

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH.

OA No. 540 of 1995

Wednesday, this the 12th day of February, 1997

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. T.V.S. Mani,
Sub Divisional Engineer,
Telecom Department,
(Cable Pressurisation),
Gandhari Amman Civil Road,
Thiruvananthapuram-1 .. Applicant

By Advocate Mr. P. Jacob Varghese

Versus

1. The Director General,
Telecommunications,
Sanchar Bhavan, New Delhi.
2. The Chief General Manager,
Telecommunications,
Kerala Circle,
Thiruvananthapuram. .. Respondents

By Advocate Mr. S Radhakrishnan, ACGSC

The application having been heard on 12-2-1997,
the Tribunal on the same day delivered the
following:

ORDER

The applicant was working as Sub Divisional Engineer in the Telecom Department at the time of filing of this application. According to him, he was born on 18-9-1113 Malayalam Era and when he was admitted in the school his date of birth was given wrongly according to the Christian Era as 1-5-1937. His correct date of birth, according to him, is 1-5-1938. This mistake continued all along including in his SSLC Book. Coming to know of the mistake

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of the date of birth in the Service Book, the applicant submitted a representation to the District Manager (Telephones), Trivandrum in the year 1978 for correction of his date of birth and the same was rejected by the District Manager (Telephones) as per reply dated 21-12-1978. The applicant submitted another representation to the same authority on 19-3-1979 (Annexure A-3). The applicant did not receive any reply to his representation dated 19-3-79. Thereafter, on 31-1-1994, he again submitted a representation to the second respondent for the same purpose. As per A-12 order the representation of the applicant was rejected by the second respondent. The applicant, hence, seeks for a direction to the respondents to alter his date of birth as 1-5-1938 instead of 1-5-1937 and also to allow the applicant to continue in service till 30-4-1996.

2. Respondents contend that the OA is time barred, that though according to the applicant he has submitted representations in the year 1978 and also in the year 1979, thereafter for one and a half decades he was sleeping over which shows that he was never serious about this matter, that the applicant has retired on super-annuation on attaining the age of 58 years on the afternoon of 30-4-1995, that the applicant has in his Service Book attested that the date of birth shown as 1-5-1937 is genuine, that the same was re-verified on 4-8-1979, that the attempt of the applicant is to justify the inordinate delay on his part in submitting representations, that A-12 order has been passed after considering all aspects, that as per note 6 of FR 56 application for alteration of date of birth should be

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made within 5 years of entry into Government service if there is a bona fide mistake, that the said conditions are not satisfied by the applicant, and that the OA is to be dismissed.

3. The admitted case of the applicant is that he submitted a representation before the District Manager (Telephones), Trivandrum for correcting his date of birth in his Service Book in November, 1978 which was rejected and to the subsequent representation made by him to the same authority on 19-3-1979 no reply has been received so far. It is also the admitted case of the applicant that another representation was made by him in 1994 for the very same purpose. Respondents have taken the contention that the OA is hopelessly barred by limitation.

4. It is not known, when the representation of the applicant filed in the year 1978 was dismissed by the District Manager, what prompted the applicant instead of taking up the matter in appeal to the Appellate Authority, to file an identical representation to the very same officer in the year 1979. As the case of the applicant is that his second representation which filed on 19-3-1979 was kept in the cold storage by the District Manager (Telephones), Trivandrum, it is not known why he did not approach the Court for redressal of his grievance. Admittedly, the applicant has not approached the Court and he preferred to sleep over conveniently till 1994 and made another representation to the second respondent in 1994. The said representation was rejected as per A-12. The cause of action shown for this application is the rejection of the

request of the applicant as per A-12. It is needless to say that successive representations cannot save limitation and give rise to fresh cause of action. If the applicant has got a genuine case, when according to him no action was taken by the authority concerned on his representation of the year 1979, he should have approached the Court for redressal of his grievance, which he has admittedly not done. Having slept over for 1½ decades and then getting awakened in the light of A-12 and approaching this Tribunal on the ground that the OA is within time, cannot be accepted and it is only to be held as time barred.

5. According to the applicant, A-12 order which is impugned was passed by the second respondent only as per directions of this Tribunal in OA No. 1700/94. It is all the more the reason that the same remedy could have been availed of by the applicant when no action was taken, according to him, by the District Manager (Telephones) on his representation of the year 1979.

6. Learned counsel appearing for the applicant argued that the applicant came to know that there is a mistake in his date of birth in the Service Book only subsequently and the reason for not taking any action earlier is only on the ground that the mistake was discovered only at a later stage. In the light of the principle enunciated in Chief Medical Officer Vs. Khadeer Khadri, (1995) 2 SCC 82, this argument cannot be accepted. Hence, this is a case where the OA is barred by limitation.

7. In Burn Standard Co. Ltd. & Others Vs. Dinabandhu Majumdar & Another, (1995) 4 SCC 172, it has been held that:

"Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their requirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for ever decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such application on grounds of acquiescence, undue delay and

laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his "Service and Leave Record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement...".

Viewed in the light of the principle laid down in the said ruling, this OA is only to be dismissed.

8. As per note 6 of FR56 application for alteration of date of birth should be made within 5 years of ones entry into Government service. That has come into force on 15-12-1979. Even within a period of 5 years from the date of commencement of the same, nothing has been done by the applicant. The entries in the Service Book of the applicant was re-verified in the year 1979. At that time also the applicant has not raised any objection. Learned counsel appearing for the applicant drew my attention to K.N. Bal Vs. Union of India & Another, (1996) 33 ATC 531. The facts of that case are entirely different

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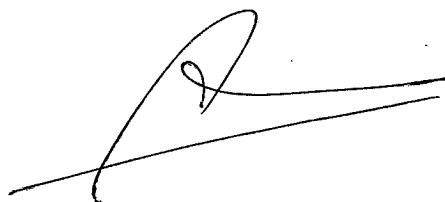


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from the facts of the case at hand. The said ruling has, therefore, no application to the facts of the case at hand.

9. Accordingly, the Original Application is dismissed. No costs.

Dated the 12th of February, 1997



A M SIVADAS
JUDICIAL MEMBER

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