

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA. 1034/91

Date of decision: 30.9.91

Mrs. Annie Johnson

.. Applicant.

Sh.E.X.Joseph

.. Counsel for the applicant.

Versus

Union of India

.. Respondents.

Sh.N.S.Mehta

.. Sr.Standing counsel for
the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Sh.DK.Chakravorty, Member (A).

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

(Delivered by Hon'ble Sh.Justice Ram Pal Singh,
Vice-Chairman (J)).

By this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for quashing the orders passed by the respondents on 27.3.91 and 5.4.91 and instead of 22.9.33 directing that her correct date of birth as 2.9.1936 be recorded.

2. The applicant contends that she entered the respondents' office on the strength of Secondary School Leaving Certificate, issued by the Government Girls High School, Pampadi (Kerala), in which wrong entry of the date of birth of the applicant as 22.9.33 was recorded. According to this date of birth the applicant was to retire from service on the last day of September '91. But she discovered that this retirement date is based upon a wrong entry in her Secondary School Leaving

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Certificate. According to her, her correct date of birth is 2.9.1936 (18.1.1112) as per Malayalam Era, because the applicant was admitted in standard I of CYS LPS in the said School at Pampadi. She, therefore, contends that in January '87 the applicant sought the advise of a colleague in this matter. The colleague advised the applicant to get the clerical mistake corrected. Hence, she on 9.2.87 submitted a representation to the Hon'ble Minister for Education, Government of Kerala, Trivendrum stating the facts and requesting for action to be taken to correct the erroneous date of birth in the School records. Alongwith that representation she had filed her baptism certificate. The said request was examined and it was decided that an opportunity be given to the applicant to apply to the Commissioner for Government Examinations for correction of the date of birth in the School records. By this decision the rules were directed to be relaxed for applying to the said Commissioner. Hence, she applied to the Joint Commissioner for Government Examinations, Government of Kerala, who after an enquiry directed the corrections to be made in the School Certificate as 2.9.36. ^{as} /the date of her birth. This order was passed on 12.10.90. The copy of the entries made in consequence of the said order is Annexure A-5.

2. Upon this the applicant submitted a representation on 3.1.90 to respondent No.1 bringing all these facts to the notice of the authorities and requested that her date of birth recorded in the official records be changed to 2.9.1936. She also filed another representation on 7.11.90 On 27.3.91 the respondent No.1 intimated the applicant that her request for change in the date of birth from 22.9.1933 to 2.9.1936 has not been accepted by the Government. This order did not contain any reason, hence, the applicant requested the respondents that she should be apprised of the reasons for rejection of the prayer of the applicant.

On 5.4.1991 the respondent No.1 passed the following order:-

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"1) As per Note 5 below F.R. 56, once a date given by the entrant at the time of entry into Government Service is accepted to be true, it cannot be changed except in accordance with the Note aforementioned. Though, this note was introduced with effect from 15.12.1979, it is applicable to all the cases where requests are made after this date, even if the government servant has entered service earlier to that. Thus, the request cannot be acceded to on account of being time barred.

2) In a CAT judgement in DA No.1090/90 in the case of Wazir Singh v. Union of India it has been observed that "the date of birth recorded on the basis of declaration made by the applicant is more or less sacrosanct in law; particularly when it is based on and authenticated by the High School Certificate. CAT has also felt that delay in seeking change of date of birth is also a significant factor". (Annexure A-10)

3. On notice the respondents appeared and while filing their return they opposed the facts contained in the O.A. and contended that the order of the Commissioner, passed in Kerala, was at the back of the respondents and the respondents were not heard before the said order was passed. Hence, they are not bound by this order. The respondents further contended that Note 5 of the F.R. 56 does not contemplate any corrections in the entry of the date of birth after 15.12.1979. They also contended that in such a situation the respondents are opposed to the prayer contained in this O.A.

4. The applicant cited the case of this Tribunal in the case of Sh.Hiralal (A.T.R. 1987(1) C.A.T. 414) and maintained that the amendment made in the F.R. ~~rules~~ cannot be applied retrospectively. The five year period of limitation prescribed for the first time cannot be applied to those Government servants who were in service by that day for more than five years. Thus the applicant on the strength of this judgement ^{relied} for the reason for rejection given by the respondents is erroneous. On this count we entirely agree to the contentions of the applicant and hold that Note 5 of the F.R. 56 cannot be applied retrospectively.

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5. The learned counsel for the respondents, Sh.N.S.Mehta, Sr.counsel placed reliance upon the case of T.Pandurangam (1983 (2) All India Service Law Journal, p.368), a judgement passed by the Andhra Pradesh High Court. In this judgement the High Court held that alteration in the service book was claimed on the basis of a decree of Civil Court in which the Department was not a party. Hence, the decree, as such, is not a decree in ~~ram~~ ^{order} hence, the Department is not bound by this decree.

6. Indeed the principles laid down in this judgement of High Court are based upon the principles of natural justice. The respondents are the employers of the applicant and any change in the date of birth affects the rights of the employers. Hence, any order passed against the interest of the respondents shall be a nullity, if it is passed without notice to the respondents. The Joint Commissioner of Kerala did not issue a notice to the respondents with whom the applicant is employed and proceeded to pass an order against the respondents without affording them an opportunity of being heard. Hence, the stand taken by the respondents, that they are not bound by the orders of the Joint Commissioner, has to be allowed. We are, therefore, of the view that the correction of the date of birth made in favour of the applicant without notice to the respondents is not binding upon the respondents.

7. We now proceed to consider the case of the applicant on merits. The applicant remained silent after ~~the~~ commencing of her service, with regard to her date of birth as 2.9.1933. She, never, before filing the first representation before the respondents, brought to the notice of the respondents that her date of birth, recorded in her service book, is wrong and erroneous hence, it be corrected. It is only when she armed herself with the orders of the Joint Commissioner, Kerala that she raised the issue before the respondents by filing the representation. On perusal of her O.A. it is also evident that

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no particulars have been provided by her in her O.A. which may convince this Tribunal with regard to the bonafide of the applicant in getting her date of birth altered. She contends that in January '87 she shought the advise of the colleague. Name of that colleague or the affidavit of that colleague has not been furnished or filed. The evidence filed by her before the Joint Commission, Trivendrum is also not present in the record. She has not given any particulars in the O.A. as to the date of birth of her elder or younger brothers and sisters, as her mother was a multipara, as can be gathered from the documents. In such a situation the clinching evidence is altogether absent and no material or record have been placed to satisfy us that her contention is correct and bonafide. The applicant should have placed the basis upon which she has raised the claim that her date of birth is not of 1933 but of year 1936. When a public servant enters the service she declares her date of birth which is recorded in her service book and her superior signs it. The School Certificate which contains the date of birth is filed as a corroborative evidence with the employer. A presumption arises that the date of birth declared by the employee before the employer was correct. To rebut this presumption the burden of the proof lies upon the shoulders of the applicant. The applicant has miserably failed to convince us that her date of birth is 2.9.1936 and not 22.9.1933.

8. Consequently, we dismiss this O.A. Parties shall bear their own costs.

D.K.Chakravorty 30-9-1991
(D.K.CHAKRAVORTY)

MEMBER(A)

Ram Pal Singh 30-9-1991
(RAM PAL SINGH)

VICE CHAIRMAN(J)