

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 7th NOVEMBER 1986

Present : Hon'ble Shri Ch Ramakrishna Rao - Member (J)
Hon'ble Shri P. Srinivasan - Member (A)

Application No. 174/1986(T)

Sri M.V. Reddy
S/o Gangi Reddy
Deputy Collector of Central Excise
Bangalore - Applicant

(By Shri M. Narayanaswamy, Advocate)

1. The Union of India, represented by
its Secretary, Ministry of Finance,
Department of Revenue & Banking
(Revenue Wing), New Delhi

2. The Secretary,
Central Board of Excise & Customs,
New Delhi 1 - Respondents

(By Shri M.S. Padmarajaiah, C.G.S.C.)

The application has come up for hearing before the
Tribunal today, Hon'ble Shri Ch. Ramakrishna Rao, Member (J)
made the following

O R D E R

This is an application initially filed as a
writ petition in the High Court of Karnataka and subsequently
transferred to this Tribunal. The facts giving rise to the
application are briefly as follows.

2. The applicant entered service in the Department
of Central Excise on 17.9.1965. At the time of entering
service his date of birth (DOB) was noted in the service
register as 8.6.1941 on the basis of the entry in the
S.S.L. Certificate. According to the applicant he was born

Ch. Ramakrishna Rao

... b... in his

in his uncle's house in Kadri Taluk in the State of Andhra Pradesh on 22.4. 1942 but while admitting him in school his father gave the DOB as 8.6.1941 by mistake. During 1968 i.e. three years after entering service the applicant was informed by his uncle that his actual DOB was 22.4.1942 and not 8.6. 1941. This was confirmed by the extract from the register of births maintained by the Sub Registrar of Births and Deaths, Kadri. Thereafter the applicant made a representation dated 4.11.68 to the Secretary, Central Board of Excise & Customs (CCE), New Delhi who has been impleaded as the second respondent in this application, to which a reply was received by the Collector of Central Excise, Madras to the effect that 'the request of the applicant can be considered if he gets his DOB changed in the S.S.L. Certificate. Shri Reddy may please be informed accordingly.', a copy of which communication was also forwarded to the applicant by the Collector of Central Excise, Madras. As a sequel to this communication the applicant moved the competent civil Court in which he has impleaded the State of Andhra Pradesh as a party and obtained a direction for effecting correction of the DOB in the S.S.L. Certificate from 8.6.1941 to 22.4.1942. In compliance with the decree, the DOB was corrected in the S.S.L. Certificate and the same was produced to the CCE at Bombay under whom he was then working. The aforesaid Collector in his turn forwarded the same to the Secretary, Ministry of Finance, Department of Revenue, (Ministry), New Delhi, who has been impleaded as the first respondent in this application. The request of the applicant for alteration in the DOB was, however, turned down by the

Chakras

(as filed 'J') the applicant has filed this application.

3. Sri M. Narayanaswamy, learned counsel for the applicant, contends that the Ministry having called upon his client to produce the S.S.L. Certificate duly amended incorporating his date of birth to enable it to consider his request, was not justified in not giving effect to the DOB as amended in S.S.L. Certificate. According to the learned counsel, the circumstances of the case were such that the original entry of DOB in the S.S.L. Certificate could be labeled as bonafide error and in view thereof the decision of the Ministry is liable to be set aside. xxxxxxxxxxxx x

xxxx Shri M.S. Padmarajaiah, learned counsel for the respondents submits that Rule 79 of the General Financial Rules (GFR) 1963 clearly says that the DOB once recorded in the service book of the government servant cannot be altered except in the case of a clerical error without the previous orders of a department of the Central Government.

Shri Padmarajaiah maintains that the error in the present case is not in the nature of a clerical error and as such is not amenable to correction in the service book. //After careful consideration of the contentions put forward by the learned counsels of both sides, we find it difficult to ~~execute~~

Chas

... upheld

uphold

the impugned order because
Underneath Rule 79 there is a decision of the
Government of India to the effect that if the competent
authority is satisfied that a bonafide clerical mistake has
been committed it should be rectified. The Ministry,
perhaps, was satisfied about the bonafide nature of the
mistake and therefore called upon the applicant to produce
the S.S.L. Certificate duly corrected regarding the
DOB of the applicant. Since there is provision in Rule 79
for rectification and the decision of Government of India
enables the competent authority to effect a change in the
DOB the communication addressed by the Ministry to the
CCE, Madras must be given its full effect. xxxxxxxxxxxx
5. In this connection, it will not be out of place to
mention that as a result of the alteration the applicant
derives benefit of only ten months in the length of
service. On the question whether the alteration in the
DOB was bonafide or not, the District Munsif, Kadri made
the following observation in his judgement dated 17.9.19

"...., it may be seen that even though the Plaintiff gave the date of birth as 8-6-1941 still Plaintiff was underaged to appear for the S.S. examination in March, 1956, and that he had to be given exemption by the concerned authority seen from Exhibit A-14. The Plaintiff did not derive any material benefit on account of his father having given the wrong date of birth 8-6-1941 instead of 22-4-1942. The Plaintiff entered service on 17-9-1965. He did not derive any advantage on account of the wrong date of birth while entering into service also he was below the age of 25 by 17-9-1965.

Ch. A. D. S.

"alteration in the date of birth, he will continue in service for ten and half months more. This is not long period. The Plaintiff has come up with the request for alteration in the date of birth in 1968 itself. He is now only 31 old. His departmental authorities also expressed their willingness to consider his request for alteration of the date of birth in his Service Register if he gets the wrong date in the S.S.L.C., changed."

Taking into account the observations of the civil Court extracted above, we are satisfied that this is a genuine case where the correction in the DOB should be granted. We, therefore, quash the impugned order and direct the respondents to give effect to the corrected DOB in the S.S.L. Certificate by entering the DOB as 22.4.1942 instead of 8.6.1941 in the service records of the applicant.

6. In the result the application is allowed. No order as to costs.

Ch. Ramakrishna,
(Ch. Ramakrishna Rao) 7/11
Member (J)

P. S. - - -
7/11/86
(P. Srinivasan)
Member (A)