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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No.571 of 1986

Manohar Lal Kalra Applicant.

Versus

The Collector, Central Excise,
Allahabad. Respondent.

Hon'ble Ajay Johri, A.M.

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This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, M.L. Kalra, retired as Superintendent, Central Excise, Gorakhpur. In his application he has stated that he passed his Matriculation examination in 1944 from Lahore University now in Pakistan and at the time of partition of India he came on foot to India from his home in Montgomery (also now in Pakistan). Thereafter he passed B.A. examination from Vaish College, Biwani, East Punjab. He was appointed as Inspector, Central Excise at Allahabad on 10.4.1950. Since he had no Matriculation certificate to prove his date of birth in his possession as he had left his home without any belongings on the partition of the country he produced a provisional B.A. certificate which showed his date of birth as 1.5.1928 and this was accepted by the Department and was entered in his service book in April, 1950. This date of birth ~~as~~ has also been maintained by the Department in the seniority lists issued ^{at} ~~on~~ various times during 1950 to 1985. The applicant has gone on to say that in 1951 he wanted to appear in the I.A.S. examination and he

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required a Matriculation certificate for proving his age for this examination. He received a certificate from Solan University which was situated in East Punjab and which was formed after the partition of the United Punjab. After obtaining this certificate he was able to sit in the I.A.S. examination but this ^{or could be} ~~was~~ not treated as authentic as he had actually passed his Matric from Lahore University. This certificate which he got from the Solan University showed his date of birth as 2.1.1928. During his service in the Excise Department he was posted at Kanpur during 1962-65 and he presented this Matriculation certificate to the Superintendent Administration at Kanpur. On the basis of this certificate his date of birth was changed from 1.5.1928 to 2.1.1928. This change of date of birth was against rules which lay down that the date of birth ~~was~~ declared and recorded in the service book at the time of appointment could not be ^{or} altered subsequently except by a competent authority. However, no correction slip was issued about the alteration of date of birth by the Collector, Central Excise, Allahabad but on 31.1.1986 without proper ^{or} ~~authorities~~ alteration of his date of birth the applicant was asked to retire. According to the applicant he had become a Gazetted Officer in 1978 and, therefore, the Collector, Central Excise was not empowered to make any ^{or} ~~alteration~~ in his date of birth in 1986. He represented to the Collector, Central Excise that he should not be retired. He also represented to the Chairman, Central Board of Excise and Customs, New Delhi on 4.4.1986. A reply was received by him dated 25.4.1986 but the reply was not to the point. The applicant aggrieved by the fact that his date of birth was changed from 1.5.1928 to 2.1.1928 on the basis

of the Matriculation certificate submitted by him has come to this Tribunal with this application seeking for the relief that he should be considered to have retired from 30.4.1986 on the basis of his date of birth being 1.5.1928 and, therefore, he should be considered to be in service from 1.2.1986 to 30.4.1986 and be paid the salary, etc. for this period.

2. The respondent has said in his reply that the date of birth which was entered as 1.5.1928 was corrected as 2.1.1928 by the Superintendent, Central Excise, Kanpur on 23.1.1965. The applicant's request for extension in service made vide his application dated 24.10.1985 was rejected by the Government of India by their letter dated 6.1.1986. It was thereafter that he applied for treating his date of birth as 1.5.1928. The applicant was informed on 25.4.1986 that his correct date of birth was 2.1.1928. The change of date of birth which has been verified by the Superintendent, Central Excise was duly verified from a certificate of the Punjab University, Solan issued in 1944. According to the respondent at the time of initial appointment the date of birth was incorporated as 1.5.28 on the basis of provisional B.A. Degree certificate produced by the applicant. This certificate ^{or treated as} could not be authentic and, therefore, when the Matriculation certificate was produced by the applicant and it showed the date of birth as 2.1.1928 necessary corrections were made in the service book. There has been thus no illegal ^{or} alteration of the date of birth of the applicant and the applicant has been correctly retired on 31.1.1986.

3. In his rejoinder affidavit the applicant has reiterated that the ^{or} alteration was made against the General Financial Rules governing the date of birth.

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Rule 79 which deals with date of birth reads that "Every person newly appointed to a service or a post shall at the time of appointment declare his date of birth by the Christian Era with as far as possible confirmatory documentary evidence such as a matriculation certificate, Municipal birth certificate and so on. If the exact date is not known an approximate date shall be given." Rule 79(2) further says that "The actual date or the assumed date determined under Rule 80 shall be recorded in the service book and once recorded it cannot be altered except in the case of a clerical error without the previous orders of a Department of the Central Govt. or an Administrator". Heads of Departments are authorised to exercise the powers delegated to a Department of the Central Government. The applicant, therefore, contended that according to the above rules the date of birth of 1.5.1928, as shown in his provisional B.A. certificate, which was the only available document with him and which was accepted on 10.4.1950 and recorded in his service record, could not be altered on 23.1.1965 by the Superintendent, Central Excise, Kanpur. Only heads of departments were authorised to make the change and that there was no clerical error.

4. When the case was called out no one was present on behalf of the applicant. Sri K.C. Sinha was present on behalf of the respondent. On 5.8.1987 the applicant had presented himself before the Deputy Registrar and had requested time to file rejoinder affidavit. He was allowed time till 4.9.1987. He filed the rejoinder affidavit and the case was listed for hearing on 1.12.1987. There has been no communication on the date of hearing about the reason of the applicant not being present personally.

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However, I have perused the documents available in the case file and the application and rejoinder affidavit to the counter affidavit filed by the applicant and have heard Sri K.C. Sinha and decided to give the judgment ex parte after taking into consideration the application and the rejoinder affidavit filed by the applicant.

5. There is no dispute about the fact that the date of birth which was recorded in the service record of the applicant was on the basis of a provisional B.A. certificate issued by Vaish College, Biwani. As a matter of fact such certificate cannot be taken as authentic under any circumstances. The basic document which has to be relied upon according to Rule 79 of the General Financial Rules governing the date of birth of Central Government ^{or employees is} the confirmatory documents ^{or it} could be a Matriculation certificate or a Municipal Birth certificate. The action of the respondent in having accepted 1.5.1928 as the date of birth on the basis of the provisional B.A. certificate was not correct. Further the applicant has himself produced a Matriculation certificate which was issued by the Solan University perhaps on the basis of certain documents which must have been presented by the applicant to the University. Solan University was, prior to partition, a part of Lahore University and, therefore, they might have taken the responsibility of issuing the certificate on the basis of certain documents in their possession or produced by the applicant. Once the applicant was able to obtain a Matriculation certificate and it showed his date of birth and he had relied on that document for appearing in the I.A.S. examination he cannot ^{or} turned back and say that the date of birth given in this certificate could not be accepted.

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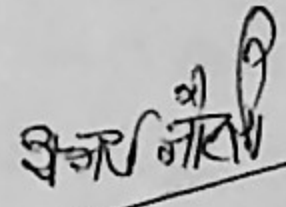
He has himself taken the trouble to obtain this certificate and to submit it as a relied on document for the I.A.S. examination. He again produced the same certificate before the Superintendent, Central Excise, Kanpur, who wanted documentary evidence in regard to his date of birth and if he choose to again rely on the same document and presented to the Superintendent, Central Excise, the change of date of birth cannot be termed as mala fide or illegally done. There ^{It was} ~~would have been~~ no occasion to change the date of birth which was recorded on the basis of a document, which ^{It sh} ~~could~~ not be relied upon, i.e. the provisional B.A. certificate, but in the face of an authentic Matriculation certificate produced by the applicant, ^{It was done} ~~The~~ applicant cannot now take umbrage behind the fact that since once his date of birth has been accepted as 1.5.1928 it could not be changed in the service record on the basis of the Matriculation certificate submitted by him. I do not think there is ^{It} ~~much~~ merit in the pleas raised by the applicant that his date of birth could not be ^{It} ~~altered~~ inspite of he himself producing the Matriculation certificate because the rules do not authorise the Superintendent to make the ^{It} ~~alteration~~. The applicant has not been able to show any other documents, ^{or} ~~to~~ produce any other colateral evidence or documents to show his date of birth was actually 1.5.1928 and not 2.1.1928. Therefore, the application is devoid of any merit and is liable to be rejected.

6. I have also perused the ^{It} ~~service~~ record of the applicant. There are two ^{It} ~~verifications~~ entered by the same officer, i.e. the Superintendent, Central Excise, Kanpur on 23.1.1965. The first regarding his educational qualification being B.A. verified from the degree from

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from East Punjab University Session, 1948 and the other regarding his date of birth verified from the Punjab University Certificate, 1944 Solan. Since the Head of the Office was authorised to make the changes in the particulars of the first page of the service record and they have been made on the basis of a document submitted by the applicant himself not much importance can be attached to the fact that an entry which had been made once could not be changed by the officer who had attested the entries. The safe guards provided in Rule 79 are only to avoid illegal and mala fide entries and not for entries based on documents which are not under dispute.

7. In view of above the application is rejected. Parties will bear their own costs.


Member (A).

Dated: December 11th, 1987.

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Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Appln. No.9 of 1988

In

Registration O.A. No.571 of 1986.

M.L. Kalra

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Applicant

Versus

Union of India & Others Opposite Parties.

Hon.Mr.Justice Kamleshwar Nath, V.C.

Hon. Mr. K.Obayya, Member (A)

(By Hon.Justice K. Nath, V.C.)

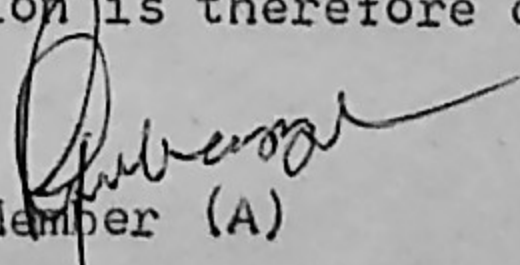
Case is called. No one is present on behalf of the applicant despite adequate opportunity in the past. Shri K.C. Sinha is present on behalf of the opposite parties.


2. This application is for review of judgement dated 11.12.1987 in which the petitioner's claim for rectification of his date of birth in the service record was rejected.

3. We have carefully gone through the judgement and also the application for review. It appears from these documents that the petitioner's date of birth was originally recorded as 1.5.28 in the service record on the basis of a provisional certificate issued by the Principal of a College from which the petitioner had appeared at the B.A. Examination in 1948 of the Punjab University. Subsequently, the petitioner appeared at the I.A.S. Examination in which he annexed a Matric

Certificate where his date of birth was recorded as 2.1.1928. It is on this basis that the petitioner was required to retire on 31.1.1984. He made motion to the Department for correction of his date of birth which having been refused he had filed the original application.

4. The basis of the claim is only a provisional certificate of the Principal of the College and the certificate bears a clear note that it has been issued only with the object of enabling the petitioner to be admitted in a college and is not to be held equivalent to the certificate to be given to him by the Registrar of the Punjab University. The contents of this certificate therefore were themselves in a fluid state. The Matriculation certificate which contains the date of birth as 2.1.28 has been submitted by the petitioner himself to the Supdt. Central Excise on demand for the purposes of verification of his date of birth. The petitioner's case that the entries in Matriculation Certificate itself was erroneous does not advance his case. At any rate the submissions made in the Review Application are outside the scope of the petition for review; they are in nature of appeal. The Review Application is therefore dismissed.


Member (A)


Vice Chairman

Dated the 11th May, 1990

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