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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 517/1990.

DATE OF DECISION: July 6, 1990.

Shri Diwan Chand	....	Applicant.
Shri J.P. Verghese	....	Advocate for the Applicant
	V/s.	
Union of India & Ors.	....	Respondents.
Mrs. Sunita Sagar & Shri M.L. Verma	....	Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgement? *yes.*
2. To be referred to the Reporter or not? *yes.*
3. Whether their lordships wish to see the fair copy of the judgement? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

6.7.1990.

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Shri J.P. Verghese	ADVOCATE FOR THE APPLICANT
	V/s.	
Union of India & Ors.	Respondents.
Mrs. Sunita Sagar & Shri M.L. Verma	....	COUNSEL FOR THE RESPONDENTS.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is employed in Electrical Division No. II, CPWD, New Delhi, has prayed for a direction to the respondents to correct his date of birth from 9.7.1930 to 8.6.1938 in his service documents and to give him all the consequential benefits.

2. The applicant was appointed as Khalasi on 24.5.52 in the Electrical Division No. I, CPWD, New Delhi. He was promoted as Assistant Wireman on 1.11.1958 in the Electrical Division No. III, CPWD, New Delhi. He was confirmed as Khalasi vide Office Order dated 30.12.68 with effect from 1.4.66. Admittedly, he is to superannuate on reaching the age of 60 years. The applicant's case is that as per the School Leaving Certificate, which he had submitted at the time of his appointment, his date of birth is 8.6.1938, but for the first time, he came to know from his confirmation order dated 30.12.68 that his date of birth had been wrongly entered as 9.7.1930. He made a representation on 8.1.69 regarding the above discrepancy (Annexure A-2). He made another representation

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on 10.4.1976 (Annexure A-3) and still another on 4.12.84 (Annexure A-4), but neither his date of birth was corrected nor was he sent any reply. He again made a representation on 16.5.89 (Annexure A-5), which had been rejected vide letter dated 7.12.89. He contends that limitation of five years for seeking change in the recorded date of birth, as laid down in Note 5 below F.R. 56, cannot be applied to him and that he has been representing since 1969 and, therefore, he cannot be accused of any delay on his part.

3. The case of the respondents is that the record reveals that the School Leaving Certificate dated 11.8.49 was not produced at the initial stage; that as per the Medical Certificate, on the basis of which his date of birth had been recorded in the Service Book, the applicant himself had declared his age to be 22 years, but by appearance, the Medical Officer found him to be about 23 years old. The Medical Certificate is dated 22.7.1953. The applicant had signed in English below the entry of his date of birth in the Service Book which was prepared on 22.7.1953. It is further stated that if his date of birth is taken to be as 8.6.1938, as claimed by him, he would have been 14 years of age at the time of his appointment and thus ineligible for appointment under the Government and, as such, the applicant will be considered to have wilfully suppressed the facts to get into Government service. They have also filed Annexure R-I, which is a copy of Form of Option for Central Government Employees' Insurance Scheme. This shows that in his option in this connection, he had recorded his date of birth as 9.7.30 and this was given sometime in March, 1978.

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4. As the pleadings of this case ^{were} ~~are~~ complete, we heard the final arguments of the parties on 3.7.90 and we feel that this case can be disposed of at the admission stage itself.

5. The sole evidence on which the applicant seeks alteration in the recorded date of his birth is the School Leaving Certificate issued on 11.8.49 by D.A.V. Middle School, Yusafsarai, New Delhi. It is pertinent to note that the applicant did not file either the certificate or a copy thereof along with his application. However, the original was shown to us at the time of final hearing and a photo-copy of the same was also made available. This certificate shows that the applicant joined that School on 11.5.49 and left it on 11.8.49, i.e., he remained in that School only for a period of three months. He was admitted to class VI-A. The date of birth in this certificate is recorded as Eighth June, Nineteen Thirty eight. However, there is nothing to show as to on which basis this date was recorded. He would have obviously studied upto 5th class in some other school and he would have normally obtained his School Leaving Certificate from that school and that certificate would have also shown his recorded date of birth. There is nothing in this certificate to show anything on that account. Further, the signatures of the Headmaster at the time he was given no objection to his admission in the school and his signatures on the same certificate at the time of leaving the school are prima-facie significantly different. In these circumstances, it is difficult to place any reliance on this certificate. Moreover, if he had any such certificate, he would have certainly produced it at the time of his appointment to the service. In the absence of any other proof, he was subjected to Medical Examination and the Medical

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Certificate shows that the applicant himself stated before the Medical Officer his age as 22 years, but the Medical Officer found him by appearance to be about 23 years of age. The Medical Examination was conducted after about a year of his appointment and ^{if} the applicant's age at that time was only around 15 years as would be the case based on his now claimed date of birth, the applicant would not have stated his date of birth as 22 years at that time and the Medical Officer also would not have found him by appearance to be 8 years older.

6. The Form of Option for Central Government Employees' Insurance Scheme also mentions his date of birth as 9.7.30 and it was signed by him in English. This was submitted by him much after his first representation in January, 1969 and if his date of birth had really been 8.6.38, he would not have written 9.7.30 as the date of birth in this Form of Option as on 10.3.1978. He also signed in English the Service Roll dated 22.7.53 in which his date of birth is recorded as 9-7-1930 on the basis of the Medical Certificate. In the light of the evidence produced by the respondents and the unreliability of the evidence on which alone the applicant relies, the claim of the applicant cannot be said to have been substantiated. The learned counsel for the respondents cited the case of UNION OF INDIA Vs. ABDUL SHAH - (1987) 4 ATC 424, and the case of T. RAMASWAMI Vs. THE GENERAL MANAGER & ORS, A.T.R. 1986(2) C.A.T. 332. In the latter case, School Transfer Certificate and in the former case, the Primary School Certificate were not accepted as conclusive evidence in regard to date of birth against the other evidence available on record. The learned counsel for the applicant also relied on the case of UNION OF INDIA Vs. ABDUL SHAH (supra). However, there is nothing in this which might

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help the applicant. Moreover, it could not be satisfactorily explained to us as to why the applicant did not seek remedy in a proper court of law when, according to him, he agitated about his grievance as early as in January, 1969 and no action had been taken on his representation. This application was filed on 16.3.1990 when the applicant is due for superannuation on 31.7.1990. We are not stating that a Government servant has no right to agitate before an appropriate judicial forum for getting his date of birth corrected till he retires on superannuation. However, the fact of delay cannot be easily brushed aside. In the case before us, the balance of evidence is against the applicant. It may also be stated that the applicant could not establish that he had submitted his School Leaving Certificate at the time of his appointment, even though he had stated in para 4 (d) of his application that he had done so. If he had really done so, there would have been no occasion for an entry in column 5 of the Service Roll on the point of date of birth having been recorded as "9.7.1930 as per M.C. attached".

7. In view of the above discussion, we see no merit in this application, which is hereby dismissed. Parties to bear their own costs.

Jomano
(J.P. SHARMA)
MEMBER (J)

6/7/1990
(P.C. JAIN)
MEMBER (A)

July 6, 1990.