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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1903/1987
T.A. No.

198

DATE OF DECISION 29.3.1988

Shri P.L. Sethi

Petitioner

In person.

Advocate for the Petitioner(s)

Versus

Union of India & Another

Respondent

Shri G. Vijaya Kumar, Deputy Director

~~Advocate for the Respondent(s)~~


and Shri G.V.S. Moorthy, Asstt. Director, on behalf of the respondents.

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? YB
2. To be referred to the Reporter or not ? YB
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(B.C. Mathur)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO. OA 1903/1987.

Date of decision: March 29, 1988.

Shri P.L. Sethi ... Applicant.

Vs.

Union of India & Anr. ... Respondents.

PRESENT:

For the applicant ... Applicant ~~present~~ in person.

For the respondents ... Sh.G. Vijaya Kumar, Deputy
Director & Shri G.V.S. Moorthy,
Asstt. Director.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

The hearing of this case had been adjourned on several occasions due to strike by the Advocates. The applicant present in person, and Shri G. Vijaya Kumar, Deputy Director along with Shri G.V.S. Moorthy, Assistant Director were present on behalf of the respondents. It was explained to them that they would be allowed to argue their cases personally if they so desire. But if they wanted their cases to be argued by Advocates, the case could be adjourned to^a subsequent date. Both the parties wanted to argue their cases today and did not want any adjournment. The case was, therefore, heard.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against the impugned Order No. Air HQ/22940/3859/I/PCI dated 23rd September, 1987 (Annexure I to the application) declining to correct the date of birth entered in the Service Book of the applicant on the basis of the date of birth as entered in the

Matriculation Certificate.

The brief facts of the case as stated by the applicant are that he was born on 1.2.1932 in District Hazare now in Pakistan. He passed the Matriculation Examination of the Punjab University, Lahore in 1947. At that time, the Punjab University did not issue any formal Matriculation Examination Certificate to the applicant, but issued only a Card testifying that he had passed the Matriculation Examination. This Card did not contain the date of birth of the applicant. The applicant joined AFHQ on 10.7.1948. According to the applicant his parents had told him that his date of birth was 30.3.1930 and he conveyed the same to his Department and this date was accordingly recorded in his Service Book. In or about 1958, the Department asked him to produce his Matriculation Certificate for verification of the date of birth. The applicant wrote to the Punjab University, Chandigarh to issue him the formal Matriculation Certificate showing his date of birth. The Punjab University, Chandigarh did not have any record of his date of birth. The applicant accordingly conveyed to the University the same date of birth as had been given by him to the Department at the time of joining the service and on this basis the Punjab University issued the applicant a formal Matriculation Certificate in September, 1959 showing the date of birth of the applicant as 30.3.1930. The mother of the applicant expired in May, 1984 and at that time while going through

the old record, he came across his Middle School Certificate, issued by the Registrar, Departmental Examinations, Education Department, N.W.F. Province, Peshawar. This Certificate showed the date of birth of the applicant as 1.2.1932. On the basis of this certificate, the applicant took up the case of correction of the date of birth in the service record with the Department by submitting a representation on 14th November, 1985. The Department rejected the request of the applicant mainly on the ground that the case suffered from ~~latches~~^{lac} inasmuch as the Middle Standard Certificate had all along been with the applicant and there was no satisfactory explanation why he did not file his request within 5 years as stipulated under Rules and the request was made when superannuation of the applicant was less than two years away. The Department's case was that they had rightly relied on the Matriculation Certificate and the applicant should have got it corrected in time. The applicant represented that the Middle School Certificate had come to his notice only after the death of his mother and as such, earlier he was not aware that his date of birth was 1.2.1932. Simultaneously the applicant applied to the Punjab University, Chandigarh for correction of his date of birth on the basis of the Middle Standard Certificate who corrected the date of birth and issued a revised Matriculation Certificate showing the date of birth of the applicant as 1.2.1932. This correction was issued

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by the Punjab University, Chandigarh on 16.9.1986. The earlier Matriculation Certificate issued in 1959 was cancelled.

In his application, the applicant has stated that instructions regarding 5 years period are only administrative instructions and not statutory and the instructions issued in 1979 are prospective in operation and can apply to those who entered ^{into} service after 1979. In some other cases, the Ministry of Defence itself ignored the limitation of 5 years and corrected the date of birth.

In their reply, the respondents have stated that at the time of joining the Office of the Chief Administrative Officer, Ministry of Defence on 10.7.1948, the date of birth of the applicant was recorded in his Service Book as 30.3.1930 as given by the applicant. Later this was verified on the basis of Matriculation Certificate issued to the applicant by the Punjab University, Chandigarh in September, 1959. The applicant had also given an affidavit confirming this date of birth. Subsequently, the applicant alleged that he came across his Middle School Certificate issued in 1945 by the Education Department in North West Frontier Province showing his date of birth as 1.2.1932. On this basis, the applicant requested the Punjab University, Chandigarh to correct his date of birth in the Matriculation Certificate and the University issued a duplicate certificate in his favour on 30.8.1986 giving his date of birth as 1.2.1932. The respondents followed the criteria set out in Note 5 below F.R. 56 which shows that the date

on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register, and such change of date of birth should be made within five years of his entry into service. It should also be established that ^abonafide mistake had occurred. The request of the applicant for alteration in his date of birth in 1985 is much belated after he had put in more than 37 years of service in Government. It has been stated on behalf of the respondents that ^{the}desired change in service record would make the applicant ineligible for entry into Government service in 1948 when the applicant actually entered into the Government service. If the applicant's date of birth as 1.2.1932 is taken as correct, he would just be 16 years and a few months on 10.7.1948 and would be below the prescribed minimum age for entry into Government service. It has also been stated that in accordance with the Ministry of Defence Decision No.2 under Article 51 of Civil Service Regulations that every person on entering service shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose entering service in Defence Service in civilian capacity. It also lays down that no request

made about the time of superannuation shall be entertained. Keeping in view the provisions of Rule, the request of the applicant to change the date of birth as entered in his service record was not accepted. The applicant cited a few cases including the case of Shri Hira Lal Vs. Union of India (ATR 1987(1)CAT 414) decided by the Principal Bench of the Central Administrative Tribunal wherein it has been held that 5 years Rule for making applications for correction of date of birth would apply to those persons who joined service after 1979 and not earlier. The applicant also argued that since the Defence Ministry themselves have accepted the alteration in the date of birth in a few other cases where applications were made after 5 years of joining of service, it would be discriminatory if his case is rejected on this ground. He cited the cases of S/Shri M.G. Gaonkar, MTD (Retd) and J.C. Munjal, MWO where the respondents had approved the change of date of birth after a period of 5 years of their joining the service. He also cited the seniority list of officiating Civilian Staff Officers of the Armed Forces Headquarters Civil Service as on 1.4.1984 which indicated that a number of persons had joined service when they were under the age of 18 years and there was nothing unnatural in applicant joining service before the age of 18 years.

Shri G.Vijaya Kumar, Deputy Director pointed out that the Middle School Certificate produced by the applicant in 1986 could not be accepted as it was an unreliable document. It was argued that according to the

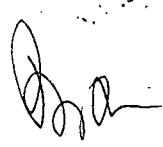
applicant, he passed the Middle School Examination in 1945 and within 3 years when he joined service in 1948, he not only forgot his date of birth but the year of birth also. This is highly unlikely. Even if it is accepted that the date of birth was given by his parents, the parents should have known the correct date.

Shri Vijaya Kumar stated that in N.K. CHAKRABORTY Vs. UNION OF INDIA (OA 84/1986) decided on 11.6.1986 by the Calcutta Bench of this Tribunal, it was held that where an applicant had himself signed the service sheet showing his date of birth which would mean that he was aware of it and if he did not protest about the date of birth for 14 years and if according to the applicant's averment, his claimed date of birth is accepted, he would have been ineligible for appointment being below 18 years of age, he cannot be allowed to change his date of birth at a later stage to get the benefit of prolongation of service. The applicant had filed an initial affidavit mentioning his date of birth 30.3.1930 which was true to the best of knowledge and belief of the applicant as well as his parents. It is not at all convincing that he found the Middle School Certificate only in 1985. Shri Vijaya Kumar stated that two documents showed different names of his mother. In one his mother's name was shown as Devwanti indicating her age as 48 years on 28.3.1958 while in the CGHS Card of 1972, his mother's name has been shown as Ramchameli and the date of birth was shown as 14.7.1916. These dates do not tally. The applicant explained that

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his mother had two names, one before marriage and another adopted later. In any case, this may not affect the present case materially.

It is well established now that Rule ^{of} 5 years would not stand in the way of the applicant getting his date of birth corrected. It is also possible that the applicant did not remember his correct date of birth while joining service in the year 1948 because of the very troubled days due to partition of the country in 1947. People migrating from West Pakistan in 1947 were under a great mental pressure and, therefore, the applicant cannot be denied change in date of birth merely on the ground that he had given a particular date of birth in 1948. However, it is also relevant that a person should not be allowed to wait till he nearly reaches the date of superannuation to make an application for change of date of birth at the last moment. The service records are important documents and in this case, it is not in dispute that the date of birth recorded in the Service Book was 30.3.1930 and this was not in dispute for nearly 37 years. Normally such authentic record based on information given by the applicant himself at the time of the entry into the service should not be changed at the far end of his service. Reliance cannot be placed on a Matriculation Certificate when it is established that the date of birth recorded in this certificate is based on an affidavit filed by the applicant much later after joining service.



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Under normal circumstances, it should be presumed that the date of birth given by him at the time of the entry into service and accepted by the employers at that time should stand and should not be changed after more than 37 years of service.

The whole case of the applicant hinges on the authenticity of the certificate issued by the Registrar, Departmental Examinations, Education Department, N.W.F. Provincance, Peshawar on 1.7.1945. Apart from the fact that the certificate was found by accident only in 1985, putting certain doubts about its genuineness, The form of the certificate has been printed by Government and the date of printing the form is recorded in small words at the bottom of the form within brackets. The form shows that it was printed on 30.10.1945 whereas the certificate is supposed to have been issued on 1.7.1945 i.e. nearly four months earlier than the printing of the form itself. This creates a grave suspicion about the genuineness of the document and on the basis of such a document, the entries recorded in the Service Book during the last 40 years cannot be changed. It is not impossible that the entries on the form have been typed at a subse-quent date and the original entries erased. There can be many possibilities but ^{it} is quite clear that this certificate cannot be accepted as ⁿan authentic without making detailed inquiries. The mutilated form has been ^{pasted on} ~~pasted~~ on a white paper, the back of which shows some dots indicating the


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use of the typewriter not only on the old certificate but also on the white paper ^{to which} the form has been pasted. It is quite possible that the original writings on the form have been erased and a new certificate has been typed. In the circumstances, the certificate does not appear to be reliable on the basis of which the applicant should be given two years' extension in service, having already completed 40 years of service. It is not necessary to go into the question that many persons had joined the service when they were not even 16 years' of age. But since the case of the applicant depends on the authenticity of the said certificate issued by the Registrar, Departmental Examinations, Education Department, N.W.F. Provincance, Peshawar on 1.7.1945 and which is of a very doubtful nature, I am not satisfied that any relief can be given to the applicant at this stage. In the circumstances, the application is rejected and the date of birth of the applicant viz. 30.3.1930 as recorded in his Service Book should stand.

The applicant has made a request that a thorough investigation should be made about the authenticity of the document viz. the certificate issued by the Registrar, Departmental Examination, Education Department, N.W.F. Provincance, Peshawar from the Pakistan authorities. This appears to be a fit case for making such an inquiry. The respondents are, therefore, directed to initiate

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action within a month to get the certificate verified by the Registrar, Departmental Examination, Education Department, N.W.F. Province, Peshawar and if they come to a decision after a proper inquiry that the certificate is genuine beyond any doubt, the case could be reviewed at that stage. The original certificate produced by the applicant has been handed over to Shri G.Vijaya Kumar, Deputy Director to take further action as directed above. There will be no order as to costs.


(B.C.Mathur)
Vice-Chairman
29.3.1988.