

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| Km. N. Ajwani | | Applicant. |
| Shri G.D. Gupta | | Advocate for the Applicant. |
| | V/s. | |
| Union of India | | Respondents. |
| Shri N.S. Mehta | | Sr. Standing Counsel for the Respondents. |

CURAM: Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether his lordship wishes to see the fair copy of the judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

(P.C. JAIN)
Member (A)

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CORAM: Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, a registered refugee from Pakistan, and who was appointed as Economic Investigator in the Planning Commission on 25.1.1958, confirmed on 1.1.1963, promoted as Research Officer on 28.9.1962 and again promoted as Senior Research Officer on 31.1.1984, has assailed the action of the respondents in not correcting her date of birth. She has prayed that the orders dated 6.11.1987 and 14.12.1987 whereby her representations in this regard were rejected, be set aside and her date of birth be deemed as 26.6.1931, originally recorded in the service book and authenticated by the confirmatory evidence from the Birth Register, and that she should not be made to retire on 31.1.1988. Her prayer for interim relief was not allowed and she has since retired on that date.

2. The case of the applicant, in brief, is that when her service book was first prepared on 8.1.1959, in the column 'Date of birth by Christian era as nearly as can be ascertained', the entry recorded was '26th June 1931 - or 26th Jan. 1930 - as entered in Matric Certificate', and as such, she had declared two dates of birth, actual being 26th June, 1931, which was to be proved on confirmatory document from Birth Register maintained in Pakistan, and the

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other as entered in the Matric Certificate. It is contended that she had submitted in 1958 or early 1959 to the respondent original birth certificate from the Birth Register from Pakistan, but necessary correction in the date of birth does not appear to have been made. She took up the matter vide her letter dated 11.9.87, which was rejected vide Office Memorandum dated 6.11.1987. She made another representation on 27.11.1987, which was also rejected vide Office Memorandum dated 14.12.1987. She also contends that the entry in the service record prepared on 8.1.59 with regard to the date of birth as 26.6.1931 was scored out and when she received the proforma for pension, she discussed the matter with U.S. (Admn.) and later on he asked her to submit the application along with her original birth certificate, which she had submitted early in 1958, and that when she approached thereafter to see the record of service, she was told that old record was perhaps destroyed. Therefore, she wrote to her brother in Pakistan to send her the original certificate of her date of birth by locating the same from her late father's papers and that the same had been received by her through her brother's messenger in August, 1987. A copy of the same has been filed as Annexure A-4 to the application. The applicant, therefore, sought correction on the basis of the above certificate.

3. The case of the respondents, in brief, is that initially two dates of birth had been mentioned in the service book, but the entry relating to the date '26.6.1931' was deleted and properly initialled by the officer concerned. Only the entry relating to '26.1.1930' was allowed to remain, obviously because the only proof that the applicant produced was the Matriculation Certificate, which recorded the date of birth as 26.1.1930. The applicant had, at no stage before her representation dated 11.9.1987, claimed 26.6.1931 as her date of birth or submitted any birth certificate in support thereof. The respondents have also referred to Rule 79 of the General Financial Rules, according to which, the date once

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recorded, could not be altered except in the case of a clerical error without the previous orders of a Department of the Central Government. It is stated that Note 5 below F.R. 56 inserted by an order dated 30.11.1979 (a reference to which has been given in the orders rejecting the representation of the applicant) cannot have a retrospective effect, but the applicant was expected to make a representation within a reasonable time after the insertion of the Note. She, however, chose to represent only after about 8 years. The respondents' contention is that her claim cannot be considered to be genuine. It is also pleaded that the applicant has not produced a copy of the extract from the Births Register, but has produced a certificate dated 25.6.53, which cannot be treated as an extract from the Municipal Births Register. The applicant had not made any written declaration regarding her date of birth.

4. I have carefully perused the documents on record and have also heard the learned counsel for the parties.

5. It is not in dispute that the Matriculation Certificate shows the applicant's date of birth as 26.1.1930. It is also not in dispute that 26.1.1930 was also initially recorded when the service book was prepared for the first time on 8.1.59. However, the applicant's contention in her representation dated 11.9.87 that at the time of joining the Planning Commission in 1958, she had insisted on the administration for accepting real date of birth as 26.6.1931 as recorded in the Municipal Certificate and Horoscope, or to the effect that she had produced / submitted the original birth certificate from the Births Register from Pakistan in 1958 or in early 1959 itself (as stated in her representation dated 27.11.1987) are not substantiated. If she had actually submitted any such document, the entry in the service record would have also mentioned it, as has been mentioned in the case of entry based on Matriculation Certificate. Further, if she had any such document and even if it is presumed that she had

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submitted the same to the Administration, she would have retained a copy thereof and there would have been no occasion to get it again from Pakistan as late as in 1987. Even otherwise if she herself had submitted two dates of birth, she should have pursued the matter by furnishing confirmatory documentary evidence in support of her claim, which as per her own averment in para 6.3 of the application, was to be proved on confirmatory document from Birth Register maintained in Pakistan.

6. The only evidence on which the applicant relies for the relief prayed for is a "Certificate" issued on 25.6.53 under the signature of Secretary, Notified Area Committee, Khairpur Mir's, Khairpur State and which bears the seal of the Notified Area Committee. This states that "This is to certify that Birth date of Nanki bai Daughter of Mr. T.N. Ajwani is 26-6-1931." It will thus be seen that it is not an extract from the Birth Register maintained by the Notified Area Committee. It also does not refer to any entry in the Birth Register so maintained. The respondents, in their reply, as already stated, have also pleaded that this certificate cannot be treated as an extract from the Municipal Birth Register. The learned counsel for the respondents, during the course of oral submissions, drew attention to the provisions of Sections 74 to 78 of the Indian Evidence Act, 1872 in support of his contention that the certificate at Annexure 4 to the application is of no evidentiary value and cannot be admitted in evidence. Section 76 of the Indian Evidence Act, defines a certified copy. Apart from the fact that the document relied upon by the applicant is a certificate issued by the Notified Area Committee and not an extract of the relevant record of births, it is also not a certified copy as defined in Section 76 *ibid*. Section 78 (6) of the Act *ibid* provides for the manner of proving a public document of this class in a foreign country. The requirement mentioned therein is also not fulfilled in this case. At best, the document

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at Annexure 4 to the application is a certificate issued by an official of the Notified Area Committee. Based on this document, which, as discussed above, is of no evidentiary value for the purpose under consideration in this application, it would neither be proper nor justified to issue any direction to the respondents for change in the date of birth of the applicant in her service record, which is the same as shown in the applicant's Matriculation Certificate.

7. The learned counsel for the applicant cited a few judgements^{*} in support of the case.

8. In view of the submission of the respondents in their reply that provisions of Note 5 below F.R. 56 cannot be applied retrospectively to the case of the applicant, it is not necessary to go into the case of Shri Hira Lal (supra) in which it was laid down that the provisions of the above Note could not be applied in the case of employees who had entered service more than five years earlier than the insertion of this Note in 1979. Similarly, it is not necessary to go into the case of Shri Manak Chand Vaidya (supra) in which it was held that Rule 79 of the General Financial Rules contains executive instructions which have no force of law, as the applicability of this Rule was not pressed during oral submissions. The case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others (supra) also does not have much relevance inasmuch as the facts of that case and the facts of this case are significantly different. The respondents have not made any inquiry at the back of the applicant, and no such inquiry appeared necessary as the applicant herself failed to furnish confirmatory documentary evidence in support of the other date of birth mentioned by her on 8.1.59, which she herself admits was required to be done.

*(1) Shri Manak Chand Vaidya Vs. State of Himachal Pradesh and Others (1976 (1) SLR 402).

(2) Shri Hira Lal Vs. Union of India (A.T.R. 1987 (1) C.A.T. 414).

(3) State of Orissa Vs. Dr. (Miss) Binapani Dei & Others (AIR 1967 S.C. 1269).

(4) M. Murtuza Ali Vs. Secretary, Central Board of Excise and Customs, New Delhi & Others. (1988) 8 Administrative Tribunals Cases 632).

9. In the case of M. Murtuza Ali (supra), the question for consideration was whether an extract from the Births and Deaths Register maintained by the Gram Panchayat under the Births, Deaths & Marriages Registration Act, 1886 could be ignored and preference given to the date of birth recorded in the Matriculation Certificate. In the case before me, as already discussed above, there is no other authentic admissible evidence other than the Matriculation Certificate, based on which the representation of the applicant had been rejected.

10. The learned counsel for the respondents cited two judgements:

- (1) Bhupindra Nath Chatterjee Vs. The State of Bihar and Others (1977) 3 Supreme Court Cases 491)
- (2) Pramatha Nath Choudhury Vs. The State of West Bengal and Others (1981 (1) SLR 570).

In the case of Bhupindra Nath Chatterjee (supra), the date of birth of the applicant as specified in the official records was also mentioned in the civil list and also stated in one of the applications filed by the appellant and it was accordingly held to be correct. The respondents in this case brought on record a copy of the application dated 21.1.1963 made by the applicant to the University of Chicago for her admission for a course in Sociology through proper channel.

In this application, the applicant herself mentioned her date of birth as 26.6.1931. The learned counsel for the respondents therefore, argued that in view of the judgement of the Supreme Court in Bhupindra Nath Chatterjee's case, the applicant's case cannot be taken as genuine. In the case of Pramatha Nath Choudhury (supra), a Division Bench of the Calcutta High Court held that in the circumstances of that case, the applicant could be superannuated only on the basis of the date of birth entered in the Matriculation Certificate. The findings in this case cannot be taken to have laid down the general proposition of law that the date of birth entered in the Matriculation Certificate is the only basis for determining the correct date of birth of a person.

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1. From the facts of this case, it is clear that the applicant has not been able to establish that she ever furnished to the respondents any extract from the Births Register maintained by the proper authority in Pakistan. What the applicant has now produced is not a certified copy of an extract from such a record. The certificate, as such, produced by her is not admissible in evidence. There is no other document on which the applicant has relied, or has furnished in support of her prayer that the date of birth recorded in the Matriculation Certificate and taken as her correct date of birth on that basis in the service records, needs to be modified. The application is, therefore, devoid of merit and is accordingly dismissed. Parties to bear their own costs.

(14/3/90)
(P.C. Jain)
Member (A)