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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 246/88.

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~~XXXXXX~~DATE OF DECISION 17.7.1989Shri K.S. Ingale. PetitionerShri G.S. Walia. Advocate for the Petitioner(s)

Versus

Ordinance Factory & Others. RespondentShri R.K. Shetty. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar, Member (A).

The Hon'ble Mr.

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. Whether it needs to be circulated to other Benches of the Tribunal? No



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 246/88.

Shri K.S. Ingale,
C/o. Shri G.S. Walia,
Advocate High Court,
89/10, Western Railway,
Employees Colony,
Matunga Road,
BOMBAY - 400 019.

... Applicant.

V/S

- 1) Union of India,
Through Ordinance Factory,
BHUSAWAL.
- 2) The General Manager,
Ordinance Factory,
BHUSAWAL.
- 3) The Secretary,
Ordinance Factory Board,
6, Esplanade,
CALCUTTA - 69.

... Respondents.

Coram: The Hon'ble Member(A), Shri M.Y. Priolkar.

Appearance:

Mr. R.K. Shetty,
Advocate for the
respondents.

Mr. G.S. Walia,
Advocate for the
applicant.

ORAL JUDGMENT:-

Date: 17.7.1989.

(Per Shri M.Y. Priolkar.)

The grievance of the applicant in this case ^{is} that, though according to him, his correct date of birth is 15.2.1942, it has been recorded in his service book as 15.2.1936. The applicant who is presently working as Junior Examiner, Ordnance Factory, Bhusawal, states that at the time of his initial appointment in Government service on 27.5.1963, he had

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declared his date of birth as 15.2.1942 and this was in fact correctly recorded in the service book, but it was amended as 15.2.1936 at a later stage. The applicant alleges that he was never informed about this amendment in his date of birth and that he became aware of it for the first time sometime in 1983. Immediately thereafter he sent a representation to his department for correcting the date of birth as 15.2.1942, enclosing therewith a birth certificate issued by Nagarpalika Bhusawal (Enclosure to Exhibit A). This was followed by further representations dated 15.12.1983, 14.5.1984, 1.1.1985 and 8.1.1987. Since all these representations were rejected on the ground that they were belated, the applicant has approached this Tribunal on 4.4.1988 with a prayer to direct the respondents to correct his date of birth as 15.2.1942.

2. In their written reply, the respondents have submitted that since the applicant was not able to produce any documentary evidence regarding his date of birth at the time of his initial appointment, his date of birth was assessed by the Medical Officer on 15.2.1963 as 27 years, in accordance with the instructions in force at that time, and accordingly the date of birth of the applicant was to be recorded as 15.2.1936. The respondents state, however, that the date of birth was inadvertently recorded as 15.2.1942 on the basis of the age of 21 years as orally stated before the Medical Officer by the applicant himself.

3. The respondents also contend that the birth certificate produced by the applicant from Nagarpalika Bhusawal is not based on the birth registered at the relevant time in the birth register of the Municipality. But it was on the basis of the birth stated to be of 1942 but registered in 1983 on the basis of the applicant's own affidavit.

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4. The respondents have also contended that the applicant's request was rejected as it was made almost 20 years after joining government service whereas under the rules in force, any request for change in the date of birth has to be made within 5 years after initial appointment. According to the respondents, even this application before the Tribunal is barred by limitation since the applicant's request for change of date of birth was finally rejected on 15.5.1985 and he has approached this Tribunal almost 3 years after that date i.e. on 24.4.1988.

5. I have heard today, Mr. G.S. Walia, Learned Advocate on behalf of the applicant and Mr. R.K. Shetty, Counsel on behalf of the respondents.

6. I have also perused the original service book of the applicant. It is observed therefrom that the Medical Examination of the applicant was carried out on 15.2.1963 when the Medical Officer In-charge in the Ordinance Factory, Bhusawal, in his medical examination report, recorded the age of the applicant as 21 years "from applicant's own statement" and 27 years "from appearance." It is clear from this record that subsequent to this medical report, someone else has entered the date of birth "from medical report" as 15.2.1942, which has later on been corrected as 15.2.1936. The correction has been attested by someone as A.M.A. though it does not bear the date of his attestation. From this it is obvious that there is a clerical error in originally writing the date of birth "from medical report" as 15.2.1942, and it should have been correctly written even in the first place as 15.2.36.

7. Bhusawal Nagarpalika's Birth certificate is the only documentary evidence which has been produced by the applicant in support of his claim that he was born on 15.2.1942. It is,

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however, observed that this certificate is an extract of an entry in the April 1983 birth register of Nagarpalika, Bhusawal and in Column 25 of this certificate, it is clearly mentioned that this birth, which is stated to be of 15.2.1942, has been registered on 20.4.1983 on the basis of the statement of the applicant himself and his parents. The respondents have also produced a letter dated 6.10.1988 (Exhibit R.1) from the Chief Officer, Nagarpalika Bhusawal stating that there is no entry about any birth of a son to Shri Sonu Ganu Ingale on 15.2.1942 at Bhusawal.

8. In my view, therefore, there is no merit in the application as this was a bonafide clerical error which was apparent from record and has been subsequently corrected. Besides, the applicant is not in a position to produce any genuine documentary proof about his date of birth, except Bhusawal Nagarpalika's birth certificate which has admittedly been issued on the basis of his own affidavit. Evidently, in the absence of any authentic documentary evidence, the age as ^{assessed} ~~amended~~ by the medical officer will have to be accepted in preference to one which is based on the applicant's own declaration.

9. Mr. G.S. Walia, however, argued that this date of birth viz. 15.2.1942 appears to have been initially accepted by the respondents on the basis of the applicant's statement. At least this was the applicant's impression all along. But later on it has been changed to 15.2.1936 without the applicant's knowledge, and without giving him any opportunity to produce any alternative acceptable documentary proof, if necessary, thus violating the principles of natural justice. Mr. Walia pleaded that given a chance, the applicant may be able to produce some other documentary evidence in support of his claim, to the satisfaction of the competent authority. Mr. R.K. Shetty could not tell at

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what stage or the specific date on which the date of birth initially entered has subsequently been amended by the respondents. According to the applicant, he became aware for the first time in 1983 that his date of birth which earlier had been recorded in his service records, including his Identity Card, as 15.2.1942 had been changed to 15.2.1936. There is no evidence with the respondents to indicate that the applicant had been aware of this position any time earlier. The respondents should not, therefore, have rejected the applicant's request only on the ground that under the existing instructions any request for change in the date of birth should have been made within 5 years of joining government service, and, therefore, all these representations were to be treated as belated. Although Mr. R.K. Shetty stated that the applicant's representations were rejected not only on ground of delay but also after examination on merits, this is not mentioned specifically in any of the replies sent to the applicant by the respondents. Since the applicant is to retire on superannuation on the basis of the recorded date of birth only after another four and a half years or so, I think the interest of the respondents will not be affected if they permit the applicant to submit whatever additional evidence he chooses to produce, in support of his claim that the correct date of birth is 15.2.1942.

10. On the basis of the foregoing discussion, the applicant partly succeeds. I direct that the respondents, within one month from the date of receipt of a copy of this order, should ask the applicant to produce any additional documentary evidence in support of his claim for a change in his date of birth within a period of three months from the date of receipt of a communication to that effect, and within three months of its receipt, the respondents should take a final decision on the

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applicant's request for change of date of birth after going into the merits of the documentary evidence so produced. Parties will bear their respective costs.

M.Y. Priolkar
(M.Y. PRIOLKAR)
MEMBER (A).

Judgment dtd 17/7/89
Sent to parties on
21/9/89.

Okal:
21/9/89