

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 191/2006

this the 2nd day of May, 2006

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

Ms. Surjit Kaur Sandhu d/o Sri Amar Singh aged about 56 years (as per record available with the applicant) 58 years (as per the record available with the respondents) Resident of 8- Gautam Palli Colony, Lucknow presently posted as Principal Secretary, Department of Vigilance and Secretariat Administrative, Civil Secretariat, Lucknow

...Applicant

By Advocate: Sri Raj Singh

Versus

1. Union of India through Secretary of Department of Personnel and Training, Ministry of Personnel, Public Grievance and Pensions, North Block, New Delhi.
2. State of U.P., through the Chief Secretary, Govt. of U.P., Civil Secretariat, Lucknow.
3. Union Public Service Commission, through its Secretary, Dhaulpur Hosue, New Delhi.
4. The Principal Secretary, Department of Appointment, Section -1, Civil Secretariat, State of U.P., Lucknow.

..Opposite Parties

By Advocate: Shri Deepak Shukla for Sri Prashant Kumar
& Shri P.K. Srivastava for Sri A.K.Chaturvedi

ORDER

BY HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

The vital question of law involved in this case is whether the applicant is entitled to her date of birth amended in the service record on the basis of a decree awarded by the Civil Court changing the date of birth of the applicant from 25.3.1948 to 16.9.1950.

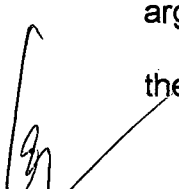
2. The counsel for the applicant at the very outset has stated that the applicant would be satisfied if a direction be issued to the respondent to reconsider the case of the applicant in accordance with

for dealing with the case in a just and equitable manner."

3. Briefly stated the applicant entered into the IAS in the wake of her having qualified in 1977 examination when in her application she had reflected her date of birth as 25.3.1948. It is some time in 2002, when the applicant had filed a Civil Suit before the Court of Civil (Junior Dn.) Hoshiarpur, Civil Suit No. 199/2002 for declaration to the effect that the correct date of birth of the applicant is 16.9.1950 and the date of birth recorded in her matriculation examination certificate as 25.3.1948 is wrong. The applicant has impleaded the Pujnab University, Chandigarh and Govt. Girls High and Basic School, Hoshiarpur in the said Civil Suit. The Civil suit was decreed on 28.1.2005 and the certificate of the High School and University were accordingly modified to reflect the date of birth as 16.9.1950 instead of original entry i.e. 25.3.1948. On the strength of the aforesaid certificate, when the applicant approached the respondents to have her date of birth corrected in the official record, referring to Rule 16 A of All India Service (Death cum Retirement Benefits) Rules 1958, they have rejected the case of the applicant.

4. Counsel for the applicant has stated that the request of the applicant is genuine and reasonable and it causes undue hardship to the applicant since she would be unnecessarily losing a valuable service of over 2 years. The respondents may be directed to invoke the provisions of Rule 3 of All India Services (Conditions of Service Residuary Matters) Rules 1960.

5. On the other hand the counsel for respondents vehemently argued that the applicant cannot be permitted to claim change in the date of birth almost at the fag end of her career. Rule 16 A is



the rules 16 A (4) of All India Service (Death cum Retirement Benefits) Rules 1958 read with Rule 3 of All India Services (Conditions of Service Residuary Matters) Rules 1960. For the purpose of convenience the aforesaid rules are reproduced below:-

"16-A. Acceptance of date of birth -(1) for the purpose of determination of the date of superannuation 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) Rules, 1971:

(a) the Indian Administrative Service under Clause 9a) or Clause (aa) of sub Rule (1) or 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 91) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954; or

(c) the Indian Forest Service under Clause (a) or clause (aa) of Sub Rule (2) of Rule 6 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 date of birth of such person

(3) In relation to a person to whom Sub Rule 92) 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 such person.

(4) The date of birth as accepted by the Central Government shall not be subject to any alternation except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under Sub Rules (2) or (3)."

3. Power to relax rules and regulations in certain cases:- Where the Central Government is satisfied that the operation of-

(i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951)' or

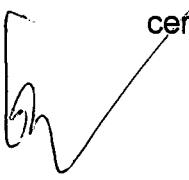
(ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an all India Service causes under hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary



very clear and provides for only a limited concession. In fact this Tribunal has already held in another identical case in O.A. 87/2006 decided on 17.10.2006 when there is no clerical error to qualify for change in date of birth under the provisions of Rule 16A, there is no question of change in date of birth. The counsel for respondents has also brought to my notice the order dated 27.3.2006 of the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.366 of 2006 (SB) filed by the applicant in the O.A. No. 87/2006. BY the said order, the Hon'ble High Court referring to **UOI Vs. Harnam Singh (1993) 2 SCC 162** confirmed the order of this Tribunal and dismissed the writ petition. Counsel for respondents has also relied upon on decision of the apex Court in the case of **UOI Vs. C.Ramaswamy 1997 (4) SCC 647** and **Syed Khalid Rizvi 1993 Supple. 3 SCC 575**. It has also been submitted that there is no reason as to why the applicant did not take timely action and woke up after 25 years of entry in service.

6. Arguments have been heard and documents perused.


7. At the time of filling up of application in 1977, the entry of date of birth in the application shall be based on authentic certificate issued by the school authorities. This was what precisely was done by the applicant. It was later on that a civil suit was filed by the applicant in 2002 and the same was decreed in her favour. By virtue of this decree, the authorities have changed the date of birth in the school certificate as also in the certificate issued by the university. This amounted to substitution of these certificates in the place of original certificates.



8. The counsel for the applicant contended that when the foundation to the entry in the application itself has changed, the logical corollary is the inevitable necessity to have the date of birth accordantly amended in the application. Per contra, the counsel for the respondents argued that 16 A (4) could be pressed into service only for a clerical error and a clerical error according to the respondents counsel means, an error committed by the respondents and this provision does not cover a situation of the nature as in the present case.

9. The request for consideration at this juncture is not whether the Respondents should be directed to effect the necessary amendment in the date of birth but only whether Rule 3 of All India Service (Conditions of Service Residuary Matters) Rules, 1960 is applicable in the facts and circumstances of the case. No doubt when the actual date of birth as contained in the decree is not incorporated, that would certainly be a hardship to the applicant. However, when the authorities are to consider the request of the applicant, they have to take into account all the attendant rules to arrive at a just conclusion. The matter is thus at the full discretion of the authorities only. They may take into accounts the provisions of Rule 3 and weigh pros and cons in acceding to the request of the applicant and arrive at a judicious conclusion.


10. Without expressing any opinion on merits, this O.A. is disposed of with a direction to the respondents to consider the case of the applicant keeping in view the provisions of Rule 3 of All India Service (Conditions of Service Residuary Matters) Rules 1960 and arrive at a just decision and in case they are satisfied that the applicant is entitled to have her date of birth amended, necessary



orders for amendment in official records be passed and if not, a reasoned and speaking order be passed.

11. Before parting with this case, it is suggested that the respondent may consider issue of a general circular to the effect that in case of there being any suit for declaration in date of birth, a member of service should invariably implead the Union of India and State Govt. concerned as a party. Any declaration by the court as to the date of birth without impleading the Govt. concerned as party, may not ipso-facto lead to effect entry, in official records of revised date of birth. The reason is obvious. Any change in the date of birth after entry into the service of a member of the service, may unduly affect the promotion prospects of certain other members of the service especially where such change in the date of birth is sought to be effected after a considerable period of entry into the service.

12. Cost easy.



(K.B.S. Rajan)
Member (J)

HLS/-