

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 517
J. A. No.

1990

DATE OF DECISION 22.3.91

T. Vasu Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the General Manager, Southern Railway, Madras and others

Ms. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This is an application filed for quashing Annexure-P, an order passed by the Chief Personnel Officer rejecting the representation of the applicant dated 27.6.1987 submitted for correction of date of birth pursuant to the earlier decision of this Tribunal in O.A. 35/89.

2. When the applicant approached this Tribunal at an earlier occasion highlighting his grievances that the service records does not contain his correct date of birth, we considered the claim of the applicant and disposed of the same by Annexure-J judgment dated 24.1.1990 observing that the applicant has produced some evidence before the respondents for a serious consideration of necessary alteration of date of birth of the applicant. We also directed that the applicant should file a detailed representation with all

available documents to satisfy the respondents about the correct date of birth. Accordingly, the applicant has presented a representation dated 27.6.1987 with all available documents such as entry in the Birth Register, School certificate and certificate from Tahsildar. But according to the applicant, they were not considered by the Chief Personnel Officer before passing the impugned order.

3. The applicant admitted that though he made a declaration in 1958 when he commenced his regular service in Railway to the effect that his date of birth is 1.7.1932, later it was found that this was a mistake and the actual date of birth is 24.8.1934 and thus, the service records is to be corrected taking into consideration the certificate issued by the School authorities and the entry in the Birth Register. According to the applicant he had made oral request to the authorities to alter his date of birth in the service records. Since his request did not invoke any result from the respondents, he submitted a representation dated 27.6.1987 for the same relief but this was rejected as per order dated 3.11.1988. The applicant challenged this proceedings in O.A. 35/89 for getting the date of birth corrected in the service records. This Tribunal directed the respondents to conduct an enquiry and decide the issue. But such an enquiry has not been conducted by the respondents as directed by this Tribunal. The second respondent passed the impugned order with same reasonings denying the claim of the applicant. He filed this application under section 19 of the Administrative Tribunals' Act 1985. During the pending of this application, the applicant retired from service on 30.6.1990.

4. The respondents filed counter affidavit in which they have taken a definite stand that the correction of

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date of birth after a lapse of thirty years cannot be granted particularly when the documents produced by the applicant cannot be safely accepted because of the discrepancy in the date and the name of the father of the applicant. The learned counsel for the applicant on the other hand submitted that the applicant is a low paid employee having no sufficient education to be included in the category of literate persons and the declaration made by him originally should not be given due weight and he is entitled to correct his date of birth in the light of the certificates produced along with the representation.

5. The correction of date of birth is a serious matter and it is generally allowed when there is satisfactory proof and evidence to satisfy the authorities that there is a genuine mistake in the date of birth originally entered in the service records and that it would cause injustice to the concerned official if it is not allowed. The Central Administrative Tribunal, Ahmedabad Bench in *Sikenderbeg S Mirza V. Union of India and others*, 1990 (14)ATC 20, in which one of us was a party (Shri S. P. Mukerji) observed as follows:

"The question of allowing a change in the recorded date of birth has been a subject matter of perennial judicial debate. The conundrum arises not so much because of any forensic vagueness but on the uniqueness of the circumstances in each case. The general principles, however, are clear and un-exceptionable. There should be sanctity in the date of birth which is recorded on the basis of the declaration or documentary evidence produced by the Government servant at the time of recruitment and if there has to be any change it should be applied for within a reasonable period of joining service and that too on irrefutable documentary and other evidence. If, however, it is found that the government servant had consciously and fraudulently got a wrong date of birth entered at the time of recruitment in order to get some personal advantage, he should not be allowed to get it further changed to get a future extension in service or any other benefit. The courts of law, however, rightly and for good reasons have been taking a liberal view in the matter of change of date of birth even at the fag-end of one's career where there has been a bonafide mistake or the government servant has been illiterate and had not derived any undue benefit by his wrong recorded date of birth and his conduct has been transparently sincere, innocent and honest."

5. The Supreme Court in R. S. Kallolimath, Appellant V. The State of Mysore and another, Respondents, AIR 1977 Supreme Court 1980, held that correction of date of birth in genuine cases is allowed even after the retirement of the concerned official. The relevant portion is quoted for convenience:

"Pursuant to the observations made by the High Court on September, 8, 1970 (while disposing of another writ petition No. 1354 of 1969 filed by the appellant) to the effect that the Government's power to hold an enquiry into the correctness of the date of birth of a Government servant from service, the Government vide order No. PWD/1EBS/70 dated November 18, 1970 directed Shri T. S. Narayana Rao, Joint Secretary to Government of Mysore, General Administration Department, to make an enquiry for the purpose of determining the correct date of birth of the appellant..."

7. In the light of these settled principles, the decision will have to be taken considering the facts and circumstances of each case. In the instant case, it is an admitted fact that the applicant made a declaration on 21.10.58 when he commenced his service that his date of birth is 1.7.1932. In Annexure-M statement given in the enquiry he admitted that he attested the second page of the service record on 4.12.1958. He did not question the correctness of it and approached the authorities within a reasonable period after the declaration. On the other hand after the declaration he produced a medical certificate dated 9.10.1958 giving his age as 26^{which is} also tallies with the original declaration and consequent entry in the service records. On the basis of the original entry in the service record and the available material in the department, presumably after an enquiry, the Senior Divisional Personnel Officer, Palghat Division issued a clarification dated 20.7.89 which is produced as Annexure R-2 along with the counter affidavit which indicates that the records available in the department and the original entry as attested by the applicant show that the applicant's

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correct date of birth is 1.7.1932. The facts and circumstances in this case lead to the inference that there is ^{no} mistake in respect of the date of birth of the applicant in the original service records.

8. Now we will examine the case of the applicant. He submitted that the correct date of birth is 24.8.1934. He has not produced any records which can be safely accepted. The applicant's case has not been proved beyond doubt by producing convincing and fool proof records which can be accepted without further verification and scrutiny. The entry from the Registrar of Birth and Death and the certificate obtained from the School authorities are doubtful materials to be acted upon. The certificate received from the Registrar of Birth and Death cannot be safely relied upon because it (Annexure-C) only makes mention that a male child was born on 24.3.34 to one Bapputty and M. Ammutti. The father's name of the applicant admittedly is Pappukutty. It requires further investigation and finding that Bapputty and Pappukutty are one and the same and that very person is the person named in Annexure-C. The applicant also produced Annexure-D to show that 'Pappukutty' alias 'Bapputty' is one and the same person. It is a certificate obtained from the Tahsildar, Kozhikkode. But the certificate from the school authorities shows the name of applicant's father as 'Bapputty' (Annexure R-1). The name of the applicant is shown as Vasu T. V. where as his actual name is T. Vasu. There is also further discrepancy regarding the date of birth in school certificate. It shows xxxx the date as 15.8.1934 while the applicant claims the date as 24.8.1934. However, there is also some confusion with regard to the name of the father and the initials of the applicant himself. In the confused state of affairs, it is not safe for the respondents to accept the fresh evidence produced by the

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applicant for correction of the date of birth after a long period of about thirty years.

9. The delay is crucial on the facts and circumstances of the case for seeking correction of the date of birth. The applicant submits that he has made oral requests to the respondents for making correction before 1987 but he did not give the year or exact date when he made oral requests to the respondents nor did he produce any evidence to accept his case particularly when the respondents denied in the counter affidavit the very statement of such oral request. So the case of the oral request made by the applicant cannot be accepted. The applicant made first attempt to correct the date of birth on 27.6.1987; after a long period of thirty years from the date of declaration made by the applicant. The applicant has not given any convincing explanation for the long delay nor did he give an acceptable reason as to why he ~~has~~ made ^a false declaration or whether he had made the declaration without knowing the correct position and when exactly ^{he} knew about the mistake.

10. Under these facts and circumstances, we do not feel that the applicant had made out any bonafide case for interference by the Tribunal in this case and grant the relief of correction of his date of birth as claimed by the applicant. In the result, the Original Application is liable to be dismissed. Accordingly we do so. We make no order as to cost.

(N. DHARMADAN)
JUDICIAL MEMBER

22.3.91.

(S. P. MUKERJI)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA-28/91 in
O. A. No. 517/90
~~XXXXXX~~

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DATE OF DECISION 10-1-1992

T Vasu Review Applicant (s)

Mr P Sivan Pillai Advocate for the Review Applicant (s)

Versus

Union of India Respondent (s)

Smt Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

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The Hon'ble Mr. AV HARIDASAN, JUDICIAL 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. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant in the original application has filed this application for review of the judgement of the Tribunal in the O.A. dated 22.3.1991. The original application was filed by the review applicant praying for quashing the order dated 22.5.1990 of the second respondent rejecting his request to change his date of birth in the service record from 1.7.1932 as it was recorded at the time of entry into service to 24.8.1934 and also for a direction to the respondents to correct the date of birth of the applicant entering the date as 24.8.1934 instead of 1.7.1932 and to continue him in service till 31.8.1992. The applicant had earlier filed OA-35/89 for

similar relief. That application was disposed of with a direction to the applicant to make a representation and another direction to the respondents to consider and dispose of the representation, in accordance with law. Pursuant to the above order the applicant made a representation which was disposed of by the respondents by the order impugned in the original application. The applicant contended that the respondents have not correctly appreciated the evidence adduced by him and has rejected his request for change of date of birth in an arbitrary manner. This Bench of the Tribunal in the order sought to be reviewed finding that there was no bonafide case for interference, dismissed the application. It is to review this order that the review application has been filed. It has been averred in the R.A. that the Tribunal has gone wrong in holding that there is no bonafide case for the applicant deserving grant of relief.

2. The respondents have filed a reply statement opposing a review of the judgement.

3. We have gone through the review application, the statement filed by the respondents, the order under review and the connected files. We have also heard the learned counsel for the review applicant and the respondents.

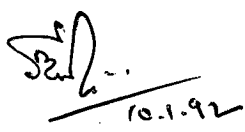
4. Finding that there has been discrepancies in the date of birth shown in the certificate issued by the Registrar of Birth and Death and in the extract of

School Admission Register as also in the name of the father of the applicant in the said records it was held in the order sought to be reviewed that the decision taken by the respondents cannot be faulted.

This finding in the order is challenged by the review applicant in this review application on merits. No error apparent on the face of records or any other circumstances warranting a review has been averred in the application. On the other hand, the review applicant is attempting to persuade us to review the order on arguments which were already advanced and found against. Scanning through the order sought to be reviewed and the connected records, we are not satisfied that the order suffers from any error or infirmity warranting a review.

5. In these circumstances, the Review Application fails and the same is dismissed without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

10.1.1992