

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 62/90
XXXXXX

199

DATE OF DECISION 20-7-90

KO Padmanabhan Applicant (s)

Mr MGK Menon Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Director General of Posts,
Postal Service Board, Dak Bhavan
New Delhi-110 001 & 2 others

Mr TPM Ibrahim Khan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, 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

Shri NV Krishnan, Administrative Member

In this case the applicant is aggrieved by the order dated 21.4.89 of the Senior Superintendent, RMS Cochin (Respondent-3) intimating him that his request for a change in the date of his birth has been considered and rejected by the Directorate.*

2 The applicant entered service on 16.12.66 and the only proof of his age submitted by him at that time was the SSLC in which his age was entered as 3.10.46 and this date was entered in the Service Book of the applicant. The applicant claims that he came

to know about his correct date of birth i.e., 12.10.47, in some time ~~around~~ 1985. He, therefore, submitted an application to the Commissioner for Government Examinations, Kerala for changing the date of his birth from 3.10.46 to 12.10.47. This request was allowed by Annexure A1 order dated 25.3.88 by that authority.

thereafter
3 The applicant submitted a petition to the Post Master General (Respondent-2) on 27.4.88 (Annexure A2). It is seen that ~~Annexure~~ he also sent another letter dated 24.10.88 (Annexure A3) explaining as to how he came to discover that his date of birth was 12.10.47 and how the delay occurred in making a request to change the date of birth. It is stated therein that while verifying the date of birth of his eldest sister in connection with getting a passport at Taluk Panchayat, Kunnathunad he came to know accidentally that the date of birth ^{of} ~~of~~ has entered in the Birth Register was 12.10.47.

4 It is in response to his representation dated 27.4.88 (Annexure-A2) followed by the Annexure-A3 letter dated 24.10.88 that the impugned reply was given to him.

5 Respondents have submitted a reply stating that the date of birth entered in his Service Book i.e., 3.10.46 has been attested by the applicant on four occasions i.e., 31.3.68, 9.1.74, 18.4.80 and 25.11.85 have without raising any objection. They drawn specific attention to the fact that though the applicant had

submitted his application for correction of his date of birth to the Commissioner for Government Examinations, Kerala on 18.4.85, yet he attested the date of birth in the Service Book without raising any objection on 25.11.85. It is stated that, nevertheless, his application dated 27.4.88 i.e., Annexure A-2 alongwith the order of the Commissioner of Government Examinations, Kerala (Annexure A1) was forwarded to the Director General of Posts who turned down the request of the applicant after a thorough examination of the documents.

6 The respondents also contend that as the applicant would be attaining the age of superannuation only in 2004, and will be having the service of about 38 years, it would be immaterial if his date of birth is not changed as requested by him.

7. We have heard the learned counsel on both sides

L The respondents contend that in

and perused the records. View of Note-5 below FR-56 which states that a request for change of date of birth cannot be entertained after 5 years from the date of joining service, such a belated application could not be considered. As far as Note-5 below FR-56 is concerned the applicant's counsel relies on the decision of the Hyderabad Bench of the Tribunal- 1989(9) ATC-442- Bhujanga Rao Vs. Scientific Officer and others which in turn relies on the judgment of the Principal Bench in Hiralal Vs. Union of India- 1987(3) ATC-130 in which it has been held that the Note-5 below Fr-56 having been

inserted in 1979 only will not apply to persons who have entered service before this date. The applicant also states that it is not as if he made this discovery on the eve of his retirement to secure an extended term of service, because he will be superannuating only in 2004.

8 The respondents have apparently not taken into account the decisions rendered by the Tribunal referred to above when they state in their reply that the application is time barred in view of Note-5 below FR-56.

9 The other stand of the respondents that repeated attestation of the entries in the service book would prove that the applicant has affirmed the correctness of the date of birth entered in the service record and that he is estopped from questioning its correctness is attractive, but without basis.

10 In regard to this issue, we notice a major contradiction in the stand of the respondents. The respondents rely heavily on the limitations provided in Note-5 below FR-56 i.e., application for correcting the date of birth can be made only within 5 years from the date of entry into service. That being so, there is no need for a quinquennial attestation of the date of birth as entered in the Service Book, which, in view of the bar in the aforesaid Note-5 is a futile exercise. No doubt, the attestation is in respect of all the entries in the Service Book but in view of the provisions of Note-5 below FR-56, the attestation cannot be said

to apply to the date of birth. Therefore, the question of estoppel does not arise.

11. We drew the specific attention of the learned counsel for the respondents to the fact that the Commissioner for Government Examinations has passed an order (Annexure A1) dated 25.3.88 under Rule-3 of Chapter-VI of the Kerala Education Rules which are statutory in nature and have binding on all concerned. The learned counsel was at a loss to explain as to why the statutory order given by the Commissioner for Government Examination is not respected by the respondents. We notice from Annexure A1 that the applicant had produced documentary evidence namely, the Birth Certificate dated 29.8.84 issued by the Taluk Panchayat Officer, Kunnathunadu Taluk, Perumbavoor and an Identification certificate dated 18.3.85 issued by the Tahsildar, Perumbavoor before that authority. It is after considering these documents that the Commissioner for Government Examinations sanctioned the change in the date of birth from 3.10.46 to 12.10.47.

12. We are of the view that this document (i.e. Annexure A1 order) being of statutory nature should be treated as sufficient and binding proof to establish the date of birth of the applicant, particularly in view of the fact that it was admitted at the Bar by the counsel of the respondents that apparently, the Government of India have not issued any instructions as to how the applications for changing the date of

birth should be verified before the change is directed to be made.

13 We, therefore, conclude that the question of delay referred to in Note-5 under FR-56 does not apply to the facts of this case and that the applicant has produced statutory proof that his date of birth is 12.10.47 and not 3.10.46 as recorded in his service book. Further, we also notice that there is no allegation by the respondents that the applicant had manipulated his age at the time of entry into Government service so as to ensure that his age was within the minimum/maximum age limits that might have been specified for such entry, and that if his real age as now disclosed, had then been mentioned he would have been ineligible for appointment. We are, therefore, of the view that this is a case where a change in the date of birth recorded in the service book has to be allowed.

14 The plea of the respondents that as the applicant will be superannuating only in 2004, according to his age, at present entered in the service book and as he would be having 38 years of service, it is not material if the request for changing the date of birth is not acceded to. We cannot agree with this proposition. One does not know what changes may take place before 2004 which may materially affect the applicant if his date of birth is not changed. That apart, it is always

essential to record the correct date of birth if the request for recording it in place of the age as entered in the service book is justified.

15 Accordingly, we quash the Annexure A4 order dated 21.4.89 which has been passed by the 1st Respondent and direct the third respondent to change the date of birth of the applicant as given in the service book and other records from 3.10.46 to 12.10.47, within two months from the date of receipt of this judgment.

16 The application is allowed with the above directions and there will be no order as to costs.


20.7.90
(N Dharmadan) (NV Krishnan)
Judicial Member Administrative Member

20-7-1990