

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.



O.A.No.2697/90

Date of Decision: 1-10-91 *Sw*

Shri Kazim Ali Khan,

Applicant

Shri G.D. Gupta,

Counsel for the Applicant

Union of India & Ors.

Respondents.

Shri M. Chandrasekharan
with Ms. Ashoka Jain

Counsel for the Respondents.

CCRAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman (Judicial)

The Hon'ble Mr. B.N. Dhoundiyal, Member (Admn.)

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

JUDGEMENT

(of the Bench delivered by Hon'ble Member
Shri B.N. Dhoundiyal)

This OA has been filed by Shri Kazim Ali Khan who has worked as Deputy Secretary in the Department of Law, Delhi Administration, against the impugned order dated 11.5.89 fixing his date of superannuation as 31.12.90.

2. The applicant passed the Higher Secondary Examination in the year 1951 from Anglo-Arabic Higher Secondary School, Ajmeri Gate, Delhi and the certificate issued by the Board of Higher Secondary Education shows his date of Birth as 1st January, 1933.

3. The applicant has stated that the above date of birth is erroneous. His version may be summed up as follows: He had represented against this to the respondents in 1972 duly supported by a certificate issued by the Municipal Corporation and an affidavit sworn by his father stating

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that his real date of birth is 23 August 1934, as recorded in Municipal records under the Registration of Birth and Death Act, 1969. On 9.7.75, the Under Secretary (Administration) of the Delhi Administration asked him to get his date of birth changed in Higher Secondary Certificate in the first instance before processing his case further. He learnt from his Uncle in 1988 that his parents were married only after 1st of January 1933 and on the basis of his fresh representation, Shri R.S.S. Shishodia the then Joint Director, Planning and Coordination, Delhi Administration conducted an enquiry. He referred to the following three conditions laid down by the Central Board of Higher Secondary Education for correction of the entries, in the School Leaving Certificate:

1. School Leaving Certificate of previous school, submitted by the parents of the candidate at the time of admission in a school.
2. Admission form filled in by the parents of the candidate at the time of admission in school.
3. Portion of the page of Admission and Withdrawal Register of the school where necessary entry has been made in respect of the applicant.

The Joint Director has stated in his letter dated 11.9.89 addressed to the Secretary, Central Board of Higher Secondary Education, New Delhi that he along with Shri I.P. Aggarwal, ADE (Planning), discussed this matter personally with the school authorities of MCD Primary School, Kucha Chelan, Darya Ganj, New Delhi and was informed that records earlier than December 1949 had either been misplaced or destroyed during the communal riots in 1947. However the authorities of Anglo-Arabic Senior Secondary School were able to trace the Register in which the names of all the candidates/students of that period have been

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found on a typed sheet pasted on their regular attendance Register, showing the date of birth of the applicant as 23rd August, 1934. Thus the entries in the records of the Municipal Corporation Delhi as well as the Anglo-Arabic Senior Secondary School were identical. On this basis, the Directorate of Education, Delhi Administration conveyed to the Central Board of Secondary Education in their letter dated 11.9.89 that they have no objection if the Date of Birth of the applicant was allowed to be corrected from 1.1.33 to 23.8.34 in the School Leaving Certificate. However vide letter dated 2.11.89, the Central Board of Secondary Education reiterated their earlier stand that corrections in the Date of Birth were not permissible without the school records and added that the applicant had already been informed by letter dated 18.8.89. A detailed representation made to the Central Board of Secondary Education on 14.2.90 and another submitted to the respondents on 4.12.90 did not elicit any reply.

4. The applicant has contended that there is no rule requiring change in date of birth in High School Certificate for changing the date of superannuation in the service records. A detailed enquiry had been held by Directorate of Education under Delhi Administration who were predecessors in interest of Central Board of Secondary Education. The Learned counsel for the applicant has relied on the following cases in support of his contentions:- **

5. On 31.12.90, an interim order was passed directing the respondents to allow the applicant to continue working on the post of Deputy Secretary (Law and Judicial), Delhi Administration. This interim order has been continued till date.

** Cases relied upon by the applicants:- 1976(1)SLR 402; ATR 1987(1) CAT 414; 1988(8) ATC 632; 1988(6) ATC 776; 1989(II) ATC 365; Judgement of Delhi High Court in CWP No.1546 of 1982, dated 4.8.89, 1987(7) ATC 886.

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6. The respondents have contended as follows:

The applicant had filed Writ Petition No.1835 of 1990 dated 1.6.90 before the High Court of Delhi, wherein, he had claimed almost the same reliefs with regard to change in date of birth. The High Court had dismissed the writ petition against which an appeal is stated to be pending in the Supreme Court. If the date of birth of the applicant is taken as 23.8.34, at the time when he joined Government service on 17.3.52, he would not have been eligible, being less than 18 years of age at that time. The Birth Certificate is not conclusive proof as it pertains to birth of any child and the applicant has not given any particulars regarding the date of marriage of his parents and dates of birth of other children. He could not satisfy the competent authority i.e. Central Board of Secondary Education and their final decision was communicated to him on 18.8.89.

7. The respondents have also filed a copy of the letter dated 20.3.91 along with a certified photocopy of the admission and withdrawal Register from Anglo-Arabic Senior Secondary School, Ajmeri Gate, Delhi which indicate that the date of birth of the applicant is 1st January 1933. The learned counsel for the respondents have relied upon the following authorities in support, in the above contentions: **

8. In his rejoinder, the applicant has argued that the writ petition filed with Delhi High Court against the CBSE had no relevance, as the present application is against the Delhi Administration and relates to his date of superannuation and the service record rather than the school leaving certificate. Even if he was less than 18 years of age at the time of entry in his service, _____

**Cases cited by the respondents: 1989(3) SLR 128;
1973(1) SLR 538; 1989 (9) ATC 540.

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under Rule-13 of Pension Rules, his service rendered till attaining the age of 18 years shall not count except for gratuity.

9. ~~We have gone through the records~~ of the case and have considered ^{the *by*} various rulings cited by learned counsel for both parties. The legal position is fairly well settled. Such cases are to be decided by taking into account the following factors:

- 1) Ordinarily the date given in the Matriculation Certificate is regarded as adequate proof.
(S.K. Sen Gupta Vs. U.O.I. -A.T.R.1986 CAT.177)
- 2) In case a civil servant disputes the entry in the matriculation certificate, it is his right to be heard, as his date of superannuation depends on the date of birth recorded in his service book and every civil servant has the right to be in service till attaining the date of superannuation. (Shri Man Chand Vaidya Vs. State of Himachal Pradesh & Ors.1976(1)SLR 402)
- 3) In itself, the entry in the Register of Births, Deaths and Marriages maintained by the Municipal authorities can only be taken as evidence that a child was born on that particular day (factum of birth and not date of birth). The applicant would have to prove his identity ^{*by*} as usually only ^{Register.} the names of the parents are given in the Birth /
- 4) In case the applicant is able to prove to the satisfaction of the ^{*by*} competent authority that the date of entry in the service book requires correction, the fact that he would have been below the age of 18 years at the time of entry into service will not debar such correction. The rules already ^{*by*}

provide that in such case, the service before attaining the age of 18 years shall not count for seniority etc. (Murtaza Ali Vs. Central Board of Excise and Customs, ATC 1988(8) 632).

10. In the light of the above, we find that the applicant had already made representation earlier and was advised to approach the Central Board of Secondary Education to prove his point. As his request for revision of the date of birth was rejected by the CBSE, he filed a writ petition in the High Court, which was also dismissed. It is true that in the Directorate of Education, his case was favourably considered but there is nothing on record to indicate that the competent authority i.e. the Administrator took the same view. The respondents have stated in their counter affidavit that the letter written by the Directorate of Education on 11.9.89 addressed to the Central Board of Higher Secondary Education was issued without any authority as they had no role to play in this regard. At any rate, the said letter merely conveys no-objection on the part of the Directorate of Education to the change in the date of birth of the applicant being made. Before that date, the Central Board of Higher Secondary Education had already informed the applicant by their letter dated 18.8.89 that correction of the date of birth was not permissible without the school record. We have noticed above from the Memorandum dated 9.7.75 issued by the Under Secretary (Administration) of the Delhi Administration that the authority competent to process

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the case of the applicant was the Administration Wing and not the Directorate of Education of the Delhi Administration. The applicant approached the Secretary (Administration) with his representation only on 4.12.90, after the Directorate of Education had written to the Central Board of Higher Secondary Education on 11.9.89. It is also noticed that the letter of the Joint Director of Education dated 11.9.89 was also relied upon by the applicant in paras 11 to 13 of the Writ Petition filed by him in the Delhi High Court which was dismissed by the High Court on 4.6.90. The respondents have produced an authenticated photocopy of admission and withdrawal register from Anglo-Arabic Senior Secondary School, Ajmeri Gate, Delhi which indicates that the date of birth of the applicant was 1st January, 1933.

11. In the conspectus of the facts and circumstances of the case, we are of the view that the applicant is not entitled to the relief sought in the present application. The application is therefore dismissed and the interim order passed on 31.12.90 is hereby vacated. The period he has served on the strength on the interim order beyond 31.12.90 will be treated as reemployment.

12. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A) 11/10/91

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN (J) 11/10/91