

(8) (13)
CAT/7/12

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

1993

O.A.No. 2338/92.

DATE OF DECISION 3.8.1993

SHRI SURAJ PARKASH,

Petitioner

SHRI S.S. TIWARI,

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS,

Respondent

MRS. RAJ KUMARI CHOPRA,

Advocate for the Respondent(s)

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The Hon'ble Mr. B.S. Hegde, Member (Judicial).

The Hon'ble Mr.

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 ?

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[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the quashing of the impugned order dated 26th March, 1992 and also to direct the respondents to correct the date of birth of the applicant from 8.9.1936 to 25.7.1939. The facts of the case are as follows :-

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2. The applicant was initially appointed as Mazdoor on 8th September, 1960. He states that at the time of initial appointment, he had given his date of birth as 25.7.1939. But the respondents had not entered the same in the Service Book but on the other hand they had relied upon the date assessed by the Medical Board at the time of appointment which reads as 8.9.1936. He further contends, that the respondents vide order dated 2.3.1971 had promoted him as Wireman pursuant to a trade test and fulfilment of other requirements. The respondents also relied upon the Junior High School certificate given by the applicant for the purpose of his appointment to the post of Wireman, nevertheless, they did not correct the date of birth. Therefore, he contends that his date of birth has been fixed by the respondents in an arbitrary manner on the basis of the assessment made by the Medical Board without any evidence.

3. The respondents, in their reply, denied the contention of the applicant and contend that the date of birth is correctly entered as 8.9.1936. They further contend that the education certificate has never been

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produced by the applicant to the department and the date of birth had been assessed by the Medical Authorities with the statement of the applicant at the time of his initial appointment as Mazdoor. Further, they contend that in the school certificate produced by him, his name is stated as "Surya Prasad" whereas he declared his name in the department as "Suraj Parkash." Therefore, the application is liable to be dismissed on this ground alone. The applicant did not submit any authenticated proof of his alleged date of birth as 25.7.1939 at the time of his initial appointment whereas he declared himself as having no educational qualification. The date of birth as 8.9.1936 was given by the applicant himself, declared at the time of his appointment and later on verified by himself from time to time. They conceded that the applicant was appointed as Wireman which is not a new appointment but promoted to the post of Wireman after passing the required Trade Test.

4. The respondents further contended that at the time of his initial appointment as Mazdoor, the applicant has never disclosed his educational qualification or thereafter at any stage even at the time of his

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promotion during March, 1971. Therefore, the question of relying on his educational qualifications for the purpose of promoting him as Wireman does not arise. As stated earlier, the applicant had been certifying his date of birth as 8.9.1936 at many occasions on April, 1971 and in November, 1977 which are at Annexures R-1 and R-2. The documents had been signed by the applicant himself. Therefore, the authenticity of date of appointment and date of birth are relied throughout by the department for all purposes as recorded in the service book. Keeping in view of the service record, the respondents vide their letter dated 26th March, 1992 rejected the representation of the applicant for changing the date of birth.

5. The short question for consideration is whether the request of the applicant can be acceded to at this point of time to change his date of birth on the basis of the certificate produced by him (Annexure 'E'). On perusal of the same, I find that in the said certificate the name of the person is indicated as 'Surya Parsad' and not 'Suraj Parkash' though the name of the father is one and the same. Therefore, the respondents raised

7/8/92

an objection that content of such certificate cannot be relied upon at such belated time especially in view of the applicant's name is different from the present applicant.

6. The Learned Counsel for the applicant, Shri Tiwari, in support of his contention cited decision of the Patna Bench in T.A. No. 2/85 [ATC 1987 (3) 15 - Bhagule vs. Union of India]. On perusal of the aforesaid judgement, I find that the facts narrated in that judgement are different from the present one. In that case the plaintiff-appellant entered railway service only on 6.2.1946. Therefore, it was observed that there can be no question of Exhibit 1, which was issued on 16.1.1946, being a record or report prepared under the provisions of the aforesaid Rule 145(2) of the Indian Railways Establishment Code Volume I. It is also observed that the Railway Authorities acted under sub-rule 1 of Rule 145 and consequently it must be held that 1.9.1918 was entered as the date of birth of the plaintiff-respondent on his own declaration and became binding on him. Ultimately, the petition was dismissed, devoid of any merit.

7. If we are to rely on the ratio dissidendi of that decision to the facts of this case, it is clear that the applicant at the time of entry into service had given his date of birth as 8.9.1936 which has been affirmed by him subsequently in the year 1971 and 1977 re-affirming the date of birth entered in the service book and at no point of time he had challenged the assessment made by the medical authorities about his date of birth entered in the service book. Therefore, the date of birth cannot be altered on the ground that the entry in the service book on the basis of which was not regular, does not arise. Therefore, the reliance cannot be placed on the ratio of that judgement. Secondly, the applicant's name has been entered as 'Suraj Parkash' and not as 'Surya Parsad'. Therefore, much reliance cannot be placed on the certificate produced by the applicant thereafter.

8. The Learned Counsel for the applicant also relied upon the Division Bench's decision of this Tribunal in O.A.No. 852/90 - Sama Singh vs. Delhi Administration.

The facts of that case was that before changing the date of birth in the service record, no opportunity was given

to the applicant before the entry in regard to the
date of birth in the integrated seniority list of
confirmed Inspectors as on 1.9.1987 in which the
name of the applicant had appeared at S.No. 37 was
corrected to his detriment nor the order by which
his representation was rejected is either a speaking
order or mentions any reasons for not accepting the
date of birth as recorded in the Higher Secondary
Examination. Further, the genuineness of the certi-
ficate or the character certificate from the school
authorities which also indicate the date of birth
as 22.12.1933 has not been challenged. Admittedly,
the character certificate dated 17.7.1952 in which
the applicant's date of birth was recorded as 22.12.1933
which is on the record of the respondents. Therefore,
in that decision, the applicant had adduced definite
proof of his date of birth and he made representations
to the competent authority and the date of birth entered
in the service records initially was without any evi-
dence and the respondents had changed the date of birth
without any notice to the applicant. In the circumstances,
the Division Bench of this Tribunal had to quash the

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non-speaking order of the respondents rejecting the representation made by the applicant and direct the respondents to change the date of birth. Admittedly, in this case there is no such authentic documents adduced by the applicant and the certificate submitted by the applicant, the name mentioned therein is not the same as of the present applicant. Except the certificate, there is no other clinching evidence submitted by the applicant in support of his contention to change the date of birth.

9. In the light of the above, I am of the opinion that there is no merit in the application for directing the respondents to change the date of birth of the applicant at this point of time. The determination of the question as to the correct age of a person would depend largely on documents and nature of their authenticity. It is also a settled principle of law that the age recorded in the matriculation certificate and date of birth on that basis should invariably be accepted as conclusive proof of correct date of birth in service matters, particularly in Government service. As referred to above in the instant case, the name

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mentioned in the Higher Secondary Certificate produced by the applicant is different from the name of the applicant in the service record. Therefore, keeping reliance on the decisions of this Tribunal referred to above does not help the applicant. Further, in view of the recent Supreme Court decision in Union of India vs. Harnam Singh [JT 1993 (3) SC 711] belated reopening/rectification of the date of birth at the fag end of retirement was found to be not acceptable. Hence, the present application also falls on the said category. I find that there is no substance in the application which is devoid of any merit and the same is dismissed.

10. In the above conspectus of the case, the O.A. is dismissed with no order as to costs.

B.S. Hegde 3/8/93
(B.S. Hegde)
Member (J)