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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 39/92

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T.A. NO:

DATE OF DECISION 26.8.92.

M.M. Sarode,

Petitioner

Shri P.V. Deshpande

Advocate for the Petitioners

Versus

Dept. of Atomic Energy and ors. Respondent

M.I. SETHNA, for the Respondents. Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Mr.~~ USHA SAVARA, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

U. Savara
USHA SAVARA 26.8.92.
(M/A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.NO.39/92

Madan Mukundrao Sarode,
residing at Naupada,
Thana, Room No.22, 206,
Bangalow, Ram Maruti Road,
Ghautali, Thane.

.... Applicant.

V/s

Secretary,
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Bombay-400039

Director,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Bombay - 400085.

.... Respondents

CORAM : HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

Shri P.V.Deshpande,
adv. for the applicant.

Shri M.I.Sethna, Adv.
with Mr.A.I.Bhatkar, Adv.
for the Respondents.

JUDGEMENT

DATED: 26.8.92

(PER : USHA SAVARA, M/A)

This is a claim petition filed by the applicant, claiming that his correct date of birth is 13.8.1934, whereas the respondents are retiring him taking his date of birth as 13th August 1932. It is submitted by the applicant that he was born on 13th day of August 1934. His parents were illiterate and they expired when he was young, leaving him an orphan. Since his relatives were not financially well off he was forced to discontinue his studies

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and find employment. In due course of time he was appointed on workcharged establishment in Indian Rare Earth Limited, an autonomous body under the Government of India. On 1.12.1961, he was regularised in the Atomic Energy Establishment, Trombay. Since he had no documents such as school leaving certificate with him, he had produced his horoscope, which was in Hindi and the concerned clerk appears to have noted the year 1932 instead of 1934. Thus, the date of birth was wrongly recorded as 13th August 1932 instead of 13th August 1934, which ^{fact} came to his knowledge sometime in the beginning of November 1988. He wrote to the Establishment Section on 4.11.1988 pointing out this mistake, that due to his ignorance he had mentioned the date of birth as 13th August 1932 inadvertantly and having realised his mistake, he is now praying that the date of birth be changed from 13th August 1932 to 13th August 1934. He was informed on 30th November 1988, that his request was not acceded to as it was time barred. He further made petition on 2.1.1989 to review his case afresh and consider his request sympathetically. The Establishment Section asked him to forward all the documents in support of his request, keeping in mind the fact that his request had earlier been rejected. The applicant forwarded his Pass-port and also his affidavit dated 12.10.1988. He was asked to produce his horoscope on the basis of which his date of birth

had been entered in the service book, however, he informed the Establishment Section, that his horoscope was not available with him as the same was kept by the recruitment Section as documentary proof of his date of birth. On 7.8.1989, he was informed that the change could not be carried out as no sufficient documentary evidence had been produced; however, he was given an opportunity to produce his date of birth certificate from the Municipality or his school leaving certificate in support of his request for alteration. He obtained an extract from the birth Register maintained by Municipal Council, Wardha and submitted the same. Thereafter, he was informed that the competent authority had not acceded to his request as it was not made within five years from the date of his appointment as required under the rules. His appeal to Respondent No.1 vide dated 28.3.1981 was also turned down.

2. Shri P.V.Deshpande, learned counsel for the applicant submitted that according to Section 35 of the Evidence Act, any entry in Public Register is a public document and heavy onus lies upon the party who disputes the correctness of the document. It is argued that the extract of the birth certificate was given in the year 1989 and the same could have been verified by the department but instead of verifying the document they had rejected it on the ground that the request to change the date of birth had not been made within the period of five years of his appointment.

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The authorities had intimated different reasons on different occasions for rejecting his claim. The reasons for rejection are illogical and arbitrary. Since, the applicant had produced his original birth certificate from the Municipality, the authorities could not have refused to accept the same as they had accepted the request of some other employees, who had filed their birth certificates. By rejecting the applicant's birth certificate, the authorities were discriminating him from others. Shri Deshpande relied upon the judgements in the case of Hari Vithoo Mankar V. Union of India (1988) of the ATC, 586 and Sachalmal Shamanlar V. Union of India (1988) 8, ATC 378

3. Shri M.I. Sethna, Counsel, assisted by Shri A. I. Bhatkar, appeared for the respondents. It was submitted that the date of birth is inviolable unless a genuine mistake has taken place. The date of birth had been entered in accordance with the horoscope produced by the applicant at the time of entry in service. Till 1987 he had accepted the date of birth as 13th August 1932 and only in November 1988 he made his representation to change the date of birth. The only documents produced on that stage were his own affidavits which could not possibly be accepted as being sufficient evidence. Thereafter, the applicant had produced his passport in support of his plea. The Passport Authority must have recorded the date of birth on the basis of the applicant's affidavit, therefore the passport did not have any evidentiary value. When he was asked to produce the horoscope, he alleged that the same was not available, ~~(he alleged that the same was not available)~~ as it had been placed in his file. Finally, he had produced a birth certificate as a last resort but the same is incomplete. Shri Bhatkar has pointed out that the Form 'A' ~~is not a valid document~~ was incomplete.

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produced by the applicant was incomplete in so far as the 'date of reporting' was blank. In the circumstances, it was not possible to accept these documents as being authentic. It is also submitted by Shri Bhatkar, that in the service record of the applicant the date of birth was entered as 13th August 1932 on the basis of his horoscope. This horoscope had been verified by a Senior Officer and the certificate had also issued on August, 16, 1962 by Shri R.S.Kumar, who was a Scientific Officer in the department at that time. There was no question of clerical mistake having occurred as the applicant had continued to declare his date of birth as 13th August 1932 over the years for availing of medical facilities; on his provident fund withdrawal application, and on the application for loans etc. It is also pointed that the applicant's father had not expired in his childhood, as claimed by him. He expired only in the year 1968. Clearly, the applicant was capable of saying anything to achieve his end. Further, the applicant had not intimated as to how he came to know that his correct date of birth was 13th August 1934 and not 13th August 1932. Shri Bhatkar relied upon the decision given in the case of Sami Ahmad V. Union of India (PAT), 102, ATC, Vol. III, 1987.

4. I have heard both the parties and perused the relevant documents filed by them. The representations filed by the applicant have been summarily rejected without making a speaking order. Having asked for the birth certificate, the respondents did not agree to his request on the ground that it was belated. The ~~Respondents~~ have not behaved as model employer. To come to the facts of the case, in his pleadings, the applicant has not cared to mention as to when and how he had come to know

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that his correct date of birth was not 13th August 1932 ^{was} ~~and~~ as recorded in the service book. If he had known all along that his date of birth was 13th August 1934, then it seems improbable that he would still have entered the date of birth as 13th August 1932 for drawing of Provident Fund, filling up of applications for taking loan or for availing of medical facilities. As late as in the year 1987, he had made an application for loan for the marriage of his niece, where the date of birth was given as 13th August 1932. If he has come to know, thereafter, that his date of birth was 13th August 1934 then what was the source of his knowledge ?. The circumstance that the applicant has never disclosed the name of any relative who told him that he could not have been born in the year 1932 also goes against the applicant. He has also not produced any affidavit of any elderly relatives which might have carried conviction. The conduct of the applicant in not asserting the date of birth, different from the one got entered by him in the service record, at the time of his entry into the Government Service, his silence over long years, inspite of his knowledge, is likely to bar his claim on the ground of acquiescence. The Government Servant is required to take steps for the correction of his date of birth, because inordinate and unexplained delay may defeat his claim for the correction of the date of birth.

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5. The service record of the applicant was produced before me and has been perused by me. The date of birth is clearly mentioned as 13th August 1932, and the same has been verified by Shri R.S.Kumar, Scientific Officer, on 16th August 1962. The first story of the applicant that the clerk concerned had made incorrect entry has to be rejected immediately. Coming to the documents produced by the applicant, he has filed two affidavits on 12.10.1988 but both are by himself and cannot be accepted as being good evidence. Thereafter, he produced his passport in support ^{of} his claim. This cannot be accepted as evidence, as the applicant must have filed an affidavit regarding his date of birth before the authorities concerned for getting a passport. He has also filed an affidavit sworn in the Court of Taluka Magistrate. The particulars of proof submitted are the birth certificate issued by the Municipal Council, Wardha as a final proof by the applicant. As pointed by Shri Bhatkar, the extract is incomplete, as the column "date of report" is blank. It is an accepted fact that the entries in the birth register are not conclusive proof of the date of birth, but only that the birth has taken place. In the circumstances, not much importance can be attached to the extract from the birth register, especially when it is incomplete. Though, it is a fact that the government servant is entitled to show that the entry made in his service record does not represent his true date of birth and that that right flows from the right to continue in service until he reaches the age of superannuation, but it is also a fact that the entry

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in the service register has a certain inviolability about it, and is not to be altered for insufficient reasons. The judgements relied upon by the learned counsel for the applicant are not applicable to the facts of the case. The affidavit filed by the applicant has also no evidentiary value, and is, therefore, rejected.

6. In conclusion, I must hold that the entry made in the service book of the applicant on the basis of the horoscope given by him, if its acceptance by the appropriate authority; his acquiescence over a long period of time has assumed a degree of finality and no alteration in it can be permitted at this late stage. The applicant has failed to make out a case for interfering with the impugned order. The application is rejected accordingly. The parties will bear their own costs.

U. Savara
(USHA SAVARA) 26.8.92.
M/A

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