

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1361/1990

Date of decision: 30.07.1990.

Shri S. B. Chhibber

.....Applicant

Vs.

Union of India & Others

.....Respondents

For the Applicant

.....Shri R.K. Kamal,
Counsel

For the Respondents

.....Shri M.L. Verma,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. P. SRINIVASAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? No

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P. Srinivasan, Administrative Member)

This application has been listed before us for admission today. However, after hearing Shri R.K. Kamal, the learned counsel for the applicant and Shri M.L. Verma, the learned counsel for the respondents, we are of the view that it can be disposed of at this stage itself. We proceed to do so.

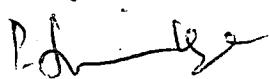
2. The applicant ^{who} was working as Deputy Chief Controller of Imports and Exports at New Delhi, was due to retire ^{from Service} according to the original entry in his service book on 31.7.1990. However, some time in 1989, he moved the

P.L. Verma

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authorities for a change of his date of birth from 22.7.1932 to 27.2.1933. This representation was finally rejected by an Office Memorandum dated 25.4.1990 issued from the office of the Chief Controller of Imports and Exports, New Delhi. Aggrieved by this Memorandum, he has approached this Tribunal.

3. Shri R.K. Kamal, the learned counsel for the applicant submits that the applicant was a displaced person from Pakistan, who came to India in 1947 and passed his Matriculation in 1948. At that time since he did not have the requisite documents, his date of birth was given to the school as 22.7.1932 and the same was, therefore, recorded in the Matriculation Certificate. In 1958, when the applicant entered Government service, he declared his date of birth on the basis of the Matriculation Certificate as 22.7.1932. Again, when he was appointed in the Office of the Chief Controller of Imports and Exports in 1975 on direct recruitment, he declared the same date of birth. He was unable to obtain the original date of birth certificate from the Rawalpindi Municipality where he was born, till 1989. It was only in 1989 that his elder brother went to Pakistan and succeeded in obtaining an extract from the Birth and Death Register of the Rawalpindi Municipality, according to which, the applicant's real date of birth was 27.2.1933. The authorities had not disputed the certificate and yet they had rejected it relying on a Circular dated 30.11.1979 issued by the Government of India. This Tribunal has held in Hira Lal Vs. Union of India,



ATR 1987(1) CAT 414 that the provisions of the Circular dated 30.11.1979 would not be applicable to persons who had entered service prior to its issuance. Secondly, when FR 56 provides that a Government servant shall retire on attaining the age of 58, no departmental instructions can take away the right by preventing a Government servant from getting his date of birth corrected, when ^{he} had given a wrong date of birth at the beginning. The principle laid down in Hira Lal's case was reiterated in R.R. Yadav's case, ATR 1987(2) CAT 506. The fact that the extract of the Birth and Death Register is accepted as a genuine document by the respondents shows that there had been a genuine bona-fide mistake when the date of birth had been originally recorded. The applicant had not ^{derived} taken any advantage by declaring his date of birth as 22.7.1932 in the first instance. In these circumstances, merely because the applicant could not move entry into service in the matter within ~~the~~ 5 years from the date of ~~1932~~ which was because he could not get the relevant evidence within that period, his request for change of date of birth based on the original record, should not have been rejected.

4. Shri M.L. Verma, the learned counsel for the respondents strongly refutes the contention of Shri R.K. Kamal. He in turn relied on a large number of judgments of this Tribunal. The applicant had himself furnished his Matriculation Certificate when he entered Government service first in 1958 and then in 1975, when he joined his present office. He cannot now be heard at the fag end of his career/ to say that the Matriculation Certificate which is an accepted source

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of evidence for the purpose, was wrong and to gain some months of service now by having it corrected. Hira Lal's case was of an illiterate person who could not give his correct date of birth when he entered service and that case has not application here because the applicant in this case is an educated person. Shri Verma strongly relied on the GFR 79 as well as the instructions of the Government of India dated 30.11.1979.

58. We have considered the matter carefully. The wealth of case law cited on both side makes it clear that the decision to be rendered in an individual case depends on the facts of that case and no hard and fast rule can be laid down applicable to all cases. In this case, when the applicant entered service, his date of birth was recorded on the basis of the Matriculation Certificate produced by him. Now it cannot be disputed that the Matriculation Certificate is generally an acceptable record of date of birth. The applicant repeated the same date of birth in 1975. When he had lived by the same date of birth all these years, recorded on the basis of an entry in the Matriculation Certificate and not on the basis of a mere statement made by him when he entered service, we feel that there has to be a finality in

about the matter. When he now seeks to produce an extract of the Birth and Death Register of the Rawalpindi Municipality obtained by him in 1989. Between two documents evidencing date of birth, both equally acceptable for the purpose of making an entry in a service book, if the respondents chose to rely on the document

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produced at the time of entry into service, we find nothing illegal in their action. After all, what we have to see is whether in declining to change the applicant's date of birth, the respondents had acted arbitrarily. We are of the view that they had sufficient evidence with them already not to accept a request for a change. We are not impressed by the argument on behalf of the applicant that the decision to reject his request should have been taken only by the appointing authority because rejecting the alteration ⁱⁿ date of birth would amount to retiring the applicant prematurely. On the other hand, the applicant was to retire according to the record on 31.7.1990 and it was he who ~~should~~ ^{had} to postpone the date of birth. There was ~~an~~ element of punishment involved in rejecting his claim and so the contention that the decision should have been taken by the appointing authority has no merit.

6. In view of the above, the application is rejected at the stage of admission itself leaving the parties to bear their own costs.



(P. SRINIVASAN)
MEMBER (A)



(P.K. KARTHIKEYAN)
VICE CHAIRMAN (J)