

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

REGISTRATION NO. OA 1844/91 Date of decision: 20. 11. 91

Shri Jamal UddinApplicant.

Shri B.B.RavalAdvocate for the Applicant.
Versus

Union of India & ors.....Respondents

Shri P.S.MahendruAdvocate for the Respondents

CORAM

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER(A)

The Hon'ble Mr. J.P.SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. J.P.SHARMA, MEMBER(J))

The applicant, who retired as Senior Welfare Inspector, Northern Railway on attaining the age of superannuation as per recorded date of birth, filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the rejection of his representation for correction of his recorded date of birth from 30.1.1933 to 15.3.1938 by the impugned order dated 2.8.91(Annexure 'A'), reasons whereof were given in Annexure R1 dated 1.8.1991 filed as annexure to the counter of the respondents.

2. In this application, the applicant claim the relief for quashing the impugned order dated 2.8.91 with all consequential benefits and reliefs flowing from the quashing of the aforesaid order. He also prays for cost. ✓

3. The applicant had also earlier filed OA No.27/91 before the Tribunal for a direction to the respondents for correction of his date of birth from 30.1.1933 to 15.3.1938 and that application was decided vide order dated 26.4.91 by giving a direction to respondent No.2 to dispose of the representation dated 30.10.1990 filed by the applicant for correction of his date of birth. The impugned order has been passed in pursuance of that direction.

4. The grievance of the applicant is that the rejection of his representation dated 30.10.1990 is by a non-speaking order without giving any reason for its rejection and is in clear violation of the direction given in OA No.27/91 by the Tribunal in its order dated 26.4.91. It was expected from the respondents, according to the applicant, to give valid reasons for ignoring the evidence, the applicant has submitted along with his aforesaid representation which included a certificate issued by Madhyamik Shiksha Parishad, U.P., Allahabad correcting the earlier Matriculation certificate and showing the date of birth as 15.3.1938 in place of 30.1.1933.

5. The facts made out in this application are that the applicant joined the North Eastern Railway at Gorakhpur as a clerk in August, 1958. At that time the date of birth recorded in the certificate issued on passing the High School examination in the year 1952 from the Board of High School and Intermediate Education(U.P.) Allahabad now renamed as Madhyamik Siksha Parishad was erroneously recorded as 30.1.1933. When the applicant learnt about this mistake, he made efforts for the correction of the date of birth by sending representations to the said Board of High School(U.P.) Allahabad through the Raghbir Singh Kisan Higher Secondary School, Simboli(U.P.) from where

he passed the High School examination as a regular student. The applicant was subsequently transferred to Northern Railway on 7.6.1959 and since then was posted in the Headquarters' office at Baroda House, New Delhi. The applicant continued his efforts for the correction of the date of birth by making representations both to the Board of High School and Intermediate Education(U.P.) as well to the Railway authorities. In response to the representation made to the Secretary, Madhyamik Siksha Parishad, U.P., Allahabad, the applicant was informed by letter dated 15.10.90(Annexure A-12) that the request for change of date of birth was favourably decided and the second copy of the High School certificate was issued altering the earlier recorded date of birth to 15.3.1938. The applicant on the basis of this certificate applied to the respondents for correction of the date of birth by representation dated 30.10.1990 which was not disposed of while OA 27/1991 was filed and has since been disposed of by the impugned order in view of the direction issued in OA 27/1991.

6 The respondents contested the applicant stating that the representation of the applicant has been correctly decided. It is stated that the applicant had made vague averments in the application regarding the knowledge of the alleged discrepancy in the recorded date of birth as well as in the date of birth in the High School certificate which was earlier issued to the applicant. It is also stated by the respondents that the applicant never wrote earlier for the change of date of birth and on the basis of the recorded date of birth in the original High School certificate, 30.1.1933 was recorded as his date of birth in the service record. Thus according to the respondents there is no illegality in recording the said date of birth in the service record of the applicant and

and he is estopped from challenging the same. As per Railway Board's circular, if there was any discrepancy in the date of birth recorded in the service record, the applicant could have moved earlier to July, 1973. Since that has not been done, the applicant has no vested right to the date of birth corrected at the fag end of his service career.

7. It is further stated by the respondents applicant that the/ has not annexed the original High School certificate with his representation where the date of birth was earlier shown as 30.1.1933. It is also stated that there is no averment in the application that the original High School certificate as issued by the Education authorities of the UP Board, has at any time been cancelled or withdrawn. Since there is no evidence if original High School certificate has been cancelled, no importance can be attached to a duplicate copy produced by the applicant showing his date of birth as 15.3.1938. The representation of the applicant has been rightly disposed of and the reasons thereof have been mentioned in Annexure R.1 enclosed with the counter.

8. We have heard the learned counsel for both parties. We have gone through the reasons given in the Memorandum dated 1.8.1991(Annexure R.1 to the counter) on the basis of which the impugned order dated 2.8.91 was issued. In para³ the reasons have given. The first reason is that in view of the circular of the Railway Board dated 4.8.1972, the opportunity for change of date of birth was available only upto 31.7.1973 which he did not avail. It is further stated

that in case the date of birth in the Matriculation Certificate has been corrected by the State Education authority at the instance or on direction from a court of law, the request of the employee for alteration in the recorded date of birth should also be made before 31.7.1973. Since the representation was not covered under this notification, the representation was dismissed. However, this is not/reason in view of the Full Bench decision in the case of Mallela Sreerama Murthy & anr Vs. U.O.I & ors. (Full Bench Judgements of C.A.T 152).
held
It was/by the Full Bench that the right for correction of date of birth cannot be taken away of those employees who are in service by the Board's order dated 4.8.1972 which has been relied upon by the respondents in disposing of the representation of the applicant.

9. Since the representation has already been disposed of and we think it is of no use to send back once again the case/ to the respondents, as the learned counsel for the applicant has also filed a number of papers which have already been annexed to the earlier OA 27/1991 to be considered in this OA also. There is no dispute that the delay in applying for the correction of date of birth would not defeat the genuine cause of the person but at the same time, there must be cogent and convincing evidence to establish the fact that the recorded date of birth was ~~get~~ erroneously recorded and that there is definite evidence to correct the date of birth of the applicant. Normally High School certificate is taken as the basic certificate where the date of birth is recorded. In the present case, the applicant states that in the High School certificate itself, the date of birth was originally recorded earlier as 30.1.1933 while it should have been 15.3.1938. We have seen the second copy issued under the signatures of the Secretary, Board of High

School Education. In order to convince that the date of birth of the applicant is 15.3.1938, he has also filed the second copy of the certificate of the basic primary pathshala, Sakhera, Ghaziabad. In this certificate the applicant passed Class-IV and he entered the school in 1944 and left the school in May 1949 after passing the Class-IV. Scholar Register of R.S.K.Inter College, Sambhali(Ghaziabad) has also been filed by the applicant. The applicant took admission in Class VIII on 18.7.49. From the same institution, the applicant also did his High School in 1952 and Inter examination in 1954. It is totally incoherent and unbelievable that a person passing Class IV in May 1949 will be given entrance in Class VIII in the same year in the month of July on the basis of this School Leaving Certificate at Sakhera. However, in the Scholar Register certificate issued to the Sambhali Inter College, the last institution attended by the applicant is shown as Middle School Baxar. The applicant could not explain this discrepancy in his own certificates because the certificate from Sakhera institution was taken on 15.1.1980 and other certificates were also taken near about the same date. Learned counsel for the respondents rightly pointed out that the respondents were not aware of any production of the High School certificate by the U.P.Board nor they were ever informed about it. It is also argued that no correspondence to the State Education authority was sent through the respondents so that may be in know of the alleged correction or the correction which has been filed, has been made by the competent authority. Without filing the original certificate and the original order under whose authority the date of birth of the applicant has been altered from the date which was recorded in the original certificate has not been furnished either before the Tribunal or when the representation dated 30.10.90 was made, the **genuineness**

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of which cannot be accepted and the doubt regarding its authenticity as harboured by the respondents is not justified. In view of this, we also find that the duplicate copy filed by the applicant of the High School certificate which shows the date of birth as 15.3.1938 cannot be said to be convincing evidence and there is no evidence to show that the earlier certificate showing the date of birth as 30.1.1933 has been cancelled by the competent authority.

10. We have also seen the extract of the family register which the applicant got issued from Sakhera. These registers are maintained under the U.P.Panchayat Raj Act, 1947 and is thus a record which has come into existence after the birth of the applicant. When this record was prepared it is not known, according to the own case of the applicant this certificate was obtained in 1980. At the relevant time, the name of the applicant was entered in this family register maintained by the Secretary, Gram Panchayat on the basis of verbal information from the local people.

11. The applicant has since retired from service on the basis of the recorded date of birth though by virtue of the order passed by this Tribunal in OA 27/1991 dated 28.1.1991, the applicant continued to serve even after that date of superannuation which he attained on 31.1.1991. The continuance of the applicant in service beyond the age of superannuation was, therefore, as an interim measure by virtue of the order passed in OA 27/1991 and that cannot be at all considered in this application as an additional fact towards the consideration of the genuineness of the duplicate certificate relied upon by the applicant to show that the correct date of birth is 15.3.1938.

12. The best evidence regarding the date of birth of a person is the birth certificate which is

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PRINCIPAL BENCH, NEW DELHI

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DA 21/1991 in CA 1844/1991

SIRI JAMAL UDDIN VS. UNION OF INDIA & ANOTHER

The applicant has preferred this Review Application against the order dt. 20.11.1991 in CA 1844/1991.

2. As provided by Section 22(3) (f) of the Act, the Tribunal possesses the same powers of review as are vested in a civil court while trying a civil suit. As per the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure, a decision/judgement/order can be reviewed :

- (i) if it suffers from an error apparent on the face of the record; or
- (ii) is liable to be reviewed on account of discovery of any new material or evidence which was not within the knowledge of the party or could not be produced by him at the time the judgement was made, despite due diligence; or
- (iii) for any other sufficient reason construed to mean "analogous reason".

3. The point taken by the learned counsel in the Review is that the order of respondents disposing of the representation dt. 30.10.1990 has not been disposed of by the speaking order. This point is fully discussed in the judgement and needs no further elaboration of the reasonings of review of the finding.

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4. The points (B), (C), (D) and (E) refer to the earlier judgement in OA 27/91, but the direction in OA 27/91 was to the respondents only to dispose of the representation of the applicant dt. 30.10.1990. By the judgement under Review, that finding has not at all been touched and para-3 of the judgement under Review discusses that matter. The points (F) & (G) are covered by para-9 & 10 of the judgement under Review. The applicant cannot reopen the matter again.

5. In view of the above discussion, we find no force in the Review Application and, therefore, is dismissed by circulation.

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

MEMBER (J) 23/12/91

B. K. Chakravorty
(B.K. CHAKRAVORTY)
MEMBER (A)