

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 30th SEPTEMBER 1986

Present : Shri L.H.A. Rego - Member (AM)
Shri Ch Ramakrishna Rao - Member (JM)

Tr Application No. 479 of 1986 (T)
Writ petition No. 4297 of 1984

J. Anthony Dass
Pt. Auditor, A/c No. 8289001
RAO (ORs) MEG & CENTRE
BANGALORE 560 042 - Petitioner

(Shri K. Suryanarayana Rao, Advocate)

1. Union of India
by its Secretary to the Ministry of Defence
Sena Bhavan
New Delhi

2. Controller General of Defence Accounts
West Block 5, Ramakrishna Puram
New Delhi 110 066

3. Controller of Defence Accounts (ORs) South
Teynampet
Madras 600 018 - Respondents

The application has come up for hearing before
the Court to-day. Honourable Member (AM), Shri L.H.A. Rego
made the following :

O R D E R

This writ petition under Article 226 of the Constitution
of India, is transferred to this Bench by the High Court
of Judicature of Karnataka under Section 29 of the Central
Administrative Tribunals Act, 1985, wherein the applicant
has challenged the change in his date of birth (DOB for short)
and has mainly prayed for issue of a writ to quash the

impugned order dated 15.2.1984 issued by the second respondent and to direct the respondents to continue him in service till 30.9.1987 i.e. the date of his superannuation according to his DOB initially recorded in his service book.

2. The facts of the case, in brief, are as follows. The applicant was an ex-employee of the M.T. Salvation Depot, Bangalore, having served as a Leading Hand Stores (Typist) during the period from 15.5.1947 to 28.10.1947. On his discharge from the said Depot on 6.11.1947, for which a Military Certificate of Discharge (MCD for short) was issued to him, he joined service as Daftary (Record Keeper) in the Defence Accounts Department (DAD, for short) on 28.4.1949. His DOB was originally recorded as 5.9.1929 in his Service Book (SB for short) but was later amended as 18.4.1926 based on Part II of Office Order No. T/AN/49 dated 11.1.1951 (Office Order for short) in the SB over the signature of a gazetted officer. The respondents state that this Office Order is not traceable at this belated stage. They further presume, that the DOB was amended with reference to the MCD on the basis of the entry, namely "that the DOB should be on 8.4.1926 as per the discharge certificate" in the medical certificate dated 16.5.1949.

3. The applicant had on 22.2.1982 represented to the ~~3rd~~ ^{2nd} respondent that his DOB originally shown as 5.9.1929 in his SB had been changed to 18.4.1926 without intimation to him, that he had sufficient proof to authenticate his original DOB ~~in his service book~~ namely, 5.9.1929 and therefore, this original DOB in his service book be maintained. The applicant was informed that his contention to maintain his original

DOB namely, 5.9.1929 was not tenable as he had several times attested his SB on the first page itself, in the years 1956, 1961, 1967, 1971 and 1979. Thereon, the applicant preferred an appeal on 5.4.1982 to the third respondent, reiterating his request for restoration of his DOB as 5.9.1929 in his SB, stating that he was not informed earlier, about the date of change in his DOB as 18.4.1926 and that even though he had ~~had~~ attested the SB periodically, he had no opportunity to scrutinise the entries therein, as he was called to the concerned officer's room and made to sign at a particular place. He, further avers, that as a low functionary, it was not possible for him to demand the SB for detailed scrutiny. According to him, he had sufficient documentary evidence to substantiate his DOB as 5.9.1929.

Thereon, the office of the ^{3rd} respondent by its letter dated 20.4.1982 advised the applicant to produce documentary evidence in original, in support of his DOB shown initially as 5.9.1929, in his SB. The applicant under his letter dated 21.6.1982 furnished to the third respondent, the certified birth extract dated 5.8.1982 from the Baptismal Register, maintained at St. Mary's Church, Erode, along with the Life Insurance Policy dated 4.11.1984 issued by the Gresham Insurance Society Limited, London (through its office at Bombay) as proof of the correctness of his DOB initially recorded in his SB. Later, he also furnished a copy of the transfer certificate issued by the Institute of Correspondence Courses and Continuing Education as further proof of this DOB. In reply to his appeal, the applicant was informed on 10.2.1981, that the second respondent had rejected his request to restore his

DOB to 5.9.1929. The applicant was also informed on 26.7.1981 by the office of the PAO (ORs) MEG, Bangalore, that he was intimated by the third respondent, that his ~~his~~ DOB had been changed to 18.4.1926 with reference to the one recorded in the MCD. He was, therefore, directed to furnish the original certificate for further action. In response, the applicant submitted the MCD in original, to the respondent.

4. The applicant preferred a further appeal thereon on 20.3.1983, to the Union Ministry of Finance. He was informed by the office of the third respondent that his appeal was not finalised and that in the absence of any specific direction from the higher authorities, he had to retire from service with effect from 30.4.1984. The applicant was further directed to complete his pension/gratuity papers, immediately.

5. The third respondent issued an Office Order on 15.2.1984 to the applicant, intimating that he would attain the age of superannuation on 17.4.1984 (AN) and that he would be struck off from the effective strength of his organisation, from the afternoon of 17.4.1984 (FN) on the authority of the Cabinet Secretariat, Deptt of Personnel & A.R. O.M. No. 33/12/73-Estt.(A) dated 24.11.1973.

6. Aggrieved by this order, the applicant filed a writ petition in the High Court of Judicature, Karnataka under Article 226 of the Constitution of India.

7. The learned counsel for the respondents submits that the DOB of the applicant was originally recorded as 5.9.1929 in his SB and the same was subsequently amended as 18.4.1926 under Part II, ~~Order~~ Office Order No. T/AN/49 dated 11.9.1951 (Office Order for short) (Item No. 1) and recorded in the SB over the signature of a gazetted officer. The counsel for the respondents has averred in the statement of objections, that Office Orders

are an authority for events in the career of an individual, such as appointments, promotions etc. and are recognised as authentic since they are published over the signature of a gazetted officer with the approval of the higher authorities. However, he was unable to enlighten us, as to the designation of the gazetted officer who actually attested the change in the DOB in the SB and as to whether the DOB was altered with prior sanction of the competent Ministry or Department of the Central Government in accordance with Note 5 under FR 56 referred to above. He further states, that it is presumed that the DOB was amended with reference to the MCD from the M.T. Salvage Depot of the Defence establishment at Bangalore, As it has been mentioned in the medical certificate dated 16.5.1949, that the DOB should be 18.4.1926 in accordance with the MCD. He further submits that the connected documents including the Office Order are not available, as they have been destroyed after the expiry of the prescribed time. In our view, an important service document of the like should not have been destroyed till the Government servant retired and we are handicapped considerably in deciding this case for want of the document.

8. The learned counsel for the applicant has furnished a true copy of the MCD certified by the Sheristedar of the Court of Small Causes, Bangalore. He has also produced before us, its original, which was also seen by the counsel for the respondents. The counsel for the respondents has remarked in the statement of objections that the original MCD in the possession of the applicant is in a mutilated condition, that the DOB had appeared in the MCD at one time as seen from the note made in the said medical certificate, but it does not now appear in the mutilated copy of the MCD produced by the applicant. On verification

of the original produced before us, however, we did not find the mutilation so alleged and the original was also shown to the counsel for the respondents. Besides, the averments of the respondents in para 19 of the statement of objections, that the DOB had appeared at one time in the MCD is at variance with what has been stated categorically in para 4 ibid, that there is no provision therein for recording DOB and therefore, no DOB is mentioned therein. Scrutiny of MCD, however, reveals, that the form provides for "age of recruitment", but strange enough, the age of the applicant has not been shown therewith. Unfortunately, the original copy of the MCD and the connected documents are not available with the concerned offices at Aurangabad, Secunderabad and Allahabad and the respondents state that their effort to obtain them from these offices, have not met with success. Even this important service document according to us, should have been preserved till the retirement of the applicant. The respondents, however, did not seem to have made any effort to trace these documents from the M.T. Salvage Depot, Bangalore, wherefrom the MCD was actually issued.

9. A moot question, therefore arises, as to how the medical officer could issue the medical certificate, which was adopted as the basis for altering the DOB from 5.9.1929 to 18.4.1926 as stated by the counsel for the respondents. According to counsel, the authority who medically examined the applicant, had on 16.4.1949 remarked in the medical certificate that the age of the applicant according to his (applicant's) own statement was 19 years, which implies that his birth year was 1930. This seems to be approximate closer to the original DOB namely 5.9.1929, than to that subsequently altered to 18.4.1926, by the respondents. The medical officer does not seem to have refuted this statement of the applicant. It therefore, passes our comprehension, as to how the medical officer could arrive at the conclusion, with regard to the DOB of the applicant and further pin-point it as 18.4.1926. It is also strange, that it should have taken as long as one year and 7 months for the respondents to effect the change of the

DOB in the SB from the date the medical examination took place.

10. As against this, the applicant states that when he came to know for the first time, in the first week of 1982, that his original DOB was altered to 18.4.1926 to his detriment, he promptly represented to the third respondent in writing, that his altered DOB namely, 18.4.1926 had no base and that he had sufficient proof, to authenticate his DOB originally shown as 5.9.1929 in the SB. On 29.6.1982, the applicant furnished to the third respondent, the following documents in proof of his original DOB:-

- (i) Certified birth extract from the Baptismal Register maintained at St. Mary's Church, Erode; and
- (ii) Life Insurance Policy dated 4.11.1954 issued by the Gresham Life Assurance Society Limited, London (through its office at Bombay), which showed his accepted age as 25 years as on that date.

11. On 24.11.1983, the applicant furnished a certificate issued by the Institute of Correspondence Courses and Continuing Education, wherein, it had been mentioned, that according to the entries in the Transfer Certificate dated 28.7.1951 issued by the St. Joseph's Primary School, Masikam, KGP, the DOB of the applicant was 5.9.1929. The matter is seen to have been referred by the third respondent to the second respondent for orders and the latter is seen to have directed, that the request of the applicant to restore his DOB to 5.9.1929 could not be acceded to. This was communicated to the applicant by the third respondent on 10.2.1983 and the documents furnished by the applicant in proof of the DOB viz. 5.9.1929 were returned to him. The order was abrupt and no reasons were given, as to why the proof furnished by the applicant was not acceptable. In effect, therefore, it was not a speaking order.

12. Let us now turn to Note 5 under Rule 56 of FR referred to above, which clearly stipulates, that the following conditions need to be fulfilled in regard to the alteration of DOB in so far as they relate to the instant case :

- (i) A request in this regard should be made to the concerned Ministry or Department of the Central Government within 5 years of entry of the applicant into Government service.
- (ii) It should be clearly established that a genuine bona fide mistake has occurred in regard to the DOB.

13. In this case, it is pertinent to note, that the applicant did not himself request for change of his original DOB namely 5.9.1929. Note 5 under Rule 56 of the FR states, that as far as possible, the DOB declared by the Government servant at the time of his appointment should be verified and determined on the basis of confirmatory documentary evidence, such as: the High School or Higher Secondary or Secondary School Certificate or extract from the Birth Register. The DOB so declared by the Government servant and accepted by the appropriate authority, would not be subject to any alteration except as specified in this Note. If the applicant was in a position to furnish such documentary evidence, we fail to understand as to why he should have been subjected to a medical examination, to help determine his DOB. Perhaps, only when documentary evidence of the like is not forthcoming, that medical examination is resorted to for determining the DOB, as accurately as possible. This does not appear to be the reason in the present case. The medical officer seems to have relied on the date indicated in the MCD to determine the DOB when actually, as explained earlier, no such date appeared in the MCD. Counsel for the respondents has not proved to us as to

whether the Office Order according to which the original DOB of the applicant was amended to 18.4.1926, was issued after prior sanction of the concerned Ministry or the Department of the Central Government.

14. We now proceed to examine whether the applicant was given reasonable opportunity to represent to the competent authority against the alteration of his original DOB. There is no evidence to prove that the contents of the Officer Order were promptly communicated to the applicant, to enable him to make a representation to the competent authority within 5 years of his entry into Government service i.e. by 27.5.1984, to record his correct DOB in his SB, in accordance with Note 5 under FR Rule 56. The counsel for the respondents states, that the DOB of the applicant was recorded in column 5 of the SB as on 18.4.1926 both in figures and in words and the page indicating the entry was attested by the applicant over his signature on as many as three occasions, namely, 1956, 1961 and 1967 and on all these three occasions, the signature affixed by the applicant was reattested by a gazetted officer over his full signature. This implies, that the applicant could for the first time notice the change in his DOB in the SB, not earlier than 1956 and that too, his without being informed of the basis on which the original DOB was altered to his disadvantage and without affording him reasonable opportunity to explain, as to why his DOB should not be so altered. Since a period of nearly 7 years has elapsed, between his entry in Government service and the access he had to his SB for the first time in 1956, after the original DOB therein was so altered to 18.4.1926, the applicant was virtually prevented from representing to the competent authority within 5 years of his entry in Government service, in regard to the change in his DOB, in accordance with Note 5 under FR 56. It is

also strange, that the applicant had access to his SB nearly as long a period as after 5 years from the year when his original D0B was altered under the above mentioned Office Order, particularly when according to para 4 of the Office Manual, the entries in the SB are required to be got attested by the Government servant once in two years.

15. Even though the applicant furnished belatedly, documentary evidence as mentioned in para 11 above, to the third respondent, the same is seen to have been summarily rejected by the second respondent (to whom the matter was referred by the third respondent) and the order passed by him (as conveyed by the third respondent on 10.2.1983) was not a speaking one, as it did not specify the reasons as to why the applicant's evidence was not acceptable. The two documents referred to therein, conform to the supporting documentary evidence specified in Note 5 under FR 56 for determining the D0B. The order passed earlier in this regard by the third respondent on 9.3.1982, was also similarly cursory. This is significant, when the third respondent had directed the applicant on 26.7.1982 to furnish his original MCO for further action, from which it appears, that the third respondent was not quite sure of the basis for altering the original D0B to 18.4. 1926 and therefore wanted to scrutinise the same anew. Yet, in his reply to the applicant, he neither indicated the basis for altering the original D0B to 18.4.1926 nor reasons for not accepting the documentary evidence furnished by the applicant.

16. The counsel for the respondents has not been able to prove conclusively that the original D0B of the applicant, namely, 5.9.1929 was altered to 18.4.1926 on the basis of irrefutable evidence. He has pleaded inability

to produce at this belated stage, a true copy of the Office Order, on the authority of which the DOB was altered to 18.4.1926. As regards extract from the Baptismal Register kept at St. Mary's Church, Erode, the counsel for the respondents contends that the DOB was shown against the printed entry "said to be born" and therefore, this date was based on the statement made to the Church authorities and not according to the Church records. We are not persuaded to accept this contention, as the Church authorities generally record the DOB on the basis of the declaration of the parents or of the near relatives, and there can be no other proof, if the birth has taken place at home and not in a maternity home/hospital. We are given to understand, that according to the Christian custom, the child is generally baptised within a period of one or two months of its birth. Under these circumstances, in our view the veracity of the Baptismal Certificate calls for realistic scrutiny.

17. We see, that the further appeal preferred by the applicant on 20.3.1983 to the Union Ministry of Finance was not disposed of and the applicant was informed by the PAO, (ORs) MEG Centre, Bangalore on 25.10.1983 that his appeal was not finalised and that in the absence of any specific direction from the higher authorities, the applicant would have to retire from service with effect from 30.4.1984. Further, the third respondent informed the applicant on 15.2.1984 that he would attain the age of superannuation on 17.4.1984 (AN) and that he would be struck off from the effective strength of his organisation with effect from 30.4.1984(AN) and transferred to the pension establishment from 1.5.1984(FN).

18. The counsel for the applicant draws our attention to the decision in AIR 1967 Supreme Court 1269 (V 54 S 264) relating to the case between the State of Orissa vs. Dr. (Miss) Binapani Devi and others, in regard to obligation on the State to hold an enquiry, if there are sufficient

sufficient grounds for holding such enquiry and for refixing the DOB and for giving opportunity to the person against whom an enquiry is held to give his version or defence. The relevant extract of this decision is reproduced below:

"...The first respondent held office in the Medical Department of the Orissa Government. She, as holder of that office, had a right to continue in service according to the rules framed under Art. 309 and she could not be removed from office before superannuation except for good and sufficient reasons. The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

19. From what has been discussed by us in the foregoing, it appears to us that no enquiry was actually held in the matter consonant with the basic concept of justice and no opportunity was given to the applicant to substantiate his defence against the change in his original DOB and therefore, we are of the view that this is particularly violative of Article 311(2) of the Constitution of India.

20. On the point of waiver the counsel seeks to fortify the case of the applicant, with reference to AIR 1977 SUPREME COURT 621 IN THE WRIT APPEAL BETWEEN M.P. SUGAR MILLS CO. LTD V THE STATE OF UTTAR PRADESH AND OTHERS. We find considerable force in the submission of counsel based on the ^h ruling cited supra.

21. After carefully considering the matter, we find the following lacunae :-

(i) The Union Ministry of Finance did not dispose of before retirement of the applicant, the further appeal preferred by him on 20.3.1983.

(ii) The DOB does not seem to have been altered as 18.4.1926 on irrefutable evidence and in accordance with Note 5 under Rule 56 of the F.R.

(iii) Earnest efforts do not seem to have been made to trace out the original copy of the MCD from the concerned office which has crucial probative value in this case.

(iv) A proper enquiry does not seem to have been made consonant with equity and justice to give due opportunity to the applicant to substantiate his defence against the change in his original DOB namely, 5.9.1929.

22. We, therefore, direct the respondents to decide the pending appeal dated 20.3.1983 in the light of our observations in the foregoing and in accordance with law, within a period of two months from the date of receipt of this order. The applicant, if yet aggrieved, is at liberty thereafter to move this Bench for redress. Meanwhile, status quo will continue.

23. In the result, we dispose of this application accordingly.


(L.H.A. Rego)
Member (AM)
30-9-1986


(Ch. Ramakrishna Rao)
Member (JM)
30-9-1986

Application No. 479/1986(T)
W.P. No. 4327/84

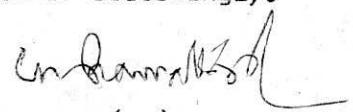
Order pronounced by Shri L.H.A. Rao, Member (AM) (R)

Shri K. Suryanarayana Rao, Advocate, present
for the applicant and Shri M.S. Padmarajaiah, Central
Government Standing Counsel, for the respondents.

2. In paragraph 22 of our earlier Order dated 30.9.1986, we had directed the respondents to decide the pending appeal dated 20.3.1983 in the light of our observations in that Order and in accordance with the law, within a period of two months on receipt of that Order. Shri Padmarajaiah now brings to our notice that the appeal was actually dated 11.3.1983 and not 20.3.1983 and that the same had already been disposed of by the Ministry of Defence (Finance), Government of India, on 3.3.1984. Counsel for both sides also brings to our notice that this fact could not be brought on record due to over sight at the time of pronouncement of the Order. Since the appeal dated 11.3.1983 is no longer pending, no further direction can be given at this stage by us in the matter. If the applicant is yet aggrieved, he is at liberty to move this Tribunal by a separate application *in the light of* ~~as already directed in~~ our earlier Order dated 30.9.1986.

3. This application is disposed of accordingly.


Member (AM) (R)
11.11.1986


Member (JM)
11.11.1986

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 11th DAY OF NOVEMBER, 1986

PRESENT:

HON'BLE SHRI CH. RAMAKRISHNA RAO ..MEMBER(J)

HON'BLE SHRI L.H.A. REGO ..MEMBER(A)

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Pt. Auditor, A/c No.8289001,
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(By Shri K. Suryanarayana Rao)

1. Union of India by its Secretary
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2. Controller General of Defence Accounts,
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NEW DELHI- 110 066.

3. Controller of Defence Accounts,
(ORS) South,
Teynampet,
MADRAS-600 018.

..Respondents

(By Shri MS Padmarajaiah)

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Sd/-

(MEMBER(AM))
11.11.86

Sd/-

(MEMBER(J))
11.11.86