

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

THIS THE ¹⁵² DAY OF FEBRUARY, 2005

Original Application No. 54 of 1999

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C

**Lalit Varma, I.A.S,
Aged about 29 years, Son
of Late Shri M.Varma,
R/o C-60, Butler Palace Colony,
Lucknow.**

.. Applicant

(By Adv: Shri H.S.Srivastava)

Versus

1. Union of India through
Secretary, Ministry of Home Affairs,
Department of personnel, North
Block, New Delhi.
2. State of Uttar pradesh, through
Secretary (Appointment),
Government of U.P.,
Lucknow.

.. Respondents

ORDER


JUSTICE S.R.SINGH,V.C.

The applicant, a 1983 batch I.A.S officer has instituted this original application for issuance of an order/direction to the respondents 1 & 2 to correct and accept his date of birth as 13.2.1962 in place of 1.3.1959 in his service record.

The case of the applicant is that he was born on 13.2.1962 in St.Stephen's Hospital,, Tiz Hazari, New Delhi, but 1.3.1959 was entered in the matriculation certificate as his date of birth on the basis of the entry made in the Scholar's register as per information given by the applicant's



grandfather at the time of his admission in the school. The applicant's grandfather, it is alleged, having a rural background got the applicant's date of birth entered as 1.3.1959 with a view to securing admission at the stage of primary education of the applicant and the date of birth so entered at the stage of primary education continued even at the stage of Higher Secondary education and on that basis applicant's date of birth was entered as 1.3.1959 in the certificate issued by CBSE in the year 1975, whereas his actual date of birth happens to be 13.2.1962. The applicant, it is further alleged had no occasion to verify the correctness of his birth date until he was informed by his mother at the time of filing the application form for the Civil Services(Main) Examination-1983 that his actual date of birth was 13.2.1962. The applicant had accordingly mentioned his recorded date of birth as well as the actual date of birth in the application form submitted by him for the Civil Services(Main) Examination 1983, an extract of which has been annexed as Annexure 3 to the application. The applicant was selected and appointed to Indian Administrative Service in the year 1984 and allotted the State of Uttar Pradesh on the basis of the Civil Services Examination, 1983. It is, further alleged that on completion of probation period the applicant made a representation on 7.8.1987 to State of Uttar Pradesh for correction of his date of birth followed by a reminder dated 24.12.1987 which has been rejected by Govt. of India vide order dated 22.4.1988 communicated to the applicant only on 7.10.1989. With a view to completing the chain of facts, it may be stated that the applicant made another attempt by means of representation dated 26.9.1990 seeking correction of his date of birth on the basis of 'authentic documents' but to no avail. Accordingly, he instituted the present OA 522/91 in the Lucknow Bench of the Tribunal which was later on transferred to this bench where it



has been registered as OA No.54 of 1999. In the meanwhile, a civil suit being Suit No.870/93 was filed in the court of Munsif, Azamgarh for declaration that the correct date of birth of the applicant was 13.2.1962 and that 1.3.1959 was wrongly recorded in the matriculation certificate. The suit was decreed ex parte vide judgment and decree dated 6.1.1994 and it was declared that the correct date of birth of the applicant was 13.2.1963 and the Central Board of Secondary Education, New Delhi was directed to make necessary amendment/correction in the documents. An application under Order 9 rule 13 CPC filed for setting aside the ex parte decree came to be dismissed by Civil Judge (Jr.Division), Shahar Avarkhand, Azamgarh vide order dated 2.2.1996. Revision preferred against the said order came to be dismissed by VIIth Addl.District Judge, Azamgarh vide order dated 6.12.1996. Pursuant to the decree, necessary rectification was carried out by the CBSE.

The application is contested by the Union of India as well as the State of U.P. In the counter affidavit filed on behalf of the State of U.P. by Shri Nirmal Chandra, Special Secretary to Government of Uttar Pradesh, Appointment Department, Civil Secretariat, Lucknow it has been that since original application form submitted by the applicant to UPSC for Civil Services Examination 1983 is not available with the party respondent no.2, it cannot be said whether in the original form the petitioner had also mentioned his date of birth as 13.2.1962. The applicant, it is further stated in the counter affidavit, was required to mention only the date of birth as recorded in the High School certificate. It is, however, conceded that the applicant's request made vide letter dated 7.9.1987 to recommend his case to the Govt. of India for change of his date of birth from 1.3.1959 to 13.2.1962 could not be forwarded to the Government of India. The reason put forth is that it was

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not covered by rules. A subsequent application dated 24.12.1987 filed by the applicant was, however, forwarded to the Govt. of India vide letter dated 5.2.1988 and the Government of India rejected the applicant's request for change of his date of birth vide order dated 22.4.1988 as it was not covered under sub-rule (1) of Rule 16-A of the All India Services (Death cum Retirement Benefits) Rules, 1958 and the applicant was informed by the Government of India through District Magistrate, Sahranpur vide State Govt.'s letter dated 21.5.1988. It is admitted in the counter affidavit that subsequent representations preferred by the applicant were received by the State Government and since the applicant had not mentioned new facts in his representation, therefore, no action was considered necessary by the State Govt. According to the averments made in the counter affidavit the applicant was not entitled to get his date of birth changed from '1.3.1959' to '13.2.1962' and since the applicant had mentioned 1.3.1959 as his date of birth in the application form for the Civil Services(Main) Examination, 1983, on the basis of his date of birth mentioned in his matriculation certificate "the same has been accepted by the Central Govt. Reliance has also been placed in the counter affidavit on the entry made in the Descriptive Roll of Lal Bahadur Shastri National Academy of Administration, Mussoorie, wherein the applicant had himself mentioned his date of birth as 1.3.1959. In the counter affidavit filed on behalf of Union of India, similar pleas have been raised besides the plea that the applicant being a member of the IAS his request for correction of date of birth as claimed by him was considered under Rule 16-A of the All India Services (DCRB) Rules, 1958 sub-rule (4) of which provides that the date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bona fide clerical mistake has been committed

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in accepting the same. It is also alleged in the counter affidavit filed on behalf of the Union of India by Shri R.V.Hariharan the then Desk officer under respondent no.1 that the minimum age required to appear in the Civil Services Examination being 21 years, the applicant could not have been appeared on the strength of his date of birth 13.2.1962. The applicant's request, it is alleged in the counter affidavit, has rightly been rejected by the Central Government. It is also alleged that the applicant having taken benefit of 1.3.1959 as his date of birth for securing admission in the primary school and for appearing in the CBSE Examination and UPSC Examination, he cannot now be permitted to get his date of birth changed from 1.3.1959 to 13.2.1962 for he would have been ineligible to appear in the CBSE Examination in the year 1975 and also in the UPSC Examination in 1981 and 1982 on the basis of the date of birth 13.2.1962 and the prayer for correction, if allowed, would amount to giving him double benefit. Rule 16-A of the All India Services (Death cum Retirement Benefits) Rules, 1958, in short 'the Rules', being relevant to the point under consideration is quoted below:

"16-A Acceptance of date of birth-

- (1) For the purpose of determination of the date of Superannuation of a member of services, such date shall be calculated with reference to the date of his birth as accepted by the 'Central Government under this rule.
- (2) In relation of a person appointed, after the commencement of the All India Services (Death-cum Retirement Benefits) Amendment Rules, 1971.
 - a) the Indian Administrative Service under clause (a) or clause(aa) of sub-rule (1) of Rule 4 the Indian Administrative Service (Recruitment) Rules, 1954:
 - or



(b) the Indian Police Service under clause (a) or clause (aa) of sub rule (1) of Rule 4 of the Indian Police Service (Retirement) Rules, 1954;

or

(c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) of Rules of the Indian Forest Service (Recruitment) Rules, 1966;

the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.

(3) In relation to a person to whom sub-rule(2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be accepted by the Central Government, as the date of birth of such person.

(4) The date of birth as accepted by the Central Govt. shall not be subject to any alteration except where it is established that bona fide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3).

The date of birth of a member of the All India Service 'as accepted by the central Government' is not open to any alteration "except where it is established that a bona fide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)" The present is not a case of 'bonafide clerical mistake' in accepting the date of birth of the applicant. Rather the case of the applicant is that his date of birth is 13.2.1962 and had never been accepted by the Central Government as 01.03.1959 and hence the inhibition contained in sub-rule (4) of the Rule 16-A of the Rules would not apply. The questions for consideration are firstly, whether the applicant's actual date of birth is 13.2.1962; secondly whether 1.3.1959 has been accepted by the Central Government as the applicant's date of birth and the same is not open to any alteration in view of the prohibition contained in sub-rule(4) of Rule 16-A of the Rules; and thirdly, whether the applicant enjoyed any benefit of the date of birth being 1.3.1959 and on that account he is debarred from claiming any alteration in the said entry of date of birth.

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In re: question No.

In support of his claim that his actual date of birth is 13.2.1962, the applicant has placed reliance on CBSE Higher Secondary School Examination certificate as it stood corrected pursuant to a civil court decree passed in original suit no. 870/93; the birth certificate dated 18.9.1990 issued by St. Stephen's Hospital, Tiz Hazari, Delhi certifying that a male baby was born at 10-55 p.m. on 13.2.1962 to Mrs. Kamla w/o Mr. Mahesh Prasad, r/o Pratap Bagh, Delhi (Annexure 1); special certificate of birth issued by Registrar (Births & Deaths) Civil Line Zone, Municipal Corporation, Delhi (Union Territory of Delhi) therein showing that a male child was born to Mrs. Kamla wife of Mr. Mahesh Prasad (Annexure 2); Photostat copy of an invitation card to attend the 'preethibhoj' organized on the occasion of 'Namkaran Sanskar' on 22.4.1962 at 'Mata Prasad Bhavan', C-11, Rana Pratap Bagh, Delhi; photo stat copy of Horoscope and Pay/salary slip 183/20-IRLA-233-PSC/89 dated the 10th July, 1989 whereby the applicant was held entitled to draw pay of Rs.3200/- w.e.f 1.1.1989 and Dearness allowance of Rs.928/- as Chief Development Officer, Gorakhpur. At the foot of the said slip it has been transcribed that "date of birth may please be intimated to the cell". The said pay/salary slip contains a clarification in the handwriting of the applicant which reads thus: "Received copy it is clarified that my actual DOB is 13.02.1962 and this fact is in the knowledge of Govt. of UP and GOI.

Sd/

Lalit Varma"

The entry of date of birth in the Municipal record referred to hereinabove goes a long way to show that the actual date of birth of the applicant is 13.2.1962. The said entry finds support from the birth certificate issued by St. Stephen's Hospital, Tiz Hazari, Delhi and the



Horoscope. It is not the case of the respondents that the male child born to Smt. Kamla wife of Mr. Mahesh Prasad on 13.2.1962 was not the applicant himself. Nor has it been established by the respondents that the special certificate of birth issued by the Registrar (Births & Deaths) Municipal Corporation of Delhi does not relate to the applicant. In the school certificate the date of birth of the applicant was initially entered as 1.3.1959 but the same was later on corrected and changed by the school authority to 13.2.1962 pursuant to the Civil Court decree. In *Brij Mohan Singh Vs. Priya Brat Narain Sinha and Ors*, AIR 1965 Supreme Court 282, a Five Judge Bench of the Hon'ble Supreme has held that in actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. The court of fact cannot ignore this fact while assessing the value of the entry.

It has been, however, contended by the learned counsel appearing for the respondents that the civil court judgement/ decree is not binding on the respondents who were not impleaded as defendants to the suit. The principle in this regard is well stated in the maxim: 'RES INTER ALIOS ACTA ALTERI NOCERE NON DEBET'-wing.Max.,p-327 ie. A transaction between two parties ought not to operate to the disadvantage of a third. The principle regarding admissibility of a judgment inter parties is governed by what is called res-judicata. A judgment in rem or one relating to matters of public nature is also ⁹admissible in evidence even if it is not inter parties (See Sections 40 to 42 of the Evidence Act). A judgment not inter parties nor in rem or in matters relating to public nature may be relevant under section 43 read with section 11 and 13 of the Evidence Act, 1872. The

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consequential effect of the decree leading to correction of date of birth by the Competent Authority in the school certificate is certainly binding on the respondents who have no other material except the school certificate as it stood originally before its correction pursuant to civil court decree to show that the date of birth of the applicant is 1.3.1959.

It is true that Civil Court decree without the respondents being party to the civil suit may not be binding on them in the matter of determination of date of birth as held by Hon'ble Supreme Court in Director Technical Education and Anr Vs. Smt. Seetha Devi, AIR 1991 SC 308. It may be noted that the above mentioned decision of the Apex court was rendered in civil appeal preferred against the decision of the Andhra Pradesh Administrative Tribunal at Hyderabad dated 7.6.1985 rendered in Representation petition no.67 of 1984 and Representation Misc. petition no. 516/84 between Smt. K.Seetha Devi petitioner and Director of technical Education in State of Andhra Pradesh represented by Secretary to the Govt., & LE&TE Department Hyderabad, A.P.(Opp.parties). In that case a question arose before the Andhra Pradesh Administrative Tribunal at Hyderabad as to whether a civil court decree was binding on the Department even though the Department was not a party to it. The State Tribunal held :“....The question is whether it is binding on the department, even though they were not parties to it. In my opinion, it is not the judgment and decree of the civil court in the above mentioned suit that are binding on the Department, but the consequential effect of the declaration and direction with regard to the correct birth date of the petitioner and its change in the University records which has been carried out by the University, that is binding on the Department.” In Civil appeal preferred against the said judgment of the Tribunal, the Supreme court though held that a decree without the employer

being a party to it is not binding on it but maintained the judgment of the State Tribunal on the ground that it was based on other materials placed before it "apart from the decree of the civil court".

The competence and jurisdiction of the Civil Court to decide the suit for declaration to correct the date of birth of the applicant cannot be doubted in view of Section 9 C.P.C and the law laid down by the Apex Court in *Ishar Singh Vs. National Fertilizers & Anr.*, AIR 1991 Supreme Court 1546 and correction/rectification in the date of birth as made by the Competent Authority (CBSE in the present case) cannot be ignored. The legal consequences of the Civil Court judgment/decreed cannot be considered as 'res inter alios acta' in that "when the law gives to a judgment a particular operation, that operation is properly shown and demonstrated by means of the judgment, which is no more res inter alios than the law which gives it force (See- A Selection of Legal Maxims by Herbert Broom, 10th Edn., pg 652). The Civil Court's declaratory decree in the instant case was followed by act of rectification/correction of birth-date by the CBSE and therefore, the declaratory decree becomes admissible as a relevant piece of evidence as a part of 'res gestæ'- a doctrine which forms an exception to the general rule of 'res inter alios acta'. The House of Lords in *Wright V. Doe d. Tatham*, 7A&E 313 has observed "where any facts are proper evidence upon an issue, all oral or written declarations which can explain such facts may be received in evidence"- See Broom on Legal Maxims, 10th Edn page 659. It may be pertinently observed that Evidence Act has not been specifically made applicable to proceedings under the Administrative Tribunals Act, 1985 and the Tribunal is empowered, as per Section 22 (2) of the Act, to decide every application "on perusal of documents or written representations and after hearing such oral arguments as may be advanced". The Tribunal is not

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bound by the strict rules of evidence embodied in the Evidence Act. In any case as pointed out hereinabove, Civil Court judgment/decreed relied on by the applicant is not wholly irrelevant.

In Updesh Kumar and Ors Vs. Prithvi Singh & Ors, 2001 (2) SCC 524 it was held that correction of the date of birth in the matriculation certificate by the School Education Board was an official act and it must be presumed to have been done in accordance with law. In the present case, the Central Board of Secondary Education, New Delhi was party-defendant no.2 to original suit no.870/93 in which a decree was passed to the effect that the correct date of birth of the applicant was 13.2.1962. The original certificate showing 1.3.1959 as the date of birth of the applicant came to be corrected pursuant to the decree passed by the civil court and as pointed out hereinabove, the applicant's case that his actual date of birth is 13.2.1962 finds support from other documents mentioned hereinabove the genuineness of which cannot be doubted. In M.Vijaya Bhaskara Reddy Vs. High Court of Andhra Pradesh 2002 (3) Administrative Total judgments 237, a Full bench of the Andhra Pradesh high court was called upon to consider the question as to binding efficacy of a civil court decree to which the High court was not a party. The Full bench held as under:

“ Although the civil court decree is not binding on the High court as held by the Division **Bench of this court, it cannot be said** that the civil court decree is irrelevant consideration for decision-making. Similarly, public documents like extracts of certificates issued by the school authority are relevant consideration in the decision making”.

The Tribunal is, therefore of the view that the actual date of birth of applicant is 13.2.1962 and not 1.3.1959.

In re: question No.2



Coming now to the second question, it may be observed that the language used in by sub-rule (4) of Rule 16-A would indicate that the prohibition as against any alteration in the date of birth would come into play only if the date of birth has been accepted by the Central government. Sub-rule (2) of Rule 16-A of the Rules provides that in relation to a person appointed, to Indian Administrative Service under clause (a) or (aa) of sub-rule (1) of Rule 4 of the Indian Administrative Services Recruitment Rules 954, after the commencement of the All India Services (Death cum Retirement Benefits) Amendment Rules, 1971, the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person, where as in relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be accepted by the Central Govt. as the date of birth of such person . According to sub rule (4) of Rule 16-A, the date of birth "as accepted by Central Govt". shall not be subject to any alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3). A conjoint reading of sub-rules (2), (3), & (4) of Rule 16-A of the Rules would make it clear that a positive act of acceptance of date of birth by the Central Government must be there in order to attract the prohibition enshrined in sub-rule (4) of Rule 16-A as against any alteration in the date of birth of a member of service. In the application form submitted by the applicant for Civil Services (Main) Examination, 1983 (Annexure 3), the applicant had no doubt mentioned his date of birth of as 1.3.1959 but at the same time it was shown as: 'contested under correction' and that apart it

was also mentioned therein that 'actual DOB is 13.02.1962'. In that view of the matter the bar created by sub-rule(4) of Rule 16-A would not be attracted in the absence of any specific order by the Central Government accepting 1.3.1959 as the date of birth. Since the applicant was appointed to Indian Administrative Service under clause (a) of sub-rule (1) of Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954, the provisions contained in sub-rule (3) of All India Services (Death cum Retirement Benefits) Rules, 1958 are not ~~be~~^{be} attracted. The respondents have also not brought on record any order by the Central Government accepting 1.3.1959 as the applicant's date of birth either on the basis of any entry in the service book or other similar official documents maintained by the concerned government. In fact the date birth has not been mentioned in the service book. In my opinion, therefore, the inhibition contained in sub-rule (4) of Rule 16-A of the Rules is not attracted to the facts of the present case.

In re: the third question

The next question that calls for determination is whether the applicant had enjoyed any benefit on the basis of his date of birth as 1.3.1959 and therefore in principle he is precluded from seeking any alteration in the said entry as to date of his birth. In paragraph 13 of the counter affidavit filed on behalf of Union of India, it is alleged that the applicant derived benefit of the date of birth '1.3.1959' for securing admission to the primary school; for appearing in the CBSE examination and the UPSC examination in which he would have been ineligible to appear with his date of birth as 13.2.1962. The applicant appeared in CBSE examination in 1975 i.e. at the age of 13 years if his date of birth is taken as 13.2.1962. The respondents have not produced any statutory rule prohibiting a candidate at the age of 13 years



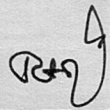
from appearing in CBSE examination. However, the Board could relax the age bar, if any. The applicant appeared in the Combined Medical Services Examination, 1981 and was selected but did not join the offer. Before joining Indian Administrative Service on the basis of Civil Services (Main) Examination, 1983 the applicant was no doubt selected and appointed to the Indian Police Services on the basis of civil Services Examination 1982 but his services from Indian Police Services were terminated vide order dated 6.12.1984 w.e.f. 28.8.1984(AN) (Annexure A5). The applicant was not under age for Civil Services Examination, 1983 on the basis of which he was selected and appointed to Indian Administrative Services. He derived no advantage or benefit in Civil Services Examination, 1983 on the basis of his earlier selection to Indian Police Service based on his date of birth 1.3.1959. The applicant resigned from Indian police Service before joining Indian Administrative Service and his request for pay fixation on the basis of earlier pay drawn as a member of Indian police Service was refused. He has also not been given any advantage in the matter of seniority on the basis of his earlier service as a member of Indian Police Service to which he could not have been selected on the basis of date of birth 13.2.1962. In principle, therefore, the applicant cannot be ^{held} debarred from claiming correction in his birth date from 1.3.1959 to 13.2.1962.

As to the bar of limitation pleaded by the respondents suffice to say that the relief claimed being one for mandamus directing the respondents to accept 13.2.1962 as the applicant's date of birth, the question of the said relief being barred by time does not arise.



In view of the foregoing conclusions, the Original Application succeeds and is allowed. The respondents are directed to accept the applicant's date of birth as 13.2.1962 and make an entry to that effect in his Service Book.

Dated: 10th Feb.,2005


VICE CHAIRMAN

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