

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.87/2006
This the 17th day of February 2006

HON'BLE SHRI J.S. DHALIWAL, MEMBER (J)

Prakash Singh, aged about 59 years, son of Late Sardar Rattan Singh, resident of House NO.1/1, Police Transit Hostel, Mahanagar, Lucknow.

...Applicant.

By Advocate: Shri Satya Prakash.

Versus.

1. Union of India through Secretary Ministry of Home Affairs/Griha Mantralaya, Government of India, New Delhi
2. The Union Public Service Commission, through its Secretary, Dhaulpur House, New Delhi
3. State of U.O. through Principal Secretary Home Affairs, Ministry of Home Affairs, Civil Secretariat, V.S. Marg, Lucknow.
4. The Director General of Police, U.P., 1, Tilak Marg, Lucknow.

...Respondents.

By Advocate: Shri Deepak Shukla for Shri Prashant Kumar.
Shri Prashant Kumar Srivastava for Shri A.K. Chaturvadi.

ORDER (Oral)

BY SHRI J.S. DHALIWAL, MEMBER (J)

1. Applicant Shri Prakash Singh is a senior IPS officer, who is aggrieved by an order dated 9.12.2005 and 1.2.2006 whereby his application seeking correction in Date of Birth has been rejected by the respondents. Pleads that he was born on



11.9.1947 in District Amritsar, Punjab. However while getting admission in his school his relative had taken him for the purpose and got his Date of Birth recorded as 5.9.1946. Thereafter this Date of Birth has continued to be recorded everywhere while he passed his school, collage etc. He appeared in Civil Services Examination conducted by Respondent NO.2 and was appointed on this basis as an IPS officer in U.P. Cadre in the year 1976. While cleaning his house and overhauling his official residence his original marks sheet was misplaced for which he lodged an FIR. He wanted a Pass-Port to be issued to him for which the Pass Port Authorities wanted a Birth Registration Certificate. On approaching the office of Additional Registrar, Births and Deaths in Amritsar, he found that his date of birth was actually recorded after his birth, which is 11.9.1947 and he has been issued a Certificate for this purpose, which is on this file. He has also been issued a Pass Port with a date of birth recorded as 11.9.1947. Pleads that this is his correct date of birth, which fact was discovered by him only now. Claims that there is no specific rule regarding correction of date of birth of an IPS officer except Rule 16 A of AIS (DCRB) Rules, 1958. Referring to the earlier rule, as unamended pleads that there is provision of correction of date of birth. He has filed a representation for correction of date of birth but the same has been rejected. He has thus, filed this O.A. with the prayer to quash the impugned orders (Date of which has been left blank in the relief clause) Annexure-1 with a direction to Respondents No.1,3 and 4 not to act on the impugned order and let him continue in service up to the age of 60 years after making



correction in his date of birth by recording it as 11.9.1947 as against 5.9.1946. Prays that respondents be directed to pay him salary regularly month to month with permissible allowances etc.

2. Learned counsel for the applicant has been heard at length. In this case Shri Deepak Shukla for Shri Prashant Kumar appeared and Shri Prashant Kumar Srivastava appears for Shri A.K. Chatutravadi for the respondents, who have also been heard on the maintainability of this O.A.
3. Admittedly, applicant joined service as IPS in the year 1976. He would be very near his age of superannuation, now he applied for correction of his date of birth towards "fag end" of his career. Question before the Court is, can he apply for such correction of his date of birth, which was duly recorded as per date of birth given by him at the time of appearing in the competitive examination and at the time of joining his service as IPS. Secondly, as to whether the present O.A. is maintainable under the relevant AIS (DCRB) Rules as amended from time to time, firstly in 1971 and thereafter in 1978 which the applicant has conveniently not taken note of.
4. The questions raised in the present O.A. are no longer Res-integra. All these aspects were raised and adjudicated by Hon'ble Supreme Court in the case of Union of India Vs. C Rama Swamy and Others. This question was also considered by the Chandigarh Bench in the case of P.C. Dogra IPS Vs Union of India in O.A.No.1225 (Pb) 1996 decided by Chandigarh Bench on 26.12.1997. Even though the Court is not required to deal with all aspects again as all the questions raised in the present



case have been dealt with in the case of C. Rama Swamy. Yet reference is being made to the provisions of the said rule that (DCRB) Rules, 1958 were first time amended through a Notification dated 4.12.1971, which was substituted by Notification dated 7.7.1978 by amending Rule-16-A. C. Rama Swamy was a pre 1971 direct recruit yet it was held by the Apex Court after the new Rule-16 -A was incorporated w.e.f. 27-1978, it was only rule which was applicable to all the persons who are in service on that date and after that date. It was held that Rule-16-A is a complete rule which was intended to be applied to All India Services to whom All India Services (Death-cum-Retirement Benefits) Rules, 1958 apply.

5. It has further been held that under Rule 16-A, Clauses 1 to 4 provided that Central Govt. only accepts the date of birth given by an officer while appearing in his Competitive Examination or while joining service. The Central Government does not determine the correctness of date of birth but has only accepted the date of birth given by an officer joining AIS. In the present case, the applicants date of birth as recorded in his School Certificate, College Certificate or at the time of his joining is not in dispute that it was 5.9.1946 and the Central Government had accepted it. In Paragraph-18 of judgment in Rama Swamy's case, it has been held that no request of correction of date of birth can be entertained from the persons appointed after 4.12.1971 except in cases of bona fide clerical error. In same paragraph the above point has also been considered and decided that where the rule permitted only acceptance of date of birth declared by an officer, it did not permit determination by



taking into account evidence how so ever authentic and genuine.

6. Learned counsel for applicant argued on the meaning to be given to words with rule "Bona fide clerical mistake". In paragraph-22 of the judgment, the Apex Court has in detail discussed the meaning to be assigned to these words. It has been held that bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded. Thereafter, the Court has discussed the applicability of the word to the case, which reasoning also apply to the present case. Admittedly, the date of birth indicated by the applicant through out, from the days of his entry in School, date of appearing in the Competitive Examination and the date of joining in IPS has been recorded to be 5.9.1946. Admittedly, applicant had also believed this is to be his correct date of birth. It was thus, not a case that his date of birth has been incorrectly recorded in the Service-Book. Thus, it cannot be said, it was bona fide clerical mistake.
7. The Apex Court had dealt with the amended part of Rule-16-A as amended as on 7.7.1978 and have given their findings to the effect once date of birth is given by an officer for joining the service Principle of estoppel would operate against him. It is non-permissible to get it changed afterwards.
8. The applicant has placed reliance on the judgment of State of Punjab Vs. Mohinder Singh 2005 (3) SCC-702, which is not applicable in the present case which has been dealt under

(DCRB) Rules. That case related to a Civil Suit pending wherein provisions of Section 32 and 35 of Indian Evidence Act were under consideration. He has also placed reliance on S.C. Chadda's case as mentioned in his O.A. in which it has been held that if no rules have been framed permitting a fixed period within which an application for correction of date of birth has to be filed, such application still should be at least filed within a reasonable time. Thirty years from date of joining service for making such application can by no stretch of language be called within reasonable time.

9. In the case of Union of India Vs. Harnam Singh (1993) 2 SCC-162, it has been held that for Central Government employee an amendment has been made to FR-56 (m) and one could apply for correction of date of birth within 5 years from coming into force of this amendment and it is not to be allowed thereafter. In fact, in para-7 of the said judgment in quite strict language , it has been held that government servants making correction of date of birth cannot be claimed as a matter of right, even if , he has got good evidence for correction of his date of birth recorded erroneously. Similar view have been expressed in case of State of Tamilnadu Vs. T.V. Venugopalan 1994 (28) ATC-294, in the cases reported in 1993 (23) ATC-807, 1993 (26) ATC-828, the Secretary Commissioner Home Department and Others Vs. R. Kiru Bakran JT -1993 (5) SC-404 and so many other judgments as rendered by Hon'ble Supreme Court and other Courts.
10. In view of the above discussion, and in particular law laid down by the Hon'ble Supreme Court in the case of C. Rama Swamy's (Supra) , this O.A. is found to be not maintainable . it is not

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thought fit case even for issuance of notice. The O.A. is dismissed in limine. No costs.


(J.S. DHALIWAL)
MEMBER (J)

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