

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 428 of 2003

Monday, this the 30th day of June, 2003.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.D. Xavier,
Income Tax Officer,
Ward No. 2, Range 3,
Ernakulam,
Kochi - 682 018

..Applicant

[By Advocate Mr. K.M.V. Pandalai]

v e r s u s

1. The Union of India represented by its Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Central Board of Direct Taxes, represented by its Secretary, Ministry of Defence, New Delhi.
3. The Chief Commissioner of Income Tax, C.R. Building, I.S. Press Road, Cochin - 682 018.

..Respondents

[By Advocate Mr. P.M.M Najeeb Khan]

The application having been heard on 4.6.2003, the Tribunal on 30.6.2003 delivered the following :

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The case of the applicant is that he joined the Income Tax Department as Upper Division Clerk on 5.1.1963. His date of birth was furnished as 2.8.1943. After a lapse of time, it was found that the date of birth as per his baptism certificate maintained in the St. Mary's Forane Church, Athirampuzha, District Kottayam, is 3.8.1944 and the date of baptism is 10.8.1944. The Annexure A/1 is the baptism certificate issued by the Church authorities on 30.11.91. The applicant made a

representation to the third respondent requesting him to effect necessary changes in the date of birth recorded in the service book of the applicant as 3.8.1944 as per Annexure A/1 certificate. The third respondent rejected the representation of the applicant vide Annexure A/3 communication dated 9.1.1992. Aggrieved by the same, the applicant had filed OA No. 205/1992 and this Tribunal vide order dated 5.8.1992 directed the second respondent in that OA (third respondent herein) to reconsider the case of the applicant in the light of the evidence produced by the applicant. However, the third respondent rejected applicant's claim vide order Annexure A/5 dated 30.12.94. He filed a detailed representation dated 17.1.1995 (Annexure A/6) before the third respondent and thereafter, a reminder was sent on 6.9.2002 (Annexure A/7). In reply to Annexure A/7 letter, the respondents issued a letter dated 17.2.2003 (Annexure A/8) to the applicant asking him to produce the copy of his original representation to enable them to process his present representation dated 6.9.2002. He submitted the same vide Annexure A/9 dated 21.2.2003. Finally, the third respondent has issued a memorandum dated 16.4.2003 (Annexure A/12) holding that the claim of the applicant cannot be entertained in the light of the judgement of Hon'ble Supreme Court reported in (1994) 6 SCC 302, State of Tamil Nadu vs. T.V. Venugopalan. Aggrieved by the same, the applicant has filed this OA seeking following reliefs:

- "(i) To call for the records leading to Annexure A/12 proceedings passed by the third respondent and to quash the same; and
- (ii) To declare that the correct date of birth of the applicant is 3.8.1944 as evidenced by Annexure A/1 Baptism Certificate and to direct the third respondent to alter applicant's date of birth in his service records as 3.8.1944, or
- (iii) to direct the third respondent to pass fresh orders on applicant's claim A2 based on the evidence produced by the applicant as directed



by this Hon'ble Tribunal in Annexure A4 order and as requested in Annexures A6 and A7 by the applicant, as expeditiously as possible;

(iv) to pass such other order or orders deem fit, proper and necessary in the circumstances of the case."

2. The respondents have filed a detailed reply statement contending that the applicant earlier filed OA No. 205/1992, which was disposed of by this Tribunal on 5.8.1992 directing the second respondent therein to reconsider the claim of the applicant. After giving the applicant an opportunity of hearing on 23.11.1994 and considering all the points raised by the applicant, the third respondent rejected the applicant's claim on the ground that the date of birth of the applicant was recorded for the first time in official records while he was admitted to the School which was again confirmed by the entry in the SSLC book. During his higher studies as well as while taking up employment in the Government, the same date of birth was recorded. They further contended that it is difficult to believe that the correctness or otherwise of the date of birth recorded and used over the period of years came to the knowledge of the applicant only in the year 1991. The explanation that the correct date of birth was obtained for the marriage purpose of his daughter is also far fetched. The delay in approaching the competent authority in getting his date of birth corrected has also not been explained. The applicant has not brought any acceptable evidence to prove that the date of birth recorded in the SSLC book is incorrect. The certificate of Baptism furnished by the applicant cannot be treated as an evidence as the same is patently against the official records of the Education Department of Kerala. They submitted that the date of birth recorded in the Matriculation certificate must prevail over any other documents.



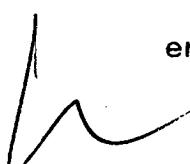
The respondents submitted that the applicant filed another application on 6.9.2002 before the third respondent requesting to consider his claim for correction of date of birth without disclosing the decision taken by the Chief Commissioner of Income Tax on the order of this Tribunal in OA 205/92 filed by the applicant. The said representation was rejected by the respondent No. 3 with due application of mind. Quoting Hon'ble Supreme Court's judgement in the case of Tamil Nadu vs. T.V. Venugopalan (supra), it is pleaded that if the application for correction of date of birth is preferred beyond five years of period of entering into service, such application cannot be entertained. The applicant joined the service on 5.1.63. He made his first representation requesting to correct his date of birth as 3.8.1944 only on 02.12.1991, after a lapse of 28 years. Annexure R/1 is the judgement of Hon'ble Supreme Court referred to above. The respondents further contended that according to Note 6 of F.R. 56, the authentic record for declaration of date of birth by the Government servant at the time of appointment and also acceptance by the appropriate authority is, as far as possible, confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from the birth register. The date so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in Note 6. An alteration of date of birth of a Government servant can be made if a request in this regard is made within five years of his entry into Government service. Annexure R/2 is the relevant portion of Note 6 of FR 56. Except approaching this department, the applicant has not taken any attempt to alter the date of birth which was already recorded in the Education Department of



Kerala by due process of law/procedure. Mere production of Baptism Certificate issued by the Church at this distant time, will not make a ground for altering the date of birth of the applicant in his service records.

3. I have heard Shri K.N.V. Pandai, learned counsel for the applicant and Shri P.M.M. Najeebkhan, ACGSC, on behalf of the respondents.

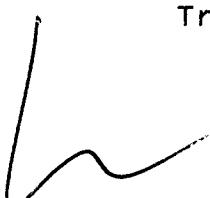
4. The learned counsel for the parties took me to the pleadings, evidence and material placed on record. The learned counsel for the applicant submitted that the impugned order Annexure A/1 was issued not in consonance with the order passed by this Tribunal in OA No. 205/1992. He argued that the third respondent has not applied his mind while passing the impugned order Annexure A/12. As per the entry in the service records, the applicant was to retire on superannuation attaining the age of 58 years on 31.8.2001. Since the Government of India had enhanced the age of superannuation to 60 years, the applicant is due to retire on 31.8.2003 as per the entry in the service records. But as per the actual date of birth as evidenced by the Baptism Certificate (Annexure A/1) issued by the Church authorities, the applicant's date of retirement would be 31.08.2004. The learned counsel for the applicant argued that Annexure A/1 is a genuine document and the applicant is legally entitled to continue in service till 31.8.2004. On the other hand, the learned counsel for the respondents submitted that the Baptism Certificate is not a gospel document and the applicant is making the claim for alteration of his date of birth at the fag end of his retirement on an experimental basis. For all



purposes, as per F.R. 56 (Note 6), High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register has been accepted, recognised and adopted as the records for proving the age and as per the judgement of Hon'ble Supreme Court in State of Tamil Nadu vs. T.V.Venugopalan (supra), if the applicant was really aggrieved, he could have approached the authority concerned within five years of his entry into service. Moreover, the Baptism Certificate issued by the Church is not an authentic document as it has no legal force at all. If the applicant was really aggrieved, he could have got his date of birth corrected in the SSLC Book by the competent authority as contemplated in the Rules of Education Department of Kerala, which the applicant has not chosen.

5. I have given anxious consideration to the pleadings and arguments advanced by the learned counsel for the parties and have perused the material placed on record.

6. The grievance of the applicant is that the date of birth recorded in the SSLC Book is not correct and he is running short for one year on account of wrong entry of his date of birth. Annexure A/1 is the correct document showing his date of birth as 3.8.1944 and if this is accepted, his retirement age would be extended for a further period of one year, i.e. upto 31.8.2004. One of the main grounds advanced by the learned counsel for the applicant is that the respondents did not consider his claim in terms of the directions of this Tribunal in OA No. 205/1992. Therefore, it is pertinent to go through the directions of this Tribunal in OA No. 205/1992, which is reproduced as under:



"6. In the light of the settled legal position, the impugned order is unsustainable and accordingly I quash the impugned order and sent back the matter to the second respondent for reconsideration of the claim of the applicant in the light of the evidence produced by him. The second respondent shall consider the grievance of the applicant and dispose of the same in accordance with law. Before disposing of the same, the applicant shall also be given an opportunity to be heard. This shall be done as expeditiously as possible."

7. In that OA, quoting the order reported in 1987 (3) ATC 130, Hira Lal vs. Union of India and Ors., this Court has held that five years period of limitation prescribed in the Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record published as SO 3997 in the Gazette of India dated 15.12.1979, takes effect from that date and the five year period imposed vide aforesaid notification dated 15.12.79, cannot be applied in the case of the applicant since he was entered into service prior to 1979 and, therefore, it cannot be strictly implemented. So, any whisper of delay in the impugned order in approaching the authority is not justified. One of the aspects that is required to be considered in this case is whether the official record as per F.R.56, i.e. SSLC Book on one hand, and that of the Baptism Certificate issued by the Church Authority on the other, would prevail in a case where the dispute regarding the date of birth occurs. The Principal Bench in the case of O.S. Bajpai vs. Union of India and Another, [1989] 9 ATC 540 and also the Jabalpur Bench of this Tribunal in N.A.Khan vs. Union of India and Others, (1993) 24 ATC 514, has considered this issue at length wherein it was held that if there is a conflict between the date of birth recorded in the Matriculation Certificate and that of Birth Register, one entered in the Matriculation Certificate would prevail unless set aside by the competent authority. The evidence produced in this case has also been discussed in the impugned order and the Baptism Certificate

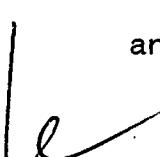


obtained in 1991, which is not put to proof, cannot be treated as having more evidential value than that of the SSLC Book. Therefore, the argument of the applicant that the impugned order Annexure A/12 has not been disposed of with due application of mind, cannot be accepted. Note 6 of F.R. 56 also specifies that a person who seeks alteration in his date of birth should establish that a genuine bona fide mistake has occurred and further the sanction of a Ministry of Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department under which the Government servant is serving, will be obtained. To show the genuineness of the Baptism Certificate, the averment/argument of the applicant is that it has come to his knowledge only at the ^{time} of his daughter's marriage, that too after a distant period. The Baptism Certificate issued may be useful for many purposes in his family pursuit, but that cannot be accepted for the purpose of alteration in the date of birth already recorded in the Service Book. Apart from that, no attempt for getting the entry corrected in the SSLC Book by the competent authority as provided under the law, has been made by the applicant in this case. In the circumstances, the decision of the respondents that the date of birth recorded in the official records as corroborated by the entry in the SSLC Book, cannot be faulted with reference to the rules position on the subject.

8. It is pertinent to mention that SSLC Certificate is a document issued by the School Authority/Board, which is carried on and confirmed by the College and Educational Authority, i.e. Education Department of Kerala. Rule 3, Chapter 6 of the Kerala



Education Rules prescribes the mode of altering the date of birth. On going through that procedure, it could be seen that it is a full proof procedure which is not followed in this case. Admittedly, the applicant did not care to adopt these procedures which he could have very well adopted and got the date of birth corrected in the service records/SSLC Book at the appropriate time. Therefore, I am of the opinion that without setting aside the entry in the SSLC Book/service records by the competent authority or without following the procedure as prescribed under the Rules for alteration of the date of birth in the Matriculation Certificate, the applicant is not justified in approaching this Tribunal as a short cut method since the alleged incorrect date of birth in the SSLC Book is not under challenge and also no relief is claimed to that effect. In the circumstances, in my view, the applicant has adopted a short cut method to get the relief which otherwise could have obtained through due process of procedure from the Education Department. The learned counsel for the respondents has brought to my notice the judgement Annexure R/1 reported in (1994) 6 SCC 302, State of Tamil Nadu vs. T.V. Venugopalan, in which similar point has been decided by Hon'ble Supreme Court. Hon'ble Supreme Court cautioned the Administrative Tribunal that the application for correction of date of birth is beyond the scope of judicial review since the Tribunal could not reappreciate the evidence to reach a different conclusion as if it is a Court of appeal. Further, it is observed that "the Tribunal is grossly erred in showing overindulgence in granting the reliefs even trenching beyond its power of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee.



It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground". Regarding the Matriculation Certificate, the Apex Court observed that " it is well known that the service record would be opened after the Government servant enters the service and normally the entry in the service record would be countersigned by the Government servant. The date of birth as entered in the School record (Matriculation, Secondary School Leaving Certificate or HSC or Board Exams, whatever may be the name of certificate from an institution in which the candidate had undergone course of study, be it in the primary or secondary educational institutions), is the source material for making entry in the service record. The object of the rule or statutory instructions issued under proviso to Article 309 or orders issued by the Government under Article 162, for the correction of date of birth entered in the service record, is that the Government employee, if he has any grievance in respect of any error of entry of date of birth, will have an opportunity, at the earliest, to have it corrected. Its object also is that correction of the date of birth beyond a reasonable time should not be encouraged. Permission to reopen accepted date of birth of an employee, especially on the eve or shortly before the superannuation of the Government employee, would be an impetus to produce fabricated record."

9. Further, Hon'ble Supreme Court in a detailed and celebrated decision reported in AIR 1995 SC 1499, Burn Standard Company Limited and Another vs. Dinabandu Majumdar and Another, has observed as under:



"11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following:

When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting the change in the date of birth is likely to frustration down the line resulting in causing an adverse affect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case, in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting

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him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim order.

10. Ultimately in para 14 of the said judgement, the Hon'ble Supreme Court held as under:

.....We have no hesitation in reaching the conclusion that the Division Bench was wholly unjustified with the order of the learned Judge of the same Court whereby it was held, in our view, rightly, that the appellant's writ application filed for correction of his date of birth at the fag end of his service career for avoiding his superannuation which was due, cannot be entertained."

(emphasis supplied)

11. Considering the above aspect and the rule position, I do not find any merit in the Original Application and the same is liable to be rejected. The Original Application is dismissed accordingly with no order as to costs.

(Dated, 30th June, 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvr.