

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 205 199 2

DATE OF DECISION 5.8.92

M.D. Xavier Applicant (s)

Mr. K.M.V. Pandalai Advocate for the Applicant (s)

Versus

The Central Board of Direct Taxes
represented by its Secretary Respondent (s)
New Delhi and others

Mr. N.N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *No*
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

The applicant is an Income Tax Inspector. His grievance is against Annexure-A-3 order passed by the second respondent rejecting his representation for correction of date of birth in the Service Records solely on the ground that it is barred by limitation.

2. According to the applicant, his correct date of birth as disclosed by Annexure-A-1 'Baptism Certificate' is 3rd August, 1944. But on account of the mistaken declaration given by his father, his date of birth happened to be shown as 2.8.1943 in the School Records and consequent mistake has also crept in the Service Records. It is only very recently that he has found the correct date of birth and filed Annexure A-2 representation dated 2.12.91 for correction of date of birth. Without considering the request of the applicant and without due application of mind, second respondent rejected his request mechanically following the provisions of FR 56. He has submitted that Tribunal

has taken uniform decisions that limitation in respect of persons who have joined service prior to the notification issued on 30.11.79 will not be covered by the provisions relied on by the second respondent.

3. The respondents have filed a detailed reply affidavit and submitted that the applicant is not entitled to any relief and that the application is to be rejected. No mention is made with regard to the decisions rendered by the Tribunal on the question of limitation and application of FR 56 in cases for correction of date of birth of officials in Govt. service.

4. In Hira Lal Vs. Union of India and others, 1987 (3)ATC 130 the Principal Bench of the Tribunal considered the question of limitation and held as follows:

" Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Govt. of India, Ministry of Home Affairs, Deptt. of Personnel and Administrative Reforms Notification No.19017/7/79-Ests. A dated 30.11.79 published as SO 3997 in the Gazette of India dated 15.12.79, takes effect from that date. It lays down that a request for correction of the date of birth in the service record shall be made within five years of entry into govt. service. But obviously the five year period of limitation prescribed for the first time under the said SO 3997 cannot apply to those govt. servants who were in service by that day for more than 5 years. In issuing the said S.O. it could never have been the intention of the Govt. that there should be two classes of govt. employees those employees who had entered service prior to 15.12.74 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within 5 years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is therefore, reasonable to infer that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.79."

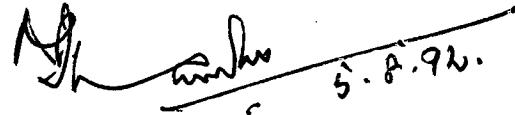
This decision was followed by this Tribunal in similar cases.

5. In the light of law laid down by the Tribunal, the request of the applicant cannot be rejected as barred on limitation as indicated in the impugned Annexure A-3 order. The only reason for rejecting the request is that of limitation. There is no application of mind or consideration on merits.

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. The application is disposed of as indicated above.
8. There will be no order as to costs.



5.8.92.

(N. Dharmadan)
Judicial Member
5.8.92

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