

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.256/93

DATE OF DECISION : 20.10.1993

K.Madhavan Nadar,
M.T.Driver, Grade-I,
C/o. GE (P), Thiruvananthapuram. .. Applicant

Mr.G.Sukumara Menon .. Adv. for applicant

V/s

1. Union of India rep. by
Secretary, Ministry of
Defence, New Delhi.
2. The Chief Engineer, MES,
Southern Command,
Pune-1.
3. The Garrison Engineer (Project),
Thirumala PO,
Thiruvananthapuram.
4. The Chief Engineer (Navy),
Cochin Zone, MES,
Cochin-4. .. Respondents

Mr. Joy George, ACGSC .. Adv. for applicant

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

JUDGMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicant is approaching for the second time before this Tribunal for getting a correction of his date of birth from 14.4.1937 to 25.8.1940 based on his school records. Earlier when the applicant filed O.A. 906/91 for the same relief, we considered the claim of the applicant and decided to give an opportunity to the concerned authority by directing them to examine the case of the applicant with reference to the evidence produced by the applicant and take a decision in a fair manner. As per

Annexure-F judgement dated 8.4.1992 this Tribunal disposed of the O.A.No.906/91 with the following observations/directions:-

"..... Therefore, I am of the view that the applicant is bound to succeed to the extent of having the impugned order Annexure-E quashed and issuing a direction to the respondent-2 to reconsider the matter and to take a decision considering the evidence produced by the applicant.

5. In the result, the Annexure-E order is quashed and the application is disposed of with a direction to the second respondent to dispose of the representation of the applicant at Annexure-D afresh on merit, in accordance with law, within a period of three months from the date of communication of this order."

Thereafter, according to the applicant, without carefully considering the grievance of the applicant, an order was passed rejecting the request. The communication received by the applicant from Garrison Engineer is Annexure-H. It reads as follows:-

" It has been intimated by CE (Navy) Cochin under their letter No.130057/292/EIB(R) dated 05 Jan 93 that your request for change in date of birth has been considered and rejected by Min of Defence."

The applicant is challenging Annexure-H and "any other communication leading to the same and to quash them".

2. Annexure-H is/^{on} the basis of an earlier order passed by the concerned authority namely Engineer-in-Chief's Branch, DHQ, New Delhi, which is produced as Annexure-R1(c). It is advantageous to read the order in full:-

" I am directed to refer to CAT Ernakulam bench dated 8.4.92 in OA No.906 of 91 filed by you and to inform you that your request dated 17 Sep 86 for change in date of birth based on the true copy of the School Leaving Certificate issued by Head Master LMS L.P.S. Sittaram, has been considered by the Ministry of Defence and rejected for the following reasons:-

(a) You had entered Govt Service on 14.4.1962 and have made request for change in date of birth only on 17.9.1986 i.e. after 24 years of joining the Govt. service.

(b) Date of birth entered in your service record as 14.4.1937 was not questioned by you during your service for 24 years.

(c) The fact of having studied in the above school, and date of birth now claimed as 25.8.40, has been concealed by you during the above 24 years of service. True copy of the School Leaving Certificate is normally issued in the printed form by the school authority but is on stamped paper. Thus its bonafideness cannot be ascertained.

(d) No bonafide mistake had occurred while recording your date of birth as 14.4.1937 which was based on the Medical certificate produced by you at the time of entry into Govt. service.

2. In the circumstances, your request for change in date of birth as 25.8.1940 has been rejected by the Ministry of Defence."

The copy of 'Reference proceeding note' contains the following statement regarding the genuineness of the evidence produced by the applicant in support of his case as Annexures-A & B:-

"True copy of the Admission Register issued by the School Authorities which appears to be genuine, according to which his DOB is 10.1.1116 (Malayalam Era) corresponding to 25.08.1940 as certified by Trivandrum Public Library. This document is genuine and cannot be doubted. As such, date of birth recorded in the service book as 14.4.37 based on the Medical certificate needs to be considered for change as per school certificate (as requested by E-in-C's Br.)."

3. The contention of the learned counsel for the applicant is that there is no application of mind by the authority who passed Annexure-R1(c). He has also not considered the evidence produced by the applicant in support of his case that there is a genuine mistake in the date of birth while entering the same in his service records. He filed an earlier request for correction of his date of birth in 1982 and that was recommended by the Assistant Garrison Engineer for favourable consideration. But the same was not disposed of by the competent authority. The relevant portion of Annexure-I reads as follows:-

"2. In accordance with the instructions stipulated in para 4 Article 51 CSR Vol I, we have no overwhelming evidence to examine about the incorrectness of the date of birth already

recorded. As per individual's statement, the date of birth recorded earlier is due to clerical error, for which alteration is permissible with supporting documents as per the instructions.

3. As per original date of birth recorded in the service documents he has still got ample period to retire from service, hence the request at this stage may kindly be examined for favourable consideration."

4. It is seen from Annexure-I that the applicant's request for correction of date of birth was made as early as in 1982 and the Assistant Garrison Engineer has recommended for taking a decision in his favour. The respondents have no case that the recommendation of the Assistant Garrison Engineer has been considered at the appropriate level and the same has been disposed of as per law.

5. The main argument advanced in this case is about the legality of Annexure-R1(c). All the reasons stated in Annexure-R1(c) do not appear to me sustainable. It appears that the authority has not understood the case of the applicant. It is stated in the order that "for change of date of birth based on the true copy of the School Leaving Certificate issued by the Head Master LMS L.P.S. Sittaram has been considered by the Ministry of Defence and rejected for the following reasons". Applicant has produced only Annexures-A & B in support of his case. Annexure-A is the copy of the Admission Register of LMS LPS, Sittaram. Annexure-B is the Certificate issued by the Trivandrum Public Library giving the corresponding Christian Era Date of Malayalam Era Date 10.1.1116. Hence, the first statement in Annexure-R1(c) itself does not appear to me correct. The further reasons (a) to (d) are also similarly not supportable. It is seen from Annexure-I that the applicant has already represented the matter in the year 1982. This fact was bound to be noticed by the authority. It is ^{statement in} contrary to the ^{statement in} Annexure-I that the authority has given the reason that the applicant has not questioned the entry

in the service records for the last 24 years. The bonafides of the records produced by the applicant in support of his case are also doubted by the authority who passed Annexure-R1(c). It is contrary to the statement contained in Annexure-R1(d) 'Reference Proceeding Note'. Since the decision contained in Annexure-R1(c) is contrary to Annexure-R1(d), the same is not sustainable and it is to be quashed.

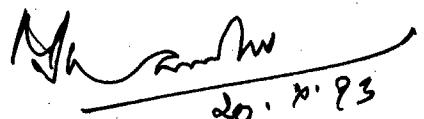
6. Learned counsel for the respondents, placing reliance on the decision in Union of India vs. Harnam Singh, AIR 1993 SC 1367, submitted that the application is to be rejected because the applicant was not diligent in pursuing his right of getting correction of the date of birth within the time limit prescribed by the Supreme Court in para 11 of the judgment. He further submitted that the applicant was fully aware of the entry in the service record for he has put his initial in various periods from the date of entry and hence he has no right to get a correction of his date of birth at this belated period and the O.A. is to be dismissed.

7. This contention of the learned counsel for the respondents is made without advertizing the statement as contained in Annexure-I, a letter issued by the Assistant Garrison Engineer, which makes it clear beyond any doubt that the applicant has applied for the correction of date of birth in 1982, which is within five year period from 1979, as indicated in the Supreme Court decision referred to above. This fact was not considered by the authority who passed the order challenged in this case. Hence, the contention of the respondents that there is delay and on that ground itself the O.A. is to be rejected cannot be sustained.

8. The learned counsel for the applicant submitted that the directions contained in Annexure-F judgment has not been considered while passing the impugned order. It is clear from the judgment extracted above that the authority is bound to consider the claim of the applicant with reference to the evidence produced by him. After the judgment the applicant produced before the competent authority Annexures-A & B, Admission Register and the date of birth entered therein. It is also to be noted in this connected that the Department has accepted the genuineness of this school record and indicated that the same can be accepted. The Assistant Garrison Engineer also recommended the case of the applicant as seen from Annexure-I, to consider the case of the applicant favourably. In the light of these letters, I am of the view that the case of the applicant requires further examination by a senior officer uninfluenced by any of the decisions contained in Annexure-R1(c).

9. Accordingly, having regard to the facts and circumstances of the case, I am satisfied that justice will be met in this case if I quash Annexures-H and Annexure-R1(c) and send the case back to the second respondent for a fresh consideration of the claim of the applicant for correction of date of birth in a fair manner in the light of Annexures-I and Annexure-R1(d). I do so
This shall be done within a period of six months from the date of a copy of this judgment.

10. The application is allowed to the extent indicated above. No costs.


20.10.93

(N.DHARMADAN)
JUDICIAL MEMBER
20.10.1993

LIST OF ANNEXURES:

1. Annexure-F .. Copy of judgment dated 8.4.92 in O.A. No.906/91.
2. Annexure-H .. Copy of letter No.116/216/EIC dated 12.1.93 issued by the 3rd respondent.
3. Annexure-R1(c) .. Copy of letter No.90237/2476/EIC(2) dated 4.1.93.
4. Annexure-A .. Copy of Admission Register dated 4.9.86 certified by the Head Master LMS LPS, Sittaram.
5. Annexure-B .. Copy of Certificate No.DC No.539/ 86/87 dated 4.9.86 issued by the State Librarian, Trivandrum Public Library.
6. Annexure-R1(d) .. 'Reference Proceeding Note of the Ministry of Defence.
7. Annexure-I .. Copy of letter No.P/268/159/E1 dated 22.11.1982 of Assistant Garrison Engineer (Indop) Thirumala.

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