

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

MP 19/1991 IN  
OA 2420/1990

DATE OF DECISION : 28.11.91

SHRI BISHAN SARUP

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI R.L. SETHI

FOR THE RESPONDENTS

...SHRI ROME SH GAUTAM

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, retired highly skilled Fitter from the Railways, filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by non correction of his date of birth in spite of his representation dt. 8.8.1989 from 1.10.1928 to 26.7.1932. The applicant has sought the relief that his date of birth be corrected in accordance with the school leaving certificate as 26.7.1932 to and allow consequential benefits retrospectively.

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2. The facts of the case are that the applicant was recruited as a Khalasi on 1.11.1950. The education of the applicant is upto class ninth, but he was declared as illiterate. According to the extant rules at that time, the date of birth of literate staff was got recorded in the service sheet by the person himself whereas in the case of illiterate staff, the date of birth was recorded by a senior Class-III Railway servant and witnessed by another Railway servant. According to the applicant, his date of birth was wrongly recorded as 1.10.1928. The applicant never learnt about this fact at that time. The applicant had a school leaving certificate which he has also filed as Annexure A-2 to the application where his date of birth is recorded as 26.7.1932. The applicant knowing that his date of birth is wrongly recorded as 1.10.1928 made a representation for the correction of his date of birth in 1981 and 1982 and the matter remained under investigation. However, no relief was granted to the applicant till he remained in service and he retired on attaining the age of superannuation as per recorded date of birth in October, 1986. On 7.11.1986, the respondent No.2 made certain querries from the applicant (Annexure A-4) and the applicant immediately replied to these querries on 25.11.1986 (Annexure A-5). However, no decision has been taken by the respondents. The applicant, therefore, made another representation in August, 1989 (Annexure A-1) which had not been disposed of and so the applicant has filed the present application in November, 1990.

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The applicant has also filed MP 2420/90 for condonation of delay.

3. The application is opposed by the respondents on the ground that the application is barred by Section 21 of the Administrative Tribunals Act, 1985. The applicant has retired in October, 1986 and the present petition has been filed in October, 1990. So the present petition has been filed after a lapse of 4 years. The date of birth of the applicant was recorded in the service sheet in English and the applicant had read upto class nineth so he could very well read the same as he was conversant with the knowledge of English language. The applicant also signs in English as is evident from the record. The date of birth recorded in the service record was witnessed by Head Train Examiner, Saharanpur and the applicant has also made a note of it in the service sheet. The applicant, therefore, cannot say that he was unaware of his date of birth being recorded as 1.10.1928. It is said that the applicant did not reply to the memo dt. 7.11.1986 (Annexure R-1) which was served on the applicant after retirement. It is admitted to the respondents that the applicant has made a request for change of date of birth in March, 1984, but he did not approach the respondents earlier to this date. The applicant has not moved the application before 31.7.1973 as was required in terms of

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S. F. No.5719. So the belated application of the applicant for correction of date of birth was not maintainable. The respondents have also annexed the S.F. No.5719 as Annexure R-2 to the counter.

4. Heard the learned counsel at length. On the basis of the recorded date of birth, 1.10.1928, the applicant finally retired from the service on 30.9.1986. The applicant has not come for the grant of any relief for a direction to the respondents for correcting his date of birth to 26.7.1932 while he was in service. It is stated by the applicant that he made a request for the change of date of birth in 1981/1982. When the date of birth of the applicant was not changed as per his prayer before the departmental authorities, then he should have in every case come before the competent authority for getting his case legally adjudicated upon. After retirement, the applicant kept silent for about 4 years and it is in October, 1990 that the applicant has filed this application. Thus the present application is hit by Section 21 of the Administrative Tribunals Act, 1985 which prescribes a period of limitation for redress of any grievance arising out of service matter. Since the applicant reached the age of superannuation on

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30.9.1986, though according to his alleged date of birth, 26.7.1932, he should have not reached the age of superannuation on this particular date. <sup>also</sup> In that event, he should have immediately filed a representation before the respondents and after waiting for the prescribed period of six months should have filed the application before the Tribunal and in any case within one and a half year from the date when he attained superannuation according to the recorded date of birth, i.e., the applicant should have filed the application in every case by March, 1988. The applicant has not done that. Now coming to the application for condonation of delay under Sub clause 3 of Section 21 of the Administrative Tribunals Act, 1985, the applicant has to make out a sufficient cause for not coming within the prescribed period of limitation. The only point urged in the MP No. 2420/1990 is that the matter was under consideration of the respondents who investigated the same and no reply was received from the respondents in spite of written and verbal representations. So the applicant finally preferred an appeal in August, 1989 before the General Manager (Annexure A-1) and as such the delay in filing this application Firstly, no rigid view can be taken regarding limitation if the applicant can in any way explain in a satisfactory manner that he was prevented by a reasonable and sufficient cause in not coming to the court earlier. However, in this case the only point urged by the applicant in the



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application for condoning the delay is that he was awaiting the reply to his representation. Then he should have come within 1 year after waiting <sup>for</sup> 6 months of the result of his representation. A reasonable cause is one which a person believes that the factual happenings were in such a manner that a reasonable person could not have acted in a particular manner. This is not the case here. Merely awaiting the reply from the respondents will not in any way taken to be a sufficient reasonable cause. It appears from the record that the respondents have asked certain querries from the applicant by the letter dt. 7.11.1986 (Annexure A-3). The applicant has also alleged to have replied to the same by the representation dt. 25.11.1986 (Annexure A-4). However, if no reply was received to this representation on November, 1986, then even 1 year after the same, i.e., by November, 1987, the applicant should have filed this application while in fact he has done in October, 1990, i.e. after 3 years. In this petition for condonation of delay, there is also no mention of the fact that how the period from 1987 to 1990 can be accounted for. The applicant has mentioned that an appeal was made in August, 1989. There was no order against which any appeal could have been preferred. If the word appeal is a misnomer for the word representation, then in that case also,

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the applicant should have come after waiting for 6 months from that date, i.e. till February, 1990, but the applicant has come in October, 1990 and there is no explanation for this period from February, 1990 to October, 1990.

5. The learned counsel for the applicant has referred to a judgement in OA 1055/1987 decided by the Principal Bench on 1.11.1990-Sh.S.D.Sharma Vs. UOI. But in that case, the application was filed within time. There is no dispute that a retired person can also be given benefit of the corrected date of birth in the service record by compensating the person monetarily. The applicant has to satisfy that he was prevented by sufficient cause in not availing of <sup>prescribed</sup> judicial remedy, for redress of his grievance within the prescribed period.

6. The learned counsel for the applicant has also referred to Mukhdev Prasad Vs. UOI, 1988 ATR (2) CAT 22 that there is no limitation for illegal orders and on technical grounds a meritorious claim should not be rejected. However, in this case, there is no order <sup>as such</sup> and secondly, it was the applicant who had to <sup>represent</sup> before his retirement or immediately on retirement to the departmental authorities that he had not reached superannuation because a wrong date of birth was recorded in service record, i.e., 1.10.1928 and

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that this date of birth recorded be changed to 26.7.1932.

Thus the facts of that case cannot be applied to the present case.

7. The learned counsel has also argued at length on merit stating that in the school leaving certificate of Baldeo Das Bajoria High School, Saharanpur (Annexure A-2), the date of birth is recorded as 26.7.1932 and this should be taken to be the correct date of birth. However, this certificate was issued on 18.10.1949 and the applicant joined the service with the Railways in November, 1950. The applicant joined in that school only on 10.7.1948 and remained there till 30.6.1949. He is shown to have failed in Class-IX. In the representation dt. 25.11.1986, the applicant has stated that the original school leaving certificate was handed over to the then dealing clerk subsequently. He further stated that necessity of obtaining a duplicate school leaving certificate arose when he found that the recorded date of birth was wrong. However, on <sup>perusal</sup> of certified copy filed by the applicant of the Scholar's register and the transfer certificate form (Annexure A-2) show that it was issued in October, 1949 before the applicant joined the service of the respondents. It does not show that it is a duplicate copy or a second copy. Be whatever may, when the applicant obtained this copy, then

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he had another cause of action to come to the court of law or to competent court for getting the matter adjudicated if the departmental authorities did not agree to his request of change of date of birth. Thus it is clear that the present application is awfully barred by limitation and there is no sufficient and reasonable cause in the MP for condonation of delay.

8. The MP is, therefore, dismissed. The application, therefore, is also dismissed as barred by limitation leaving the parties to bear their own costs.

J. P. SHARMA 18-11-71  
(J. P. SHARMA)  
MEMBER (J)