

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

(2)

O.A. No. 315 OF 1991
~~PLAINTIFF NO.~~

DATE OF DECISION 27-3-1992.

Dilip Mathurdas Shah, Petitioner

Mr. J.G. Shah, Advocate for the Petitioner(s)

Versus

The Collector of Central Excise & Ors. Respondents

Mr. B.B. Naik, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member

The Hon'ble Mr. R.Venkatesan, Admn. Member.

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 ?

Dilip Mathurdas Shah,
Superintendent,
Customs & Central Excise
Headquarters,
Baroda,
Residing at 32, Shri Hari Apartment,
Kareli Baug, Baroda. Applicant.

(Advocate: Mr. J.G. Shah)

Versus.

1. The Collector of Central Excise & Customs, Baroda, having his office at Race Course Circle Baroda.
2. Chief Accounts Officer of Central Excise & Customs, Race Course, circle, Baroda.
3. Union of India to be served through Central Board of Excise & Customs, North Block, Central Secretariat, New Delhi. Respondents.

(Advocate: Mr. B.B. Nayak)

J U D G M E N T

O.A.No. 315 OF 1991

Date: 27-3-1992.

Per : Hon'ble Mr. R. Venkatesan, Member (A),

The applicant in this application has come with the prayer to set aside an order of the Chief Accounts Officer, Central Excise & Customs, Baroda rejecting an application made by the applicant for alteration of his date of birth from 8th June, 1933 to 4th October, 1934, and to direct that the said alteration may be made in his service book.

2. The facts of the case, that are relevant, are that the applicant joined service in the Central

Excise Department on 15th April, 1954. The service book of the applicant shows the date of birth of the applicant as 8th June, 1933, which is based on his school leaving certificate submitted at the time of appointment. The applicant contends that he came to know in 1988-89 ^{or} ~~thereabouts~~ while applying for a passport, from his certificate of birth obtained from the Dohad Municipality, that his date of birth was actually 4.10.1934. He states that on the basis of the information he obtained another copy of the said certificate and made an application on 12th December, 1990 to the respondents for making an alteration in his date of birth to 4.10.1934.

3. By the impugned order dated 30th January, 1991, the said application has been rejected stating that the applicant's date of birth has been correctly mentioned as 8.3.1933 on the basis of his School Leaving Certificate submitted by him at the time of appointment and further that his request should have been made by him within five years of his entry into Government service.

4. The learned counsel for the applicant contended that the applicant had ^{no} ~~means~~ of knowing that his date of birth entered in his school records

was incorrect. He states that his father is an uneducated person. The applicant came to know only at the time of his applying for the passport in 1988-89 that the date of birth as entered in the Register of Births of the Dahod Municipality was 4th October, 1934. He contended that the Register of Births was a statutory record and the entry was made at the time of the birth and there-
~~would~~
fore prevail over the entry in the school records. He further contended that the period of five years
~~into service~~
after the date of entry, which has been prescribed under the Rules for submitting representation for
~~birth~~
change in the date of had been struck down by the Courts and it was opened to the authorities to entertain an application for change of date of birth at any time when it is found that a genuine bonafide mistake had occurred. The learned counsel also drew our attention to the actual extract of the birth register of Dahod Municipality which has been filed along with the application, reading as under :

"Applicant Dilip Mathurdas Shah, S.No.200(5)
DAHOD MUNICIPALITY Stamp of
Birth Register Dahod Muni-
cipality.

Sd/- (Illegible)
Chief Officer
Dahod Muni.

- 5 -

No.	Ward	Place	H.No.	Name of mother	Religion
1	2	3	4	5	6

291	-	Old Bazar	-	Son born to wife of Mathurdas Gadhadhar Das	Hindu
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Caste	Son of daughter	Birth date	Address & name of sender of the notice	Date of notice
7	8	9	10	11

Nima Bania	Son	4.10.34	Mathurdas Gadadhardas Dahod.	5.10.34
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Name of the sender of notice	Signature of the sender of notice	Signature of the Entry maker
12	13	14

Father	Sd/- Shah Mathurdas Gadadhar, Dahod	Sd/- Manilal Mansukhlal
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Copy made by : Sd/- (Illegible)	True copy
Compared by : Sd/- (Illegible)	Sd/-
Stamp.	President
True copy	Executive Committee
Sd/-	Dahod Nagarpalika

True copy
Sd/-
Superintendent
C.Ex. & Customs (Prev.)
H.Q. Vadodara

The learned counsel submitted that even though the above certificate does not mention the name of the son who was born on 4.10.1934, to the parents of the applicant, one affidavit had been recorded by one Mr.R.C.Kadakia, an advocate of Dahod who is a long time resident of Dahod and had known ~~the family~~ the family

for 55 years, affirming that no male child had been born after the birth of the applicant and the applicant was the younger of the only two sons born to the parents of the applicant. The affidavit further states that the birth certificate issued by the municipality had been verified by him and the certificate pertains to the applicant. He stated that on the strength of this affidavit and the extract of the birth register it stood establish that the applicant's date of birth was infact 4.10.1934 and the applicant was therefore, entitled to have the date corrected in his service record.

5. The respondents have filed a detailed reply affidavit. According to this, the date of birth of the applicant was recorded as 8.6.1933 after due verification from the school leaving certificate which was relied upon by the applicant himself at the time of entry into service. The relevant entries in the service record had been verified by the applicant himself periodically and were duly signed by him from ~~the~~ time to time in the service book maintained by the department. The respondents contends that it was difficult to believe that the applicant came to know about his correct date of birth only when he received a certificate from the

in 1989-90 especially when
Dahod Municipality, such a contention comes after

a long period of 36 years of service and just

date of
prior to 7 months of his superannuation. The

respondents have also referred to the service rules

minimum
prescribing a period of 5 years after entry into

service for making applications for correction in

the date of birth.

6. We find that it is not in dispute in this case that for a period of nearly 36 years from the date of his entry into Government service in 1954, the applicant had accepted the date of birth as entered in his service book, namely 8th June 1933 as being the correct one. Prior to his representation dated 12th December, 1990, the applicant had never represented for a change in the said date of birth. It was only 7 months before his due date for retirement that he submitted his first representation contending that his date of birth was actually 4th October, 1934.

7. The applicant is an educated person having studied upto S.S.C., and entered service in Group-C as a clerk. He is contending that there was an error at the time of his admission into primary school, resulting in his date of birth being recorded

(a)

wrongly and the age overstated by above one year and two months. Even assuming that this is true, it is difficult to believe that at no subsequent point of time until 1988-89 the applicant ever came to know that the said date was wrong and that he was actually a year and two months younger. The entry in the Register of Births, which we have ^Q produced above shows that the father of the applicant had himself sent the notice of birth and had signed it. Therefore, the father of the applicant was not an illiterate person. If the child that was born on 4.10.1934 was in fact the applicant, the father could not have been unaware of the discrepancy in the date recorded ^{and in one} _Q in the School Records and School Certificate. It is also seen from an affidavit made by the applicant at the time of his representation to the Respondents that he states that he is celebrating his birthday on 4th October every year. Thus the contention that the applicant was not aware until 1988-89 or thereabouts that his date of birth as recorded ^Q in Service Records, viz., 8th June 1933, was incorrect, fails.

8. There is a ^Q number of decisions of this Tribunal which holds that entries in the service records which have stood the test of time and remained unchallenged for a considerable period cannot be modified unless there are overwhelming reasons to establish that the entries had

been made under erroneous circumstances which throw great grave doubt about the validity or authenticity of the entries (Fakir Chand Vs. Union of India, 1987(3) SLR CAT 625). The same view has been taken by the Principal Bench of CAT in Baldev Rai Vs. Union of India, 1989(1)ATLT(CAT) 289, wherein it was held that an entry of date of birth in the service record which has gone unchallenged and accepted by the employee concerned for years cannot be altered at the fag end of one's career unless there is overwhelming evidence in support of the correct date of birth and no element of fraud or malafide intention or taking undue advantage at the time of recruitment by the recorded date of birth is present. Again in H.K. Walia vs. Union of India, ATR 1988(2) CAT 606, it was held that the applicant was estopped from challenging the recorded date of birth which he had himself declared and continuously accepted for more than 30 years. It was also held in V.Surya Raman Vs. Accountant General, Andhra Pradesh, 1986 (6) ATC 456 that an application for change in date of birth made shortly before the retirement can be validly rejected. In B.N. Gupta Vs. Union of India, ATR 1988(20) CAT 126, it was held that "one of the conditions on which relevant orders allow alteration of date of birth recorded in the service is that the entry must be due to genuine bonafide mistake and where there is no mistake and the

applicant saw the entry on several occasions over nearly 25 years and made no protest, a request for change of date of birth should not be considered".

In Hirralal Vs. Union of India (ATR 1987(1)CAT 414) it was held that while an employee has the right to seek change of date of birth, but it does not lay down that he can claim change of date of birth ~~and~~ without explaining the delay in seeking such a change.

9. In the present case, in the light of the applicant's affidavit dated 10.12.1990 in which he states "I am also celebrating my birth date on 4th October every year", we hold that the applicant must have been aware of the discrepancy in the date of birth all along. In such circumstances, he ought to have made diligent efforts at the earliest opportunity after his entry into service to obtain an extract from the Birth Register of the municipality. He made no effort to do so, ~~he~~ admittedly made an application only in 1988-89 or thereabouts, i.e. to say, only about 2 years before his due date of retirement as per official records. There was no overwhelming reasons to establish that the entries have been made in any erroneous

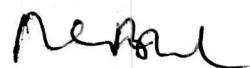
circumstances, no genuine or bonafide mistake on the part of the respondents or on the part of the applicant having been shown on the evidence. The applicant has himself given the date of birth as 8th June 1933 in his application form for registration for employment in the Central Excise Department on 8.3.1954 and he has accepted the said date for more than 35 years thereafter. In such circumstances we hold that the applicant is estopped from seeking a change in the date of birth as late as December 1990, after more than 35 years of service and just about ^{7 months} ~~1½ years~~ before his due date of retirement as per his recorded date of birth.

10. In the result, we dismiss this application.

There will be no order as to costs.



(R. Venkatesan)
Member (A)



(R.C. Bhatt)
Member (J)