

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

Original Application No. 77/86

Shri C.R. Bhagwat,
Chief Executive Officer & Financial Adviser,
Khadi & Village Industries Commission,
Gramodaya, Irla Road,
Vile Parle (West),
BOMBAY - 400 056.

.. Applicant

V/s.

1. Comptroller & Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi - 110 002.

2. Secretary,
Department of Personnel, Administrative Reforms & Pensions,
Government of India,
New Delhi.

.. Respondents

Coram : Vice-Chairman B.C. Gadgil
Member J.G. Rajadhyaksha.

Appearances:

1. Applicant in person

2. Shri Subodh Joshi,
Advocate for
Respondents.

JUDGMENT:

Dated: 16-7-1986

(Per Gadgil, Vice-Chairman)

The short question in this application is as to whether the applicant is entitled to get corrected his service record by amending the entry so far as his birth date is concerned. The birth date has been shown as 5.8.1929 while according to the applicant the correct date is 11.10.1931.

2. The applicant applied for service as an Apprentice in the Sub-ordinate Accounts Service under the Indian Audit and Accounts Department. In his application made in 1954 he had shown his birth date as 11.10.1931. However, the Matriculation Certificate has mistakenly mentioned the date as 5.8.1929. Even before joining his service, the applicant had been vigilant about getting the record corrected. The Public Health Department maintains a Register about the vaccination of children

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from time to time. In 1951, the applicant obtained a copy from such register showing that on 23.11.1931 the applicant was vaccinated and at that time his age was one and half month. A copy of the certificate is produced at annexure 3 & 3A - Pages 53 & 55. The name of the applicant has been mentioned in the said register. The applicant then applied to the City Magistrate for getting age, Domicile & Nationality certificate. The City Magistrate, on 14.7.1952 granted this certificate showing the birth date of the applicant as 11.10.1931 (vide annexure 4 (Page 61)).

3. But, while admitting the applicant to the School the birth date was wrongly mentioned as 5.8.1929; this mistake was carried further at the time the applicant appeared for the Matriculation Examination and the said mistake in birth date has been entered in the service record of the applicant.

4. The applicant has been agitating about the record of this incorrect birth date in service records. However, the Government, from time to time, was insisting that the correction in the service ^{record} could not be made unless the applicant got the School Leaving Certificate as well as the Matriculation Certificate corrected. The applicant had written to the University for such correction stating that an incorrect date was mentioned when he was admitted to the School and the said mistake was carried forward while submitting the application for permitting the applicant to appear for the Matriculation Examination. The University authorities informed the applicant that the birth date as entered in the Matriculation Certificate could be corrected only on one ground namely when the birth date as mentioned in the application for admission to the Matriculation Examination differs from the birth date mentioned in the school register and the application is supported by the Head of the school. Such declaration was not there and therefore the University authorities were not able to correct the birth date. We have already observed that the concerned department was not able to do anything in the matter and the applicant had been informed about it from time to time. It is material to note that on 14.6.1983 (vide pages 83-85 Annexure -11), the department in which the applicant was serving wrote a letter to the Department of Personnel recommending the case

of the applicant for correcting the date. But that department did not agree and the matter stood finally closed on 2.8.1985, when the applicant was informed that the matter had been carefully examined again and that it would not be possible to accede to the request of the applicant. The applicant, thereafter, filed the present application seeking redress as regards the incorrect birth date in the service record.

5. The respondents have been duly served with the notice of this application. The respondents did not file any reply in time. On 3.7.1986 Mr. Subodh Joshi appearing for the respondents orally prayed for extension of time for filing the reply. We did not grant that request but we told Mr. Joshi that even without such a written reply he might raise all the necessary contentions for opposing the application.

6. We have heard the applicant in person and Mr. Joshi also argued the matter on behalf of the Respondents. It cannot be doubted even for a moment that there is a mistake while showing the birth date of the applicant as 5.8.1929 though he was born on 11.10.1931. The very fact that even before entering Government Service, the applicant was trying to get the School Record corrected is eloquent. He obtained the Vaccination Certificate from the Public Health Department in 1951. He approached the City Magistrate in ¹⁹⁵³ ~~1952~~ for a Certificate mentioning his correct birth date. It is true that the applicant is not able to produce an entry from the birth register from the Pune Municipal Corporation for reasons beyond the control of anyone; and that reason is obvious. The Municipal Corporation has informed the applicant that the birth register for the year 1931 has been washed away (vide Annexure.12 Page 87). The applicant then asked the Municipal Corporation for an entry from the birth register of 1929 showing the birth of a male child to the applicant's mother Kalavati Ramchandra Bhagwat. The Municipal Authorities informed the applicant (vide Annexure.13 Page.87) that there was no entry in the birth register of 1929 showing that a male child was born to Kalavati Ramchandra Bhagwat. In the absence of such Municipal record, the entry from the

Vaccination Register carries great weight. It would be very difficult for Mr. Joshi to contend that the said entry should be discarded from the evidence. This is more so when we take into account the fact that the applicant has been trying to get the birth date corrected even before he joined Government Service in 1954. We are thus satisfied that there is a mistake in the service record of the applicant where his birth date has been shown as 5.8.1929. The correct birth date is 11.10.1931.

7. Mr. Joshi, however, seriously urged two points. He has relied upon Note.5 below Rule 56 of Fundamental Rules. That rule states that the birth date declared by the applicant and accepted by the appropriate authority shall not be subject to any alteration except as specified in the note. The note further adds that the request for such alterations will be made within 5 years of the entry into the service and the alteration would be granted if there is, genuine, bona fide mistake. There is one more condition. Such alteration should not make the applicant in-eligible to appear for any examination. Shri Joshi, therefore, urged that in the face of this foot-note it would not be open for the applicant to re-agitate the question more than 5 years after entering service. In our opinion the provisions in the foot-note are no doubt salutary. However, this Tribunal would not treat them as rigid in each and every case. Much will depend upon the facts of a particular matter and whenever there is a genuine and bona fide mistake, the Tribunal would consider the correction thereof, provided all other attendant circumstances will not preclude the applicant from getting such relief. In the peculiar facts of this case we are satisfied that the applicant deserves consideration, particularly in the background that even the Department in 1983 did not reject the claim of the applicant by applying this 5 year rule; in fact even in 1985 the Department again examined the matter carefully and found that it would not be possible to accede the applicant's request. Mr. Joshi therefore, would not be able to lay any stress on the above mentioned note which prescribes that request for alteration of birth date can be made only within 5 years.

8. Another contention of Mr. Joshi is that the

applicant's claim is barred by time. He drew attention to the fact that in 1959 and 1963 the Respondents were not able to effect the alteration in the birth date. Similarly in 1983 the Respondents felt that it would not be possible to make such alteration. Shri Joshi therefore, urged that the matter was treated as closed at least in September, 1983 (vide Annexure.16 Page.43) when the Government did not think it fit to effect alteration of the birth date. However, what is important is that the Government expressed its inability to do anything unless the date of birth entered in the Matriculation certificate is changed by the concerned authorities. It is thus clear that even in 1983 the Respondents have kept the matter open and have not decided it finally. It appears that it is only on 2.8.1985 (vide Page.41 Annexure.22) that the Government after carefully examining the matter again informed the applicant that his request could not be granted. In these peculiar facts of the case we do not think that the Respondents should be able to contend that the application is barred by time or that the Tribunal has no jurisdiction as the matter has been decided more than 3 years before the establishment of the Tribunal.

9. The net result is that the application succeeds. The Respondents are directed to correct the Service Record of the applicant by altering his birth date from 5.8.1929 to 11.10.1931. No orders as to costs.

B.C. Gadgil

(B.C. GADGIL)
VICE - CHAIRMAN

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER.

Copy of Judgment
16/7/86 were delivered to
Shri P.V. Nisgahe (personally)
Section Officer Adm. I
d/o A.C. Noh. By 20.
Moghe
25.7.86.