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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI
NEW BOMBAY BENCH

O.A. No. 148/89.
T.A. No.

198

DATE OF DECISION 27.6.1989

Shri Madhukar B. Yelne Petitioner

Shri V.G. Rege Advocate for the Petitioner(s)

Versus

Ministry of Communication Respondent

Shri V.S. Masurkar 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*

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

Original Application No. 148/89.

Shri Madhukar B. Yelne,
Flat No. 6, Plot No. 148,
Trimbakeshwara Apartment,
Dahanukar Colony, Kothrud,
PUNE - 411 029.

... Applicant.

V/S

Union of India,
Through the Director General
of Posta & Telegraphs,
Ministry of Communication,
Government of India,
NEW DELHI - 110 001.

... Respondents.

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

Appearance:-

ORAL JUDGMENT:-

Date: 27.6.1989.

Mr. V.G. Rege, Learned
Advocate for the applicant.

Mr. V.S. Masurkar, Learned
Advocate for the respondents.

ORAL JUDGMENT:-

Date: 27.6.1989.

The grievance of the applicant in this case is that his correct date of birth is 5.10.1932, whereas the date of birth recorded in his Service Book is 1.7.1931. The applicant, who is presently serving as Divisional Engineer, Phones, in Pune Division of the Telecommunication Department states that at the time of his initial appointment as Telephone Operator on 18.3.1952, the date of his birth was recorded in his Service Book as 1.7.1931 on the basis of his High School Certificate. According to the applicant, this wrong date of birth was given by his illiterate father ^{to the teacher of the Primary School,} presumably under the mistaken notion that the minimum age for school admission was seven years.

P.T.O.

After coming to know subsequently from some elder in the family that he was born during Navaratra Festival and since Navaratra Festival never comes in July, and after verifying from the Village Kotwal's Birth Register that he was in fact born on 5.10.1932, the applicant, while he was a student in Class XI in the Neill City High School, Nagpur applied to the School authorities for correcting his date of birth, attaching therewith a certified copy of the extract of the entry in the birth register maintained by the Village Kotwal. The School Superintendent forwarded his application on 22.7.1948 (Annexure I) to the Divisional Superintendent of Education, Nagpur Division, recommending correction in the date of birth. Since there was no response from the Education Department, the applicant states that he had to continue giving the same date of birth as recorded in his School Leaving Certificate, although he knew that it was not the correct date of birth.

2. On 20.12.1956, i.e. within about four years of his initial appointment in Government service, the applicant represented to his Head of the Office viz. the Divisional Engineer, Nagpur for correcting the date of birth in his Service record enclosing therewith his sworn affidavit, the certified true copy of the extract of the Kotwal's birth register which was obtained by him again on 15.12.1956 and also a certificate issued by the concerned Tahsildar. Thereafter, a series of letters have been exchanged between the Department of Telecommunications rejecting his request and the applicant making further representations. Finally on 30.8.1985 he submitted a representation to the President of India. While forwarding this representation to the Secretary, Department of Telecommunications, New Delhi, the then General Manager, Telecommunications, Maharashtra Circle, Bombay observed as ~~XXXXXX~~

under:-

" The case has been examined in the light of Notification No. 19017/7/79-Ests-A, dated 30.11.1979 from the Ministry of Home Affairs, Department of Personnel and A.R., New Delhi, circulated vide Director General, Post and Telegraph, New Delhi letter No. 40-2/81-SPB-II dated 14.4.1981 and the applicant satisfies all the requirements mentioned therein viz;

- a) Confirmatory documentary evidence of extract from the Birth Register, mentioning specifically his date of birth as 5.10.1932.
- b) Request for correction in the date of birth within 5 years of his entry in the Government Service as Telephone Operator.
- c) A genuine bonafide mistake occurred during his admission to the primary school.
- d) The change in the date of birth does not make him ~~an~~ ineligible for entry into Government service."

3. On 11.3.1986 the General Manager received a communication from the Assistant Director General, Ministry of Communications, Government of India informing him that the applicant's request has been considered by the Competent Authority but has not been agreed to. No reasons for rejection were, however, given in this letter. It was only in a reply dated 15.5.1986 to his further representation dated 20.3.1986 forwarded by the applicant through a former member of the Post & Telegraphs Board that the reasons for rejecting the request of the applicant were communicated in the following terms (Annexure 23):-

" The request of Shri Yelne for change of date of birth has been considered sympathetically. In one of the applications, the Officer had stated that his ~~xxxxx~~ father had intentionally mentioned the present date of birth at the time of his admission to the school as the school authorities had categorically denied admission for children below 7 years. By virtue of the present date of birth, the Officer got admission to the school early and also entered into Government Service early. Therefore, he has already got advantage by way of early ~~entry~~ admission in the school and early entry into the Government service. The full facts have already been considered twice. It is regretted that it is not possible to revise the date of birth of Shri M.B. Yelne."

4. It may thus be noted that it was for the first time ^{reason} on 15.5.1986 that the Department has disclosed the real/for

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not accepting the repeated requests of the applicant for correcting his date of birth. As the applicant was not satisfied with the reasons indicated in this letter, he submitted a further representation dated 6.10.1986 to the Minister of Communications, which was followed by ^{another} representation dated 16.10.1986. Now reply to these representations having been received, the applicant approached the Tribunal on 15.2.1989 praying that the respondents may be directed to correct his date of birth as 5.10.1932 and for grant of consequential benefits.

5. In the written reply filed by the respondents and also during the submissions in the hearing today, the Learned Counsel for the respondents Shri V.S. Masurkar opposed the application primarily on the ground of limitation. I do not see much merit in this contention. Rule 122 of the Post & Telegraphs Manual, Volume II which deals with petitions to the President lays down the manner in which such petitions are to be dealt with. Shri Masurkar argued that this Rule was not at all applicable in the present case as the representation which was sent by the applicant to the President was not a petition but an appeal. He could not, however, quote any authority or show any ruling or guidelines or any instructions for treating any such representations as either appeals or petitions. His only argument was that in the representation, the applicant himself had used the word "appeal" and accordingly this representation has been treated only as an appeal and not a petition. Since there is a separate volume of the manual dealing with appeals, the respondents contend that the procedure prescribed for petitions was not followed in the present case. It may be stated that in para 9 of their written reply, the

Respondents have stated ^{that} the applicant's representation could not be considered as an appeal as per Rule 24 of C.C.S. Rules. The learned advocate for the applicant submitted that the word "appeal" in the applicant's representation was loosely used, and for the purpose of statutory rules, appeal would mean a representation to a designated appellate authority against an order of the competent authority levying a penalty ⁱⁿ disciplinary proceedings. It may also be mentioned that this reason for not considering the representation in terms of the instructions under Rule 122 was never informed to the applicant at any time by the respondents. It is obviously not possible to accept this contention that the procedure which should be made applicable to deal with a representation should depend only on the wording of the applicant himself in his representation. Infact, under Rule 123(a) of this Manual Volume II, petition has been defined to include a memorial, representation, letter or any application of the nature of a petition. I would, therefore, reject the contention of the respondents that Rule 122 was not relevant for the purpose of this representation.

6. It may also observed that in the earlier replies to the representations made by the applicant, the reason given was that his request was belated and the reasons given ^{by him} for the delay were not convincing. In this context, Mr. V.G. Rege, the learned Advocate for the applicant, drew attention to the Judgment of Ahmedabad Bench of the C.A.T. in Transferred Application No. 80/87 in which it has been held that " it is exclusively within the jurisdiction of the authorities to examine the relevant evidentiary value and come to its own conclusion, but rejection on the mere ground of delay cannot be accepted. In such cases, when an employee approaches a competent authority for correction of the birth date, the authority should first call upon the employee to


furnish whatever evidence he relies upon." I am in respectful agreement with this observation of the Ahmedabad Bench of this Tribunal.

7. Evidently, the respondents have no reservations about the genuineness of the documentary proof submitted by the applicant. It is also conceded that no advantage has been gained by the applicant in the matter of School Leaving Examination or for entry into Government Service by giving the earlier date of birth. It has also been certified by the General Manager, Telecommunications, Maharashtra Circle while forwarding the petition addressed to the President, that all the requirements prescribed in the Department of Personnel's O.M. dated 30.11.1979 incorporated as Note V below F.R. 56 have been met in this case and, on that basis, he had strongly recommended the correction in the date of birth of the applicant. In view of all these facts, I am satisfied that the delay in this case, if at all, is neither deliberate nor unreasonable and the respondents should not have ignored or rejected the request of the applicant for correction in the date of birth without going into the authentic documentary evidence submitted by him.

8. Regarding the delay, the applicant has today filed an application for condonation of delay stating that the delay was not deliberate or due to negligence and it is, therefore, for a sufficient cause. Mr. Masurkar opposed the application on the ground that this is being filed at the last moment and he requires time to take instructions and also on the ground that it is not in the prescribed form. In the light of the Judgment of the Ahmedabad Bench to which I have referred earlier, and also since I have already stated that on the facts and circumstances of this case, I am satisfied that the delay is neither deliberate nor unreasonable, the delay is condoned as

applied for. The application filed today for condonation of delay may be numbered as Misc. Petition and treated as disposed of.

9. On the basis of the foregoing discussions, the applicant must succeed. I, accordingly, direct that the respondents should correct the date of birth in the service record of the applicant as 5.10.1932 instead of 1.7.1931 and his date of superannuation should be determined on the basis of the corrected date of birth. The parties will bear their respective costs.


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