

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. xxxxxx 246 of 91 159

DATE OF DECISION 30.12.91

M.P. MOHAMMED _____ Applicant (s)

Shri.K.R.B Kaimal _____ Advocate for the Applicant (s)

Versus

UNION OF INDIA and 3 ORS. _____ Respondent (s)

Ms. Dhanalakshi, Proxi counsel _____ Advocate for the Respondent (s)

CORAM : appeared on behalf of ACGSC
Mr. Mathews J Nedumpara

The Hon'ble Mr. N.V. Krishnan, M(A)

The Hon'ble Mr. N. Dharmadan, M(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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

N. Dharmadan, M(J)

The applicant who is working as Sircar under the 4th respondent filed this application challenging Axe-A1 and A2 order passed by 4th and 3rd respondents respectively negativing his request for correction of date of birth (DOB for short).

2. The admitted facts are as follows: The applicant commenced his service in the Telecom Stores

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Depot as Packer in 1958 and he was promoted as Sircar during 1974. At the time of his initial joining in the Govt. Service the applicant produced certificate obtained from the School in proof of his DOB which showed DOB as 10-3-113(ME). When the concerned officer converted the DOB in Malayalam era into English era, for the purpose of entry in the Service Book, it was recorded as 1-7-1935. The converted DOB into English era was wrong and the corresponding DOB in English era should be 23-1-38. Though the applicant signed the service book as required he did not notice this mistake crept in and it was only in 1989 he realised the wrong entry of DOB in the Service Book and submitted a representation on 18-7-1989 before the 4th respondent for correcting the DOB in the Service Book. The 4th respondent rejected the said representation by Axe-A.1 letter dated 16-10-89 on the ground that correction of DOB was not sought within the time limit prescribed under the Fundamental Rules. Aggrieved by Axe-A.1, the applicant submitted a detailed representation before the 2nd respondent who also rejected the request by Axe-A2 letter dated 28-5-90 on the same ground.

Annexures A-3 and A4 are further representations and A-5 is a copy of true extract of School admission register. The applicant submits that impugned orders be are illegal and cannot be sustained.

3. We have heard the arguments of both counsel and carefully perused the documents. The laconic orders which are under challenge in this application read as follows:

Annexure A1

"...With reference to your letter cited above, it is intimated that the request for alteration of date of birth should have been made within five years from the date of entry in the Govt. service, as laid down in Fundamental Rules. Since the time limit prescribed has already been exceeded the question of any alteration at this stage does not arise..."

Annexure A2

"...It was intimated by C.G. M.T. Trivandrum that since the official has not pointed out the discrepancy within five years from the date of appointment the request for change in the date of birth at this distant date is not admissible...."

4. The reason stated in the above two impugned orders is unsustainable in the light of the decision reported in Hira Lal V. Union of India, 1987(2) SLR 319. It has been repeatedly held by the Courts and Tribunals that the prescribed time limit of five years for correction of DOB, introduced as

Note: 5 to FR-56 published in Government of India

Gazette dated 15-12-79, does not apply to Government servants who commenced service prior to 15-12-79.

Admittedly, the applicant has commenced his service with the Telecom Department on 19-7-58 i.e much earlier to the crucial date. Hence the objection of the respondents based on the 5-year limitation relying on Note:5 to FR-56 cannot sustain and the same is not attracted in the case of the applicant.

The Principal Bench of the Central Administrative Tribunal, while dealing with an analogous situation observed in Hira Las's case(supra) as follows:

"...That being so whenever a question arises whether the entry of the date of birth in the service record is correct or not, that has to be enquired into and that has been done in this case in accordance with law. Note 5 to FR-56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Deptt. of Personnel & Administrative Reforms Notification No.1907/7/79-Estts.A dated 13-11-79, published as S.O3997 in the Gazette of India 15-12-79, takes effect from that date. It lays down that a request for the correction of date of birth in the service record shall be made within 5 years of entry into Government service. But obviously the five year period of limitation prescribed for the first time under the said S.O. 3997 cannot apply to those Government servants who were in service by that date for more than five years.....It is, therefore, reasonable to infer that period of limitation prescribed under the said S.O. would be applicable to those entered service after 15-12-1979. (emphasis supplied)

The above laid down ratio that bar against making request for correction of DOB after 5 years of joining

service was not applicable to the government servants who joined service for more than 5 years prior to issuance of the notification dated 30-11-79 but published on 15-12-79, has been followed by Jabalpur Bench of the Tribunal in K.U. Jain V. Union of India, (1989) 11 ATC 365 and the Hyderabad Bench in V. Bhujanga Rao V. Scientific Adviser & DG, R & D, Ministry of Defence, (1989) 9 ATC 442. Apart from this, the applicant has reasonable explanation for the mistake in the entry crept in the service book at the time of joining time. The contention of the respondents that the applicant did not raise the issue in earlier occasion when he had signed his service book, is not sustainable. The applicant's signature in the Service records on number of occasions does not operate as an estoppel against him so as to take away his right to get his erroneous entry as to date of birth corrected, when he adduces cogent evidence to substantiate the error crept ⁱⁿ at the time of conversion of Malayalam era into English era. The Principal Bench in the cited Hira Lal's case took the view that mere signature in the Service records does not estop the Government servant from seeking correction of

wrong date of birth provided the correction is sought on the basis of admissible evidence/document.

5. When the applicant has given reasonable explanation for the mistake in the DOB in the Service Book and came forward with a proper record to substantiate his claim for the correction of the date of birth, the respondents would have conducted a fair enquiry into the issue and come to a conclusion in this regard. The default on the part of the respondents in not examining the matter in detail with reference to the statement of the applicant and certificate (true copy of the extracts from the Birth Register) produced by him causing injustice to the applicant. It is the duty of the respondents to find out the true position and effect the correction of DOB if the applicant's case is a genuine.

6. Having heard the matter in detail and in the light of the facts, circumstances and settled legal prepositions, we are of the view that justice will be met in this case if we set aside the impugned orders and remit the case to the 2nd respondent for proper consideration of the claim of the applicant for the correction of his date of birth in his service

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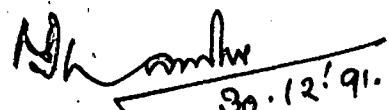
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Book and pass appropriate orders in accordance with law on merits.

7. In the result, we quash Annexures A1 and A2 and simultaneously direct the 2nd respondent to pass appropriate orders, afresh in accordance with law after conducting a detailed enquiry as indicated above within a period of two months from the date of receipt of copy of the judgment.

8. The Original Application is thus allowed.

But in the circumstances, we make no order as to costs.


30.12.91.
(N. DHARMADAN)


30.12.91.
(N.V. KRISHNAN)
M(A)

30.12.91

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