

In the Central Administrative Tribunal

Principal Bench: New Delhi

OA No.1789/90

Date of decision: 26.02.1993.

Shri Desh Raj Singh

...Petitioner

Versus

Union of India through the
Secretary, Department of Personnel
and Training, North Block, New
Delhi & Another

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner

Shri M.R. Bhardwaj, Counsel.

For the respondents

Shri P.H. Ramchandani,
Senior Counsel.

1. Whether reporters of local papers may be allowed to
see the Judgement? *NO*
2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

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Judgement

The petitioner, Shri Desh Raj Singh was appointed to the Indian Administrative Service (IAS for short) in 1962 on the basis of the result of the Combined Services Examination held by the Union Public Service Commission (UPSC for short) in 1961. He was allocated to the cadre of Uttar Pradesh. In the application for admission to the said examination in the prescribed form submitted to the UPSC in 1961, the petitioner recorded his date of birth as 15.5.1938. The said date of birth was supported by the date of birth as recorded in the High School Examination Certificate, issued by the U.P. Board of High School and Intermediate Examination. The date of birth as recorded in the application form submitted to the UPSC thereafter automatically forms the basis of all records created in the Central/State Government. The petitioner admits that he had recorded his date of birth as 15.5.1938 in the application submitted to the U.P.S.C. His case is that he had done so under

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a misgiving about his date of birth and further submitted that this misgiving did not come to his notice till early 1988 when his mother talked to him about his elder sister, Damyanti Devi, who expired in 1952 at the age of 14 years. In the course of this talk the petitioner's mother told him that late Damyanti Devi was $1\frac{1}{2}$ years older in age to him and was born in January, 1938. This set him to thinking. If his elder sister was born in January 1938, his date of birth cannot be 15th May, 1938. Then followed a chain of actions. He, therefore, wrote a letter to his uncle living in his native place on 12.5.1988 and asked him to obtain a copy of the High School certificate regarding his elder brother Shri Hans Raj Singh and if that were not available, to obtain his date of birth from the school register in the form of a certificate. He also asked him to obtain a similar certificate in regard to the date of birth of his elder sister Kumari Damyanti Devi who did her middle school examination from the local girls school. The certificate in regard to the elder sister so obtained and produced in support of his contention reads as under:-(English version)

"Ram Piari Kanya Pathsala (Junior High School),

Debai, Bulandshahar:

This is to certify that the date of birth of Damyanti Devi, daughter of Shri Shiv Raj Singh, according to the record (No.845) of School is 14.1.1938 (Fourteenth January Nineteen Hundred thirty eight)."

In regard to his elder brother the certificate is issued by Kuber Inter College, Debai, Bulandshahar and reads (English version):-

"Character Certificate

Kuber Inter College.

Book No..... No.2824

I am pleased to certify that Shri Hans Raj Singh son of Shri Shiv Raj Singh was the student of this college from the year 1946 to 1952. He has passed the High School Examination with 1st Division in the year 1952. According to the admission register of students his date of birth is 26.3.1936 (twenty six March, nineteen

hundred thirty six). 13

To the best of my knowledge during his study period he has been a man of good moral character and he has not taken part in any illegal activities.

I wish him all success in life."

In addition to this the petitioner has filed a 'Special Certificate of Birth' issued under Section 17 of Registration of Births and Deaths Act, 1969 by the Municipal Corporation of Delhi, according to which a male child was born in Victoria Hospital for Women on 26.10.1939. The name of the father of the child given is Shri Shiv Raj Singh. However, the column for filling the name of the mother who gave birth to the child is left blank. There is another letter issued by the Medical Superintendent, Kasturba Hospital on 21.3.1989, addressed to the petitioner annexed to the petition. The said letter reads:-

"With reference to your application dated 20.3.89, it is to inform you that as per delivery register for the period October, 39 and Smt. Ram Piyari, aged 22 years, Para III R/o, Maliwara, Delhi delivered a living male child in this hospital on 26.10.1939. However, husband's name of Smt. Ram Piyari is not available in the record, so husband's name could not be verified."

Besides the petitioner's mother has also filed an affidavit dated 16.6.1989 in support of the claim of the petitioner.

After the petitioner had collected the above set of evidence he made a representation dated May 22, 1989 to the Government of India, Department of Personnel and Training through Chief Secretary, U.P. The relevant part of the said representation reads as under:-

"I have to make the following submissions in regard to my date of birth viz. 15th May, 1938, as recorded in

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the service records and my actual date of birth.

2. I joined I.A.S. in 1962 after selection through the Combined Services Examination of 1961. The date of birth, as recorded in my High School certificate in 1953 from the UP Board of High School & Intermediate Education is 15.5.1938. The same was declared by me in all the required documents concerning the IAS etc. examination, 1961. Accordingly, this date has been recorded in my service records.

3. Sometime early in 1988, I happened to be told by my mother that the date of birth of my late elder sister, Damyanti Devi was January, 1938. She expired in 1952 at the age of 14 yrs. It created a genuine doubt about the veracity and correctness of my own date of birth viz. 15.5.1938 in my mind. Obviously, there could not be a difference of five months between the birth of my elder sister and mine.

4. I probed the matter further and found that a genuine mistake had inadvertently occurred in declaring my date of birth at the time of my admission in school. The background of the mistake is that my eldest brother Sri Hans Raj Singh and I were admitted at the same time in the Kuber Inter College, Debai, Bulandshahr, UP. It was the year 1946. I was admitted to class III while my eldest brother was admitted to class V. I am told that one of our Munshis had taken both of us for admission to the school, as my father had gone out of town on that day. He had the actual date of birth of my elder brother Hans Raj Singh with him which is 26th March, 1936. It was because he was born at Debai, Bulandshahr itself and the documents were locally available. As I was born at Delhi in the Kasturba Hospital, no document regarding my date of birth was found to be available at that time with my parents. There was a sister-younger to my elder

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brother and senior to me - who was studying in 1946 in the local girl's school called Ram Piyari Kanya Pathshala Junior High School, Debai Bulandshahr. She was born on 14.1.1938. Her correct date of birth is recorded accordingly in the school register. She was also born at Debai, Bulandshahr and therefore her actual date of birth had been registered in the school.

The Munshi, obviously forgot about my having an elder sister. Perhaps under the impression that I was the 2nd son of my parents, he seems to have roughly added 2 years and 2 months to my elder brother's date of birth (26.3.36). Thus an assumed date of birth was given to me (15.5.38) at the time of my admission to the school.

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The birth certificate issued by the Zonal Office of the Municipal Corporation, Delhi tallies with the Delivery register certificate given by the Kasturba Hospital Authorities. While the Municipal certificate has mentioned my father's name as well as that of my Grand father (Shiva Raj Singh s/o Basdeo Sahai). The Kasturba Hospital 'Delivery register' has mentioned my mother's name as well as the fact that it was her 3rd child. All these facts are to be taken together as the Municipal records were prepared on the information supplied by the Hospital from their Delivery Register. It, therefore, establishes that a 3rd male child was born to smt. Ram Pyari w/o Sri Shiva Raj Singh on 26th October, 1939."

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In view of the submissions made in paragraphs above, supported by documentary proof, I am to state that my

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date of birth as presently recorded in the service records viz. 15.5.1938, is not my real and correct date of birth. That my true date of birth is 26th October, 1939.

10. I accordingly request you to kindly have the matter considered in the light of the facts mentioned in this petition and obtain appropriate orders to have my date of birth changed in service records from 15.5.1938 to 26.10.1939. Incidentally, I may submit that with the change in my date of birth from 15.5.38 to 26.10.39. I would not have been ineligible to take the IAS etc. Examination, 1961."

The said representation, however, was rejected by the respondents vide letter dated 7.11.1989 which states that:-

"Reference your letter dated 22.5.1989 addressed to the Govt. of India relating to above subject. I have been directed to state that the Govt. of India has informed that as per Rule 16-A of ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFIT) RULES, 1958 the Govt. of India accepts the date of birth written in the application-form of the service and recorded in the service book and in other similar official records. The date of birth accepted in this way can only be changed in case the Govt. of India is satisfied that at the time of acceptance of date of birth an actual clerical error had occurred. The date of birth mentioned by you as 15.5.1938 at the time of filing the application for appearing in the I.A.S. Examination held in 1961, was accepted by the Govt. of India. At the time of acceptance of date of birth, there was no actual clerical error. As such according to law laid down in ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFIT) RULES, it is not possible for the Central Govt. to accept your request regarding change in date of birth at the stage of your career."

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2. The learned counsel for the petitioner, Shri M.R. Bhardwaj, submitted that the evidence produced by the petitioner is irrefutable and it was unfair on the part of the respondents to have rejected his representation. He further reiterated the stand taken by the petitioner that the certificate given by the Medical Superintendent which only gives the name of the mother to whom the male child was born on 26.10.1939 and the certificate issued by the Registrar of Births and Deaths which only gives the name of the father have to be read together to arrive at the correct date of birth of the male child born on 26.10.1939 to Smt. Ram Piyari wife of Shri Shiv Raj Singh. He further submitted that the petitioner has had no occasion to raise this issue earlier, as it was only after the death of his father in 1986 that his mother came to live with him in 1988, when she happened to mention about the birth of his elder sister in January, 1939. In such a situation the petitioner could not have raised this matter earlier than 1989. He further submitted that the petitioner cannot be barred from seeking rectification of a bonafide mistake which occurred at the stage when he joined the primary school where a functionary of the household gave his date of birth on his estimation taking his elder brother's date of birth as the benchmark. It is this date of birth that has come to be reflected in the Matriculation/High School certificate and later on in the service record of the petitioner maintained by the respondents. To fortify his case the learned counsel relied on the following judicial pronouncements:-

i) **AIR 1981 SC 361 Harpal Singh v. State of Himachal Pradesh.**

3. A perusal of this judgement would indicate that there is no principle of law of universal application which can be derived from **Harpal Singh** (supra) case. and the judgement is

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inextricably woven with the facts and circumstances of the case.

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ii) **1976 (1) SLR/ Manak Chand Vaidya v. State of Himachal Pradesh and others.**

4. In this case the date of birth of Shri Manak Chand which was recorded in the service book as March, 13, 1915 was founded on the Matriculation certificate issued by the Punjab University, Lahore. Although the respondents rejected his petition for change in the date of birth, the Punjab University, Chandigarh corrected the date of birth in the Matriculation certificate as it found that the date of birth of the petitioner was in fact March 13, 1917. The University, therefore, issued a fresh Matriculation certificate on July 21, 1973 with the corrected date of birth. It was in these circumstances that the petitioner challenged the order of rejection of his representation by the respondents regarding the change in the date of birth. The facts of the case, therefore, are distinguishable.

iii) **ATR 1987 (1) CAT 608 Shiv Prasad v. General Manager, Northern Railway.**

5. The above case cited by the learned counsel also does not bear any resemblance to the facts before me. This was a case where the petitioner was appointed as Gatekeeper on the Northern Railway on July 5, 1950. The claim of the petitioner was that at the time of appointment he was not asked to give any date of birth and as such he had not been a party to the date of birth recorded in the service book of the petitioner. The petitioner wanted to get his date of birth changed on the basis of Scholar Register and school Transfer Certificate. After going into the details of the case the Tribunal came to the conclusion that the date of birth entered in the service record cannot be held to be wrong by placing reliance on the entry relating to the date of birth in the transfer certificate.

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accepted by the Central Government, as the date of birth of such person.

16-A(4) The date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)."

It emerges from the above rules that a person who is appointed to the service after the commencement of the All India Services (Death-cum-Retirement Gratuity Benefits) Amended Rules in 1971 the date of birth as declared by such person in the application for recruitment to the service and accepted by the Central Government shall not be subject to alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule 2 or 3 of the Rules. The learned Senior Counsel Shri Ramchandani further submitted that prior to the introduction of the above provisions the officers who were already in position at that time were given an opportunity to declare their date of birth. The Government considered the representation received from the members of the service in response to the opportunity provided for declaration of the date of birth and the dates of birth of the officers so declared and as accepted by the Government were notified. An averment to this effect is made by the respondents in paragraph-6 of the counter-affidavit. This fact has not denied by the petitioner in his rejoinder. The said averment has been disposed of by a cryptic statement in the rejoinder to the effect that this "calls for no reply". The petitioner who entered the service as a result of examination conducted in 1961 declared/deemed to have declared his date of birth as 15.5.1938. This is the same date which he has entered in his application for recruitment to the service. There is, therefore, no occasion for him to make a representation for revising his date of birth in 1989 when his date of birth has

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6. The respondents have filed their counter-affidavit and have contested the contentions of the petitioner. Shri P.H. Ramchandani, Senior counsel appearing for the respondents submitted that the conditions of service of the members of All India Services are regulated under the various rules framed under the All India Services Act, 1951. The All India Services (Death-cum-Retirement Benefit) Rules, 1958 (Rules for short) which regulate the issue raised herein are framed under the said Act. Rule 16-A of the Rules regulates matter relating to date of birth of a member of the service for the purpose of determination of the date of superannuation. I consider it expedient to reproduce the said rule hereunder:-

"16-A(2) In relation to a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971.

(a) Indian Administrative Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Administrative Service (Recruitment) rules, 1954; or
(b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Police Service (Recruitment) rules, 1954; or
(c) the Indian-Forest Service under clause (a) or clause (aa) of sub-rule (2) of rule 4 of the Indian Forest Service (Recruitment) Rules, 1966; the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.

16-A(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be

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already been accepted in accordance with the provisions made in the statutory rules. Further, there is no bonafide clerical mistake and the statutory rules do not provide alteration of date of birth on any other account, once the date of birth has been accepted by the Central Government. It was further submitted that while the case is being agitated by the petitioner on the basis of a fresh set of evidence, he has not challenged the validity of Rule 16-A(4) of the Rules which gives the circumstances in which the date of birth can be changed. The fact that the rule mentioned above applies to the petitioner is also not disputed. Unless, therefore, there is any thing arbitrary or discriminatory in the application of the rules to the petitioner the Court would not go against the statutory rules. The learned counsel asserted that the petitioner did not make any representation from 1961 to 1988. He also did not avail of the opportunity given to him prior to the enforcement of the 1971 amendment. The story that he became aware of the fact that he had a sister who was born in January, 1938 and died at the age of 14 years only in 1988 does not inspire confidence. The learned counsel further submitted that the certificates of the brother of the petitioner gives the details of the period when he attended that school. The certificate in regard to his late sister Damyanti Devi lacks the details as to period when she was a student in the said school. Further, if the date of birth of the members of the I.A.S. is allowed to remain in a continuous state of flux it would affect adversely the public policy of the Government. The learned counsel also submitted that the petitioner had also appeared in the IAS etc. examination in 1960. He could not have appeared in the 1960 examination if his date of birth, which is now claimed to be as true date of birth, viz. 26.10.1939 had been recorded in the application. He would have fallen short of 21 years of age on the crucial date of 1.8.1960, his age would have been 20 years, 9 months and 5 days. It did not suit him to give his true date of birth for

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the 1960 examination. He, therefore, chose to rely on the matriculation/high school certificate and recorded his date of birth as 15.5.1938 in the application form. If the true date of birth of the petitioner is 26.10.39, he appeared in the 1960 examination in violation of the statutory rules. Having taken the advantage of the recorded date of birth of 15.5.1938 for appearing in the 1960 examination he is now seeking to revise the date of birth to 26.10.1939. The circumstances in which the case has been founded do not lend credence to the claim of the petitioner for revising his date of birth.

7. I have heard the learned counsel for both the parties and have gone through the records carefully. The petitioner's stand is that it was a trusted functionary of the house who took him and his elder brother to the school for admission and he gave his date of birth by adding two years and two months to the date of birth of his elder brother. Further although the functionary of the house (Munshi) was trusted with the admission of the petitioner, he only knew the date of birth of his elder brother. He did not know the date of the petitioner. So he declared the petitioner's date of birth by taking recourse to simple arithmetic of adding 2 years and 2 months to the date of birth of his elder brother. There is, however, no explanation as to why he put his trust on differential 2 years and 2 months. There is also no explanation as to why such a trusted employee did not know that there was an elder sister of the petitioner. in his representation has The petitioner stated that "the Munshi obviously forgot about my having an elder sister". In my opinion this set of evidence lacks credibility. It is his further case that this fact came to his notice only in 1988 when his mother came to stay with him after the death of his father,

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culminating in his securing two certificates, one relating to his elder brother and the other to his late sister Damyanti Devi. The certificate regarding the date of birth of his late sister Damyanti Devi does not give the details of the period she studied in the school whereas the certificate relating to his elder brother although termed as 'character certificate' gives such particulars. The certificate of birth issued by the Municipal Corporation of Delhi said to relate to the petitioner gives only the name of the father of the male child born. It is unusual that the name of the mother is not indicated when specific columns have been provided to record the particulars of the mother e.g. name, literacy, occupation, nationality, religion, age etc. The second certificate relating to the petitioner is a letter addressed to him by the Medical Superintendent, Kasturba Hospital in response to his letter dated 20.3.1989 and gives the name of the mother of the male child who was born on 26.10.1939 but does not give the name of the father. That the two certificates should be read together to figure out the date of birth and the identity of the petitioner is a naive prayer. More so, when the petitioner was born in a hospital who are required to maintain complete record. The two documents are contradictory and I am not persuaded to accept them as proving that petitioner's date of true birth is 26.10.1939. There is another aspect which merits attention. The petitioner in his representation dated 22.5.1989 seeking change in the date of birth made it a point to state that "Incidentally, I may submit that with the change in my date of birth from 15.5.38 to 26.10.39 I would not have been ineligible to take the IAS etc. Examination, 1961." The petitioner is keenly aware that the date of birth should be such as not to render him ineligible for 1961 examination. Yet he has slipped to hark back to see whether he would be rendered ineligible for the 1960 examination in which he also had appeared only a year earlier. He could not have forgotten this milestone in his life. It is likely to invite the blame because he for violating the rules in 1960, that he fails to recall this event. Further,

the statement that the petitioner and his mother never talked about the date of birth of the brothers and sisters till does not seem to have any merit. 1988. It cannot be that the petitioner had no interaction with his mother till his father died, particularly when he has served in the State of U.P. - to which he belongs- for most of his service career. Taking all these circumstances into account, I am of the opinion that the fresh set of evidence, as discussed above, lacks credence. The date of birth of the petitioner as recorded in the application form for 1961 examination and accepted in accordance with the statutory rules is not liable to be altered at this point of time. In the case of **Govt. of Andhra Pradesh & Another v. M.Hayagreeb Sarma** 1990 (13) ATC 713 the Hon'ble Supreme Court in somewhat similar circumstances rejected the prayer of Shri M. Hayagreeb Sarma for alteration in the date of birth. The petitioner in the said case had joined service on 12th November, 1956. At the time of his joining service, March 9, 1932 was recorded as his date of birth in the service book on the basis of SSLC certificate. He made an application on January 5, 1962 for alterations of his date of birth as entered in his service book on the ground that his date of birth as recorded in his service book was apparently wrong and incorrect in view of his elder brother's date of birth who was also in Government service was recorded as September 2, 1931. The petitioner supported his case for alteration of date of birth relying on the extracts of entry in the register of births and deaths. His application was, however, rejected by the Government of Andhra Pradesh. He filed a petition in the State Administrative Tribunal challenging the statutory rule regulating date of birth of the State Government employees. Their Lordships set-aside the decision of the Tribunal and observed:-

"In the instant case as already noted by the respondent's date of birth had been recorded in his service book on the basis of SSLC certificate at the time of entry into service, therefore, that entry had become final and he was not entitled to reopen the correctness of that entry on the basis of

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extract of birth register.....

'The Births Deaths and Marriages Registration Act 1986' is central law which is referable to Union List. Section 9 of the Act merely lays down that copies of entries of the registers relating to births and deaths maintained under the Act shall be admissible in evidence of proving the births and deaths. It merely relates to admissibility of documents, it does not seek to regulate conditions of service of a State employee...."

It is clear from the above that even a complete certificate indicating the entry of birth in the register of births and deaths cannot shake the date of birth once it has been accepted in accordance with the statutory rules. In the matter before us even the copy of the entry from the register of births suffers from infirmity, as adverted to earlier. Further the date of birth recorded by him in his application for admission to IAS examination has come to be accepted by the respondents in accordance with statutory Rules, as earlier observed. The petitioner also did not make any representation seeking change in the date of birth in 1971 when existing members of the service were given an option to do so before the amended Rules came into force. Thus the issue of date of birth came to be finally settled. In a recent judgement in **Executive Engineer, Bhadrak (R&B) v. Rangadhar Mallik JT 1992 (5) SC 364** the Hon'ble Supreme Court has held:-

"It is not in dispute that the respondent himself had accepted his date of birth as 27.11.1928 after entering into service on 16.11.1968. The respondent also affixed his signature in the service roll in token of his acceptance of his date of birth as 27.11.1928. The respondent did not challenge the aforesaid date of birth nor made any representation till 9.9.1986....

The representation made by the respondent was considered by the Governor of Orissa and the order of rejection was communicated to the respondent vide letter dated 27.2.1989.....

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The respondent was appointed initially as a Gang Mulia on work-charged basis. The date of birth was recorded as 27.11.1928 as per horoscope submitted by the respondent himself and he had also put his signature in the service roll accepting his date of birth as 27.11.1928. The respondent did not take any step nor made any representation for correcting his date of birth till 9.9.1986. The representation as well as the documents furnished by the respondent were considered by the Governor and thereafter his representation was rejected. It cannot be said that such action taken by the Government was in any manner illegal or against any principles of natural justice."

8. It is observed from the above that once the date of birth is recorded in the service record and accepted it cannot be challenged after a long efflux of time.

9. In the above facts and circumstances of the case, the fresh set of evidence produced by the petitioner in support of his claimed true date of birth lacks credibility and conviction. The fact that he had appeared in the 1960 examination taking advantage of the recorded date of birth viz. 15.5.1938 as given in the High School/Matriculation certificate and that he would not have been eligible for appearing in the examination on the basis of his true date of birth also militates against the change of date of birth as prayed for. Having regard to the above circumstances, I do not see any merit in the case. The same is accordingly dismissed. No costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

'San.'