

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(8)

Regn. No. O.A. 2646/1991. DATE OF DECISION: March 23, 1992.

Dr. Prem K. Gupta Applicant.

V/s.

The Director - Admin. & Respondents.
Vigilance, DGHS, & Anr.

CCRAM: Hon'ble Mr. P.C. Jain, Member (A).

Capt. Virender Kumar, counsel for the applicant.
Shri N.S. Mehta, Sr. Standing Counsel for the respondents.

JUDGMENT

The applicant, who is posted as Drugs Controller (India) in the office of Director General Health Services, New Delhi, has prayed in this application for changing his date of birth from 30.11.1934, as entered in his service record to 1.6.1936, solely on the basis of a revised Matriculation Certificate issued by the Jammu & Kashmir State Board of School Education in 1990, in pursuance of the Court's order. The respondents have vehemently opposed the application, firstly, by filing a short reply opposing admission of the O.A. and later on by filing a detailed reply after the applicant had filed his rejoinder to the aforesaid short reply. I have carefully perused the material on record and also heard the learned counsel for the parties with a view to finally disposing of the matter at the admission stage itself.

2. In brief, the case of the applicant is that he was born at Jammu in the State of Jammu & Kashmir and at the time he was staying with his father, who was practising Law at Bhimber, a small town in District Mirpur, which area is now a part of Pakistan occupied Kashmir, he had to shift with his family to Jammu in 1947. On coming to Jammu, he was put in 8th class in S.R. High School, Jammu in 1948 by a relative, who by mistake gave his date of birth as 30.11.1934. This was the date recorded in the school records and later on in his

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Matriculation Certificate as also in the service record, when he joined the Government service in 1968. The applicant contends that it was only in 1975 that his father told him his actual date of birth, i.e., 1.6.1936 and it then dawned on him that the date of birth recorded in the Matriculation Certificate was much different from his actual date of birth. Till then he was not aware of the error that had crept in 1948. In March, 1975, he accordingly moved the Drugs Controller (India) for the amendment of his date of birth vide his letter dated 5.3.1975. After protracted correspondence, the Government did not agree to his request and he had to file a civil suit, which was decreed in his favour and the first appeal to the Additional District Judge and the second appeal in the High Court of Jammu & Kashmir filed by the respondents in the suit were dismissed and accordingly, he was issued the revised Matriculation Certificate, as aforesaid, but the respondents have declined to make the necessary corrections in pursuance of the aforesaid decree in the date of birth entered in his service record; hence this O.A.

3. The case of the respondents, in brief, is that the applicant has not come to the Tribunal with clean hands and that he has suppressed relevant facts and has filed a false affidavit while filing the O.A. The plea of limitation has also been taken. Further, it is stated that the judgment of the civil court is not binding on the respondents, as they were deliberately and, in any case, for reasons best known to the applicant, not made a party in those proceedings.

4. I have carefully considered the rival contentions of the parties. The applicant has impugned Office Memorandum dated 29.7.1991 (Annexure - VIII), by which he was informed, with reference to his note dated 21st March, 1991 and 11th June, 1991, that his representations had been considered and the points putforth therein were the same as the points given in his earlier representations. As regards his statement

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in the representations that "not changing the date of birth is likely to be viewed as contempt of court of the J&K High Court", he was informed that the judgment of the High Court of J&K is in the name of J&K State Board of School Education and there was no direction to the Union of India. For the reasons stated above, the impugned order states that "it has not been found possible to take up the matter again with the Ministry of Health and Family Welfare". It may also be stated here that it has clearly come on record that after protracted correspondence from 1975 between the applicant and the Government authorities, the applicant was informed vide letter dated 31st August, 1979 (Annexure - 21) that in the circumstances mentioned therein, the question of alteration of date of birth does not arise in this case. The applicant admits that it was the final reply given to him. Thus, the cause of action to the applicant will be deemed to have accrued on or after 31.8.1979. This O.A. has been filed by him on 16.11.91. The cause of action, having arisen in this case three years prior to the date on which the Central Administrative Tribunal came into being, the Tribunal has no jurisdiction in the matter in accordance with the provisions of Section 21 of the Administrative Tribunals Act, 1985. This view has been taken by the Tribunal in a number of cases, some of which are:

- (1) V.K. Mehra Vs. The Secretary, Ministry of Information & Broadcasting, New Delhi (ATR 1986 (1)(CAT) 203);
- (2) Sukumar Dey Vs. Union of India (1987 (3) ATC 427 (CAT)(Calcutta);
- (3) V.S. Raghavan Vs. Secretary to the Ministry of Defence (1987)3 ATC 602 (CAT)(Madras).

This point of law has also been upheld by the Supreme Court in the case of P.L. Shah Vs. Union of India & Another (1989 (2) SLJ 49).

5. Learned counsel for the applicant urged at the bar that it was at the instance of the respondents themselves that the applicant filed the civil suit to get the revised

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Matriculation Certificate issued and then approached them for correction of the date of birth in his service record. In this connection, he relied on Memorandum dated 9.1.1976 (Annexure - 6 to the rejoinder of the applicant to the short reply filed by the respondents). This Memorandum is from the Directorate General of Health Services, addressed to the Assistant Drugs Controller (India), Central Drugs Standard Control Organisation, South Zone, Madras and it is with reference to the addressee's letter dated 25.9.75. It is stated in the Memorandum that the matter was referred to the Department of Health (Ministry of Health & Family Planning) and they have stated that Shri I.K. Gupta, Asstt. Drugs Controller (India), South Zone, Madras be requested to get his date of birth corrected in the Matriculation Certificate from the School Authorities so that the case may be processed thereafter. The name of the applicant in the case before us is Dr. Prem K. Gupta and not I.K. Gupta. Even presuming that this is a typing mistake and this Memorandum pertains to the applicant before us, this Memorandum cannot be taken as an assurance on behalf of the respondents that once he gets a revised Matriculation Certificate, his date of birth as entered in the service record will be changed. Further, after the above Memorandum was issued in January, 1976, a lot of correspondence took place between the applicant and the authorities and, as already stated, a final reply had been issued in 1979. Thus, the question of considering change of date of birth on the issue of the revised Matriculation Certificate was not kept alive, and, as such, issue of the revised Matriculation Certificate does not give to the applicant any extended limitation.

6. As regards the sole ground on which the applicant has approached the Tribunal for the relief prayed for by him, the respondents have taken the stand that as they were not parties to the proceedings in the civil suit as well as in the two appeals, and as no direction was issued in those

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12

proceedings to the Union of India, the decree in those proceedings is not binding on them. In support of their contention, they have relied on the judgment of the Supreme Court in Civil Appeal No.863 of 1988 decided on 8-11-1990 (between the Director of Technical Education and another Vs. Smt. K. Sitadevi) - AIR 1991 S.C. 308. In that case, the respondent was a lady Engineer appointed to State Government in 1955 and the Matriculation Certificate produced by her indicated her date of birth as 19.10.1929. She had filed suit for alteration of her date of birth to 21-8-1933. Andhra University alone was impleaded and not the State Government. Decree was obtained and a fresh certificate was issued correcting the date of birth. Her application for consequential correction in her service record was rejected by the Government. Her case filed before the Administrative Tribunal was allowed. In para 3 of the judgment, their Lordships observed as below: -

"3. It is not in dispute that in the suit the State of Andhra Pradesh was not impleaded and the only defendant was the Andhra University which had granted the certificate. The claim of the respondent for the alteration of date of birth was based upon a municipal certificate regarding date of birth. Though, the suit was contested, the State of Andhra Pradesh not being a defendant, the decree was not accepted by the State. The matter would have been certainly very different if the decree was obtained in the presence of the State of Andhra Pradesh. Mr. Madhava Reddy is, therefore, justified in his submissions that the decree and the municipal certificate on which reliance was placed in the suit were only pieces of evidence having no binding effect on the dispute. His submission is that the Tribunal has erred by relying upon them as binding on the State."

In para 6 of the cited judgment, the Supreme Court has held "We, therefore, clarify the legal position that a decree without the State being a party is not binding on the employer (The State) in the matter of determination of the date of birth." When the purpose of the applicant in initiating



proceedings in the civil suit was with a view to getting the date of birth as entered in the service record changed, and as the evidence adduced before the civil court also referred to that aspect of the matter, the applicant should have made the Union of India as a party to those proceedings. He has not given any cogent reasons for not doing so, except stating that once the respondents had asked him to get his date of birth entered in the Matriculation Certificate changed, he took it that the respondents would abide by the decision of the court in those proceedings. Such a plea does not change the legal position clarified by the Supreme Court in the aforesaid cited case.

7. Learned counsel for the respondents also cited the judgment of the CAT in O.A. 1034/91 decided on 30.9.91 in a case between Mrs. Annie Johnson Vs. Union of India. In this case also, the applicant had prayed for alteration of the date of birth as entered in the service book on the basis of a decree of civil court in which the Department was not a party. The Tribunal referred to the case of T. PANDURANGAM decided by the Andhra Pradesh High Court (1983 (2) SLJ 368), in which the Andhra Pradesh High Court held that alteration in the service book on the basis of a decree of Civil Court in which the Department was not a party, was not a decree in rem and hence the Department was not bound by this decree. The Tribunal also upheld the decision stating that the principles laid down in the judgment of the High Court were indeed based upon the principles of natural justice. It was observed that the respondents were the employers of the applicant and any change in the date of birth affected their rights. Hence any order passed against the interest of the respondents shall be a nullity if it is passed without notice to the respondents. Thus, it has to be held that the claim of the applicant for getting his date of birth as entered in the service record changed solely on the ground of a decree of a Civil Court and consequential issue of a revised

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Matriculation Certificate cannot be legally upheld.

8. It may be stated that the decree of a Civil Court on the basis of which a revised Matriculation Certificate has been issued to the applicant appears to be primarily based on a certificate issued by the Municipal Board of Jammu in regard to the date of birth of the applicant as entered in the relevant record. The applicant has not produced the said certificate before us; nor has he filed a copy thereof along with his O.A. or the rejoinder. The correspondence between 1975 and 1979 between the applicant and the Government authorities does show that the said certificate was produced by the applicant. However, the respondents have stated in their main reply to the O.A. that "the file relating to the instant case seems to be suspiciously missing and hence the answering respondent is not in a position to submit the details of the correspondence conducted between 1975 and 1979." It was, therefore, incumbent on the applicant to produce the said Municipal Board certificate in these proceedings, as there is no other evidence apart from the revised Matriculation Certificate which has already been discussed above, to support the case of the applicant. On the other hand, there is enough material on record to doubt the case of the applicant as made out by him. His main contention is that when he was admitted in 1948 to class 8 in a school in Jammu after shifting from the place which came to be occupied by Pakistan, his date of birth, eg., 30.11.1934 was entered in the school record on a statement made by a relation on approximate guess. After perusal of the judgment of the learned Sub-Judge, Jammu in civil suit No.41 of 1980 filed by the applicant, a copy of which has been filed by him along with his rejoinder, it is clear that at the time of admission to the school at Jammu in 1948, the date entered in the school record was 1.6.1936 and not 30.11.1934, as has been pleaded by the applicant. However, the above date was corrected to 30.11.1934 in the school record by order No.540 dated

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15

4.5.1949 of the Inspector of Schools. This fact was not disclosed by the applicant in his O.A. and there is nothing to show that he ever challenged this date made on the basis of the order dated 4.5.1949. The respondents have stated that the revision in the date of birth was ordered by the Inspector of School either on a finding that the date of birth entered in the school record in respect of the applicant, whether by his relative or otherwise, was in fact, a wrong one and needed to be corrected to bring the date of birth to his actual date of birth, or the said change in the date of birth was made at the instance of the applicant himself so as to enable him to sit in the Matriculation Examination the following year, i.e., 1950, the year subsequent to the year in which the school record was directed to be altered by the School Inspector. It has also been pointed out by the respondents that if the applicant's date of birth is taken to be 1.6.1936, he would have been approximately 13 years of age when he took the Matriculation Examination in 1950 and he would not have been eligible on that ground for getting admission to B. Pharmacy course in the Banaras Hindu University where the minimum age was 17 years. I would not like to go into details of this issue for the simple reason that, according to the applicant, he had produced a certificate from the Jammu School authorities that in the year 1950 no minimum age was prescribed for taking the Matriculation Examination, and that as he took up the B. Pharmacy course after doing his B.Sc., the minimum age of 17 years was not relevant. Another aspect of the matter is that, according to the reply filed by the respondents, the Municipal Board's certificate about the applicant's date of birth shows the profession of the applicant's father as a 'shopkeeper', while the applicant's case is that his father was always an Advocate. The applicant has not controverted the statement of the respondents by not filing a rejoinder to the respondents' reply on the merits of the O.A. As has already been stated, the Municipal Board's certificate has not been filed or produced

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in this case before the Tribunal.

9. In the light of the foregoing discussion, there is no merit in the O.A., which is dismissed, leaving the parties to bear their own costs.

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(P.C. JAIN)
MEMBER(A)