

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 199/91 199

DATE OF DECISION 20-3-93

K.J.Alphonse Applicant (s)

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

Versus

Union of India, represented by Respondent (s)
Secretary, Ministry of Home Affairs,
New Delhi & 3 others.

Mr.George C.P.Tharakan, SCGSC Advocate for the Respondent (s) 142
Mr. D. Sreekumar - for Rs

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? Y
2. To be referred to the Reporter or not? Y
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

In this application filed on 1st February 1991, under Section 19 of the Administrative Tribunals Act, 1985, an IAS Officer now in service seeks correction of his date of birth on the ground that ~~he~~ has a bonafide "clerical mistake" crept in while entering his date of birth in the service record.

2. This is the second time the applicant is coming with the identical prayer. Earlier when he filed OA 199/89 it was heard and disposed of as per Annexure-H judgment dated 30.1.90 with the following directions:-

"2. The learned counsel for the third respondent has drawn our attention to Rule 16-A of the All India Service Death cum Retirement Benefit rules which permits corrections of date of birth if there has been a bonafide clerical mistake. In any case, the correction of the date of birth has to be directed by the Government of India. The learned counsel for the applicant states that the applicant has made a representation to the Government of India but no final order on his representation has been communicated to the applicant by the Government of India. We find it difficult at this stage to go into the merits of the case for judicial intervention. In the circumstances, we close the application with the direction that the applicant should make a fresh representation to the Government of India through the State Government in accordance with the relevant rules within a period of one month from the date of communication of this order. We also direct the first respondent to dispose of the representation within a period of three months from the date of receipt of the representation, giving opportunity to the applicant to produce all necessary documentary evidence in support of his claim. The applicant will be at liberty to approach appropriate legal forum in case he is aggrieved by the decision of the Government of India on his representation. With these observations, the application is closed."

Thereafter the applicant filed a representation with the documents in support of his claim that the State Government has granted the correction in the SSLC certificate. That was disposed of as per the impugned order dated 2nd May 1990.

We extract the order:-

" WHEREAS Rule 16(A) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 provides that in relation to a person appointed after the commencement of the All India Service (Death-cum-Retirement Benefits) Amendment Rules 1971 to the Indian Administrative Service, the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such persons;

AND WHEREAS the date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth;

AND WHEREAS Shri K.J.Alphose has represented that the date of birth in his certificates was altered from 27.11.1952 to 8.8.1953 by the Commissioner of Government of Examinations, Kerala after he applied for the Indian Administrative Service Examinations but before the interview and that he had claimed the later date of birth at the time of interview.

AND WHEREAS the Union Public Service Commission have intimated vide their letter No.F/7/5/84-E.III dated 31.8.84

that as per records available with them, the claim of Shri Alphonse that he claimed 8.8.1953 as his date of birth did not appear to be correct and his date of birth in their records is 27.11.1952;

AND WHEREAS Shri Alphonse had declared his date of birth as 27.11.1952 in his application for recruitment to the service;

AND WHEREAS no bonafide clerical mistake has been committed while entering the date of birth of Shri Alphonse in the service records;

AND WHEREFORE after a due application of mind the Central Government has decided not to accept the claim of Shri Alphonse for changing the date of birth from 27.11.1952 to 8.8.1953. "

The case of the applicant is as follows: He belongs to 1979 batch of IAS. At the time when he submitted his application ~~after~~ filling up the ^{same} in the prescribed form for the written examination of IAS in 1978 his date of birth had been entered wrongly as 27.11.1952. According to him this was a clerical error which had crept-in in the school records. This error was later corrected by a petition presented by the applicant before the Commissioner of Examinations, Government of Kerala, as per order No. K.Dis.44314/78 XB2 dated 5.12.1978. Hence the correct date of birth of the applicant as per the corrected SSLC book is 8.8.1953. A wrong entry was originally made in the school records. Annexure-B is the copy of the relevant page of the SSLC book after correction dated 5.12.1978. The applicant, after coming out successful in the written examination for the IAS was called for viva-voce in May 1979. Prior to the personal interview applicant had filled up certain forms giving the altered date of birth. Though the authorities have verified the corrected date of birth with reference to Annexure-B, the service record maintained by the Government of Kerala is with the original date of birth namely 27.11.1952 which was declared by the applicant in 1978 in

his application for written examination of the IAS. This was noticed by the applicant accidentally at a later stage. Then he submitted an application to the Government of India seeking correction of the date of birth to bring it in conformity with the date of birth as shown in the SSLC book, after the correction. The applicant received Annexure-C communication dated 6.7.81 from the Chief Secretary to Government of Kerala. It reads as follows:-

" I am directed to inform you that your request for alteration of date of birth in the service records cannot be agreed to as the rules do not permit such a correction except for rectifying bonafide clerical mistakes."

He filed another representation before the UPSC on 2.2.1984. That was rejected by Annexure-D order which is extracted below:-

" I am directed to refer your letter No.25015/4/84-IAS(II) dated 8.4.1984 on the above mentioned subject and to say that the applications for the IAS etc. examination 1978 have been weeded out in the normal course. However, it is seen from the other records available that the date of birth of Shri K.J.Alphonse is 27.11.1952. As such, his statement that he had claimed his altered date of birth viz. 8.8.1953 and submitted his SSLC with that date of birth at the time of his interview for personality test in connection with Indian Administrative Service etc. Examination, 1978 does not appear to be correct. "

Thereafter the applicant made a request to the Chief Secretary to Government of Kerala for getting permission to take legal action in this behalf. He received Annexure-F reply dated 13.3.1985 intimating that the acceptance of date of birth/alteration of date of birth of the IAS officers is governed by Rule 16A of IAS (Death-cum-Retirement Benefits) Rules 1958, hereafter referred to as IAS (DCRB) Rules. It is also stated that since the date of birth of the applicant was fixed under Sub-Rule (2) of Rule 16A, the Government did not consider that any civil enquiry is necessitated. If the applicant considers that the aforesaid

rule is unreasonable he is free to question it through a writ in the High Court and no permission is required for taking such action. Instead of challenging that rule as indicated in Annexure-F the applicant had earlier filed OA 199/89 before this Tribunal which was disposed of by Annexure-H judgment. The reliefs prayed for in this application are as follows:-

" i) To call for the records leading upto Annexure-E and J and quash the same.

ii) To declare that the correct and actual date of birth of the applicant is 8.8.53 and not 27.11.1952 as has been wrongly entered earlier in the SSLC book.

iii) To direct the first respondent to make/correct the entry of the date of birth of the applicant as 8.8.1953 in his service records by deleting the existing entry 27.11.1952 and substituting 8.8.1953 in its place in conformity with the SSLC book.

iv) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

3. Having heard the counsel on both sides we are of that the decision in this case will depend upon the interpretation of Rule 16-A of All India Services (Death-cum-Retirement) Rules, 1958. The said rule is extracted below:-

"16-A. Acceptance of date of birth. - (1) For the purpose of determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted by the Central Government under this rule.

(2) In relation of a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971,

(a) the Indian Administrative Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Administrative Service Recruitment Rules, 1954; or

(b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Police Service (Retirement) Rules, 1954; or

(c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) of rule 4 of the Indian Forest Service (Recruitment) Rules; 1966;

the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.

(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be accepted by the Central Government, as the date of birth of such person.

(4) The date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bona fide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)."

The above said rule permits correction of date of birth of IAS officer who made a declaration before the authority at the time of selection only when it is established that a "bonafide clerical mistake" has been committed in accepting the date of birth under sub-rule (2). For the purpose of determining the date of superannuation of IAS officer calculations will have to be made with reference to his date of birth as accepted by the Central Government under Rule 16-A. In the case of the applicant, he declared at the time when he applied for the written examination for the IAS in 1978 that his date of birth is 17.11.1952. His SSLC book also contained the same date of birth in 1978. It was only after his pass in the written examination that a correction appears to have been made in Annexure-B i.e. it is stated as on 5.12.1978. He submitted that before the viva-voce in May 1979 the correction has been brought to the notice of the competent authority but no records ~~are~~ forthcoming to support the contention.

4. Respondents 1 & 2 in their reply stated that the applicant was appointed in the IAS in 1979 as a direct recruit through All India Civil Service Examination held in 1978 by the UPSC. In the application he has indicated his date of birth as 27.11.1952 which tallied with the corresponding entry of his date of birth recorded in his SSLC book which was enclosed with the application form. Thus the date of birth of the applicant was accepted by the UPSC and Government of India as 27.11.1952. There was no

bonafide clerical mistake at that time. Respondents 1 & 2 also submitted that the UPSC denied the statement of the applicant that he had claimed his altered date of birth as 8.8.1953 and submitted his SSLC with that date of birth at the time of interview and personality test held in connection with IAS examination in 1979.

5. As per order dated 22.1.1992 the UPSC represented by its Chairman was impleaded as the additional 4th respondent. The learned counsel who appeared on behalf of the 4th respondent noticed the statements contained in the reply filed by the respondents 1 & 2. If at all any correction is to be made in the case regarding the date of birth of the applicant it is to be made by the UPSC. But the UPSC has taken the clear stand that the applicant produced the copy of the Certificate from the school disclosing the date of birth of the applicant as 27.11.1952. Even at the time of the viva-voce this was taken as the correct date of birth of the applicant. Applicant has not produced any records to satisfy us that he produced copy of Annexure-B before the UPSC at the time of the viva-voce examination.

6. Shri K.Ramakumar, learned counsel for the applicant vehemently contended that the date of birth of the applicant has been originally entered as 27.11.1952 on account of a bonafide clerical mistake. A clerical mistake according to Supreme Court in Master Construction Co. vs. State of Orissa, AIR 1966 SC 1047 is a "mistake in writing or typing". An accidental and careless mistake can only be termed as a clerical mistake. The Supreme Court held as follows in that case:-

"..... An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification, namely, such an error shall be apparent on the face of the record that is to say, it is not an error which depends for its discovery on elaborate arguments on questions of fact or law. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake...."

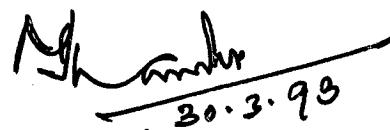
In order to make a mistake as clerical such mistake should have been made by the party inadvertently and casually without reference to any official document.

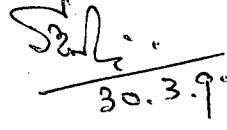
7. In the instant case at the time when the applicant entered his date of birth in the application submitted before the UPSC he consciously and carefully entered his date of birth as 27.11.1952 by producing a copy of the relevant page of the SSLC book in support of that entry. At that time the school certificate disclosed the applicant's correct date of birth as 27.11.1952. If the applicant bonafide believed that the SSLC book does not contain the correct date of birth and that he has moved before the Commissioner for Government Examinations, he should have mentioned that fact before the UPSC either at the time of the filing of the application or at least before finalising the results. No such attempt was made. The correction of the date of birth ordered by the Commissioner of Examinations, Government of Kerala, was only on 5.12.1978. So, under these circumstances, it is difficult to come to the conclusion that the applicant has inadvertently or bonafide committed a clerical error in entering his date of birth in the application submitted before the UPSC. His contention is to be rejected.

8. The Chief Secretary to Government of Kerala issued Annexure-F letter as early as on 13.3.1985, as reply to the request of the applicant for permission to take legal action in which he has stated in clear terms that under Sub-rule (2) of Rule 16-A of IAS (DCRB) Rules 1958, the applicant's date of birth has been fixed on the basis of the date of birth given by him in the application for recruitment to IAS and it cannot be changed since the Government did not consider to make any alteration in the service records in the light of mandatory provisions contained in the said Rule. It was also clearly indicated in that letter sent to the applicant that if he considers the aforesaid rule unreasonable he has the freedom to question the validity of the Rule through a writ petition in the High Court for which no permission is required. The applicant did not act on the basis of Annexure-F letter issued by the Chief Secretary by challenging the provision of Rule 16-A(s) & 4 which really stood against granting any relief to the applicant on the facts and circumstances of the case. If the applicant had accepted the suggestion in that letter and taken necessary steps for relief in the line indicated in Annexure-F a different approach was possible for we feel that so long as the provisions of Rule 16 are in force no relief can be granted to the applicant as prayed for in this case particularly when we have found on facts that there is no bonafide clerical mistake in this case. So the only remedy which was available to the applicant in 1985, in the light of the statements in Annexure-F was to move the High Court or Supreme Court for striking down the Rule itself. The applicant did not do this at the appropriate time. Since he has failed to take appropriate legal action immediately after Annexure-F, we feel that the applicant has missed the bus and no relief can be granted in this

application at this stage. The orders challenged in this case are legal and valid and they cannot be set aside for the reasons stated by the applicant in the application. We have already held that there is no bonafide clerical mistake in regard to the entry of the date of birth in the service records and the application is only to be rejected.

9. In the result, we see no merit in this application. It is liable to be dismissed as devoid of any substance. We do so. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

v/-