

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *



OA 1176/92

10:09.1992

Shri R.R. Roy

...Applicant

VS.

Union of India & Ors.

...Respondents

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

For the Applicant

...Shri M.L. Ohri, Counsel

For the Respondents

...Shri J.C. Madan with
Shri P.P. Khurana, Counsel

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant, who has since retired on 31.5.1992 was employed as Female Attendant in CGHS dispensary, Jungpura, New Delhi. The applicant migrated from East Pakistan (now Bangladesh) in May, 1970 and reported at Mana Camp, Mana Group of Transit Centre, Raipur, M.P. The applicant was granted Indian citizenship by the Additional Collector, Raipur and the age of the applicant in 1973 has been indicated as 35 years (Annexure A3). The applicant joined as Aya w.e.f. 17.9.1970 with Chief Medical Officer, Mana Camp, Raipur.

The applicant has claimed the relief that the respondents be directed to alter the date of birth in the service record from 30.5.1932 to 25.3.1938 and direct the respondents not to superannuate the applicant on the basis of

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the wrong date of birth of 30.5.1932 entered in the service record.

The case of the applicant is that she has read in Jalma Chakra Khali High School Batiaghata, District Khulna and she left the school in December, 1950 after passing eighth class. The date of birth of the applicant is 25.3.1938 and she was married at the age of less than ten years to one Shri Narender Nath Rai, now deceased. She was given employment in 1970 and the applicant in total ignorance and by mistake intimated her date of birth as 30.5.1932 instead of her actual date of birth namely as 25.3.1938. At the time of migration from East Pakistan to India, the applicant had to leave all his belongings there and she could not take the school leaving certificate with her. In 1974, the Chief Medical Officer asked her to furnish the certificates in support of her age and educational qualification. The applicant submitted a copy of the educational/age certificate of school dt. 31.1.1971 which indicated the date of birth of the applicant as 25.3.1938. The applicant was posted as Female Attendant in the CGHS Wing of the DGHS w.e.f. 27.9.1976. In the year 1989, the applicant learnt that correct date of birth, i.e., 25.3.1938 was not recorded in the service record. The applicant, therefore, submitted a representation on 8.9.1989 to the Administrative Officer, CGHS, South Zone, New Delhi duly supported by an affidavit. The applicant was informed by

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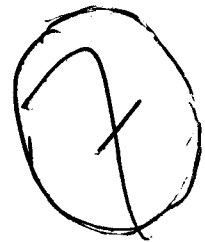
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the Administrative Officer by the letter dt.14.12.1989 that the request of the applicant was considered, but could not be acceded to. The applicant, therefore, again made a representation dt. 31.12.1991 requesting the Additional Director, CGHS, New Delhi to change the date of birth in the service record. The Additional Director, CGHS informed the applicant by the Memo dt.24.2.1992 that her request for change of date of birth could not be considered at the stage. The applicant has obtained the school leaving certificate dt.25.2.1992 from the school in Bangladesh in support of her claim for alteration of the date of birth recorded in the service record. So the applicant submitted another representation on 18.3.1992 to the Additional Director, CGHS for which she has received no reply and the present application has been filed for the reliefs stated above.

The respondents contested this application. It is stated by the respondents that the date of birth of the applicant shown in her service book as well as in the attestation form furnished by the applicant at the time of her appointment is 3.5.1932 (appears to be 30.5.1932). It is admitted to the respondents that the applicant was taken on the strength of CGHS w.e.f. 24.9.1976 as Female Attendant on nomination by a Surplus Cell. The applicant has been asked on 22.8.1988 to produce the certificate of fifth class pass in support of her contention, but she did not do so. As the applicant did not file any additional document in support of her contention, so the representation preferred by the

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applicant was rejected. The first representation for change of date of birth was received by the respondents in August, 1987 which was duly examined, but she failed to submit any documentary certificate to the effect of her educational qualification as entered in her Service Book at the time of her joining the service. Thus according to the respondents, there is no merit in the case of the applicant.

The applicant has also moved an application for condonation of delay. The applicant has also assailed the order dt.14.12.1989 in this application, which has been filed on 24.4.1992. The second order challenged by the applicant is dt. 24.2.1992 which was passed on the second representation of the applicant dt.13.12.1992. Thus the challenge to the first order dt. 14.12.1989 (Annexure A1) is not within limitation. The applicant has given reasons for not coming to the Court at the proper time. The respondents did not file any reply to this application for condonation of delay nor they have taken any specific plea in the counter that the application is barred by limitation. The reason given by the applicant of not coming within time is that she is a widow and not so educated, so she preferred another representation and made efforts to get the school leaving certificate from his relations in Bangladesh and after receiving the same, she made another representation in March, 1992. That representation has not been disposed of. Since her application remains

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unreplied by the respondents and the learned counsel for the applicant has prayed that the delay, if any, be condoned taking a liberal view of the matter and placed reliance on the authorities of Collector of Land Acquisition Anant Nag Vs. Mst. Katiji (AIR 1987 SC 1513), Laxman Das Vs. Union of India (1988 (6) ATC 609), Ahmed Abdul Rehani Vs. Union of India (1992 (2) SLJ CAT 405) and A.Sanganathan Vs. Union of India (1992 (L & S) 665). In fact the applicant is an uprooted lady from Bangladesh and that she has also become widow in her early life and her education is also nominal. So taking all these facts into account, I find it a fit case for condonation of delay and the application for condonation of delay is, therefore, allowed.

I have considered the case on merit and have gone through the reply filed by the respondents. The respondents in their counter have annexed a letter written by the Deputy Director, Central Government, Health Scheme on 21.10.1988 to the Chief Medical Officer, Mana Group of Transit Centres, Mana Camp, Raipur. In this letter, there is a mention of the fact that an attested copy of school leaving certificate is on record in the service file of the applicant where her date of birth has been intimated to be 25.3.1938. Along with this letter, the Service Book was also sent and necessary papers were flagged as Annexures A and B. But this letter was returned undelivered to the addressee because by the time, the Mana Group Transit Centre has been wound up. When this

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document (Annexure R5) is in the possession of the respondents, then they should have considered the facts of the application on merit which she has stated in her representations. The reply given in December, 1989 as well as the second reply given in February, 1992 do not disclose any reason. However, the respondents in their counter have taken the stand that the applicant has no prima facie case for the change of date of birth on the basis of the certificate furnished by her later on. While the applicant got an entry of service in the Mana Transit Camp, an attestation form was got filled by her (Annexure R2 to the counter). In this, the year of entering in the school has been given as 1947 and the year of leaving that school is 1955 and the educational qualification is Class 6th. While in the present certificate of the educational institution, the applicant relies upon, she left the school in December, 1950. This certificate appears to have been signed and issued on 31.1.1971. Thus the original certificate under the signature of the applicant which she has signed, she has shown her education upto class sixth and the name of the same high school has been mentioned. In the service sheet also, the date of birth is mentioned as ^(30.5.1932) 3.5.1932/. The respondents should have considered all these evidence furnished by the applicant while disposing of the representation by the order dt. 14.12.1989. Another material fact is that she has furnished the education certificate to the authorities of Mana Camp on 27.4.1974 and the respondents themselves have annexed the Memo as Annexure R4 to the

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counter. When already there is a school leaving certificate in the service book of the applicant, the respondents should have considered that aspect of the matter and disposed of that representation of the applicant on the basis of the available record. Not doing so is against the principles of natural justice. The applicant at the time when she joined at Mana Camp was an uprooted refugee belonging to Scheduled Caste and due consideration has not been paid to the circumstances prevailing at the time when she was appointed as Aya with the earlier employer. After she was declared as surplus and the name was sent by the Surplus Cell to the Director of CGHS, she was again asked by the letter dt. 22.8.1988 to furnish the ~~record~~ ^{certificate}. It is not a case where a person was born in the territory ~~now~~ in India, but that territory now falls in East Pakistan. Due consideration of this aspect should have also been given by the respondents. The learned counsel for the respondents has also placed reliance on the authority of Hira Lal Vs. Union of India (ATR 1987 (1) 414). He has also placed reliance on the case of Charles Wilson Vs. Union of India, ATR 1987(1) CAT Jabalpur Bench, 103 and R.R. Yadav Vs. Union of India, 1987 (4) ATC 337. In all these authorities, the emphasis has been given for considering the school leaving certificates as an evidence for date of birth of the concerned employee. When the respondents have entertained the representations of the applicant, they should have also disposed of the same on merit, particularly when according to their own admission in the letter dt. 21.10.1988 (Annexure 5

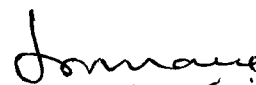
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to the counter) ~~and~~ a copy of the school leaving certificate
is available in the Service Book.

Considering all these facts and circumstances, the application is disposed of in the manner that the respondents are directed to dispose of the latest representation of the applicant which she has preferred on 18.3.1992, a copy of which has been enclosed as Annexure A9 to the present application. In this representation, the applicant has enclosed certain documents also. The respondents are directed to dispose of the representation of the applicant dt. 18.3.1992 preferably within a period of eight weeks from the date of receipt of a copy of the judgement. The applicant has since retired from service. In case the representation of the applicant is allowed, the applicant should be allowed to continue till the date of superannuation on the basis of the corrected date of birth and shall be paid arrears of pay and salary less the pension if she has already been paid. In the circumstances, the parties shall bear their own costs.


10/9/92
(J.P. SHARMA)
MEMBER (J)