

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 368/97.

Date of Decision: 24. 11. 97.

Shri T. B. Jadhav, Applicant.

Shri S. Natrajan, Advocate for
Applicant.

Versus

Union Of India & Another, Respondent(s)

Shri R. K. Shetty, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B. S. Hegde, Member (J).

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- (1) To be referred to the Reporter or not?✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 369/97.

Dated this 24th, the Monday day of November, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

T. B. Jadhav,
Line Mistry - SHI,
Machine Tool Prototype Factory,
Ambernath - 421 502.

Residing at -
H-19/3, Ordnance Estate,
Ambernath 421 502.

(By Advocate Shri S. Natrajan)

... Applicant

1. Union Of India through
The Chairman,
Ordnance Factory Board,
10-A, Aukland Road,
Calcutta.

2. The General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.

... Respondents.

(By Advocate Shri R. K. Shetty)

: O R D E R :

PER.: SHRI B.S. HEGDE, MEMBER (J)

Heard Shri S. Natrajan for the applicant and
Shri R. K. Shetty for the respondents.

2. In this O.A. the applicant is challenging the

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impugned order passed by the respondents vide dated 16.10.1996 in response to his appeal dated 04.09.1996, which reads as below :-

"It is observed from the School Certificate submitted by you in support of your Date of Birth, the same is found to be discrepant and on verification from the Education Authorities no evidence could be found in regard to your studies at Khandpe School. The Certificate issued by the Tahsildar, Kurpad and copy of which is submitted by you is also discrepant, apart from other discrepancies, the name of father mentioned in the said certificate is not as declared by you at the time of your appointment. The dates mentioned in School Certificate and the Birth Certificate are also inconsistent.

In view of the position explained above, the General Manager has not approved your request for change of date of birth from 02.07.1937 to 30.04.1941 as requested in para 9 of your appeal dated 04.09.1996 and as such, it is regretted that your request cannot be acceded to. Hence, the date of birth 02.07.1937 recorded as approved by OFB and communicated to you under this factory letter of even No. dated 30.07.1996 will remain unchanged."

3. The applicant joined the respondents department on 03.07.1962 and retired at the age of 60 years on 31.07.1997. The contention of the Learned Counsel for the applicant is, at the time of entry into service, the respondents recorded the date of birth of the applicant as 31.04.1940. The said date of birth was arbitrarily changed to 02.07.1937 allegedly based on a medical certificate, which has been challenged in this O.A. Further, he submits



that the applicant belongs to Scheduled Caste, being Hindu Mahar Caste. Nevertheless, he was not given the benefit of reservations applicable to the Scheduled Castes, therefore, he made enquiries about promotions not being given to him inspite of belonging to the Scheduled Caste. Accordingly, the applicant was directed to produce the School Leaving Certificate, copy of which has been submitted by the applicant in the year 1993, though obtained in the year 1973. The applicant, thereafter made an appeal to the Competent Authority to change the date of birth according to the School Leaving Certificate and accordingly, the respondents directed the applicant to explain certain discrepancies observed by them regarding the date of birth and the change made in the service record.

4. On the other hand, the Learned Counsel for the respondents, Shri Shetty, stated that the claim of the applicant to change the date of birth from 02.07.1937 to 31.07.1941 is fraudulent and not genuine. Further, the applicant has not approached this Tribunal with clean hands. The applicant being a Group 'B' employee, is entitled to serve upto the age of 60 years vide F.R. 56(b), On the basis of service record of the applicant, the applicant attains the age of 60 years on 31.07.1997, Further, the

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applicant had given an attestation form which was signed in the year 1962 stating that he had passed 2nd Standard Marathi Examination whereas in the alleged School Leaving Certificate dated 18.06.1973 it is stated that he was studying 4th Standard in the year 1951. Though the applicant joined the service on 02.07.1962, he had produced the said School Leaving Certificate dated 18.06.1973 only on 21.05.1993 i.e. after a lapse of 20 years. Therefore, the statement made by the applicant and the records would show many discrepancies.

5. The Learned Counsel for the respondents further submits that doubting the genuineness of the School Leaving Certificate produced by the applicant, the respondents decided to carry out a verification at the School, where the applicant had alleged to have studied and the village where he was born. On verification, it was revealed that both the School Leaving Certificate and the Birth Certificate produced by the applicant are false, fictitious and bogus. The Birth Registry Certificate is not a genuine document as the name recorded against the applicant's father is Babu Mahar ^{father's} whereas the name recorded on the date of applicant's medical examination was Bhagoji Jadhav. Thus, there are apparent contradictions even in the name of ^{applicant's} father

between the Workman's Record of Service and Exhibit A.5 to the application.

6. The Learned Counsel for the respondents further submits that since the applicant had not produced any School Leaving Certificate at the time of his appointment, from the appearance of the applicant, the Medical Officer certified that his age is to be treated as 25 years, whereas, the applicant stated that he was 22 years. If the age cannot be verified by documents, the age certified by the Medical Authorities from appearance at the time of first entertainment in the Establishment, should be taken as the correct age. Further, it is noticed that an entry in the said proforma showing the date of birth of the applicant as 31.04.1940 is without any counter-signature of any authority. In the Service Record, the correct date of birth was shown as 02.07.1937, which is in accordance with F.R. 56 note 6, which reads as below :-

"Note 6 - The date on which a Government servant attains the age of 58 years or 60 years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the

appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under whom the Government servant is serving, if -

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has occurred, etc.

In the absence of documentary evidence of date of birth, the date of birth can be recorded based on the medical examination. The date of birth recorded as per the rules is binding on the Government servant and no alteration shall be permitted. Any request for amendment in the date of birth is considered on account of clerical error, provided there is an overwhelming evidence to support for such a change. No request for change of date of birth should be entertained at the time of superannuation of Government servant. Any request for amendment of date of birth should be made within five years from the date of entry in the Government service.

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7. In the light of the above, the question to be considered is, whether the request made by the applicant vide dated 04.09.1996 for the change of date of birth is justified in the facts and circumstances of the case.

8. The respondents have given a brief but clear reply vide their letter dated 16.10.1996 why they could not consider his request for change in the date of birth and the reasons thereof. As stated earlier, the applicant has not adduced any authentic evidence to substantiate his claim that his date of birth is 30.04.1941. Admittedly, the date of birth as 31.04.1940 was inserted in the Service Book but not countersigned. Therefore, under any stretch of imagination, the date of birth inserted cannot be valid.

9. The contention of the respondents is that, since at the time of recruitment, the applicant had not produced any documentary evidence in regard to his age, the date of birth recorded by the Medical Examiner after examining the applicant, should be treated as correct. Secondly, the School Leaving Certificate produced by the applicant is found to be not genuine. Apart from that, as per F.R. 56(6), if a Government servant finds any

discrepancy in the age entered in the Service Book, he ought to have brought to the notice of the department within five years of his entering into service. As a matter of fact, the applicant raked it up at the fag end of his service. Though he obtained the School Leaving Certificate in the year 1973, he did not furnish the same till the respondents found out the discrepancy in the document furnished by the applicant. No reasons have been given by the applicant for the ordinate delay.

10. The Learned Counsel for the applicant has cited two decision of the Tribunal. In case of Smt. Maito & Others V/s. Union Of India & Others 1997 (1) ATJ 105 the Jodhpur Bench of the Tribunal observed that the opinion of an expert can be accepted only when he gives cogent reasons for his opinion and in its absence it becomes unreliable. In that case, the Medical Officer did not assign any reason whatever for his assessment of the applicant's age as claimed - the date of birth cannot be allowed to be altered. It was also observed that unless the applicant furnishes an irrefutable nature of document, the date of birth entered in the service record cannot be changed in view of the law laid down in Harnam Singh's case. Applying,

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the ratio of Harnam Singh's case, the said case was dismissed. Secondly, in case of Chhotey Lal V/s. Union Of India & Others [1995 (1) ATJ 77] the Allahabad Bench of the Tribunal observed that the age indicated in the Junior High School Certificate at which the applicant qualified subsequent to joining his service - cannot be taken into consideration for alteration in his date of birth. In that case, the O.A. was dismissed on the ground of delay and laches and barred by limitation. Though the date of birth of the applicant as informed by the Employment Exchange and as entered in the Service Record was 01.07.1934, he insisted that fresh enquiry about his date of birth be made by the Medical Officer in support of the application dated 07.01.1994. Accordingly, the applicant was directed to appear before the Medical Officer for physical verification and the Chief Medical Officer's report dated 27.01.1994 supported the date of birth indicated in the Junior High School Certificate. In that connection, it was observed that "it is well-known that the assessment of age by appearance even by Medical Officer cannot be taken as accurate. The position with regard to the assessment of age by the Medical Officer at the time of applicant's entering into service is supported as shown by the applicant's own statement

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that he was of 26 years of age at the said time."

11. With utmost respect to the Counsel for the applicant, both the cases cited by him are distinguishable and does not support the case of the present applicant. Both the cases were dismissed on the ground of limitation and on other grounds. In the instant case, at the time of recruitment of the applicant, since the applicant did not produce any certificate in support of his date of birth, he was being examined by the Medical Officer, who issued the certificate showing the date of birth as 02.07.1937, which is recorded in the Service Book. The subsequent insertion of the date of birth as 31.04.1940 is not made by the department, since it is not counter-signed by any officer. Just because the said date of birth is shown in the Identity Card, that by itself does not give him any right to agitate the matter. The applicant has not produced any proof regarding his date of birth at the time of his appointment and according to Article 51 CSR, "when the authorities have any doubt about the correctness of the age stated or evidence produced by the person concerned in support of his age, medical opinion to assess his age may also be obtained and suitable date of birth entered in the Service Record after taking into account the date stated/evidence produced by the individual in the manner prescribed."

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An extract of Service Record would show that the date of birth on the medical report is 02.07.1937. Further, in terms of F.R. 56 (6), since the applicant was appointed in the year 1962, he should have sought for change of date of birth within five years from the date of appointment, hence the request of the applicant for change of date of birth is erroneous and belated and cannot be entertained.

12. In the facts and circumstances of the case, the O.A. filed by the applicant is hopelessly barred by time. Considering the pleadings and arguments of the Counsel for the parties and in view of the ratio laid down by the Supreme Court in catena of cases, I am of the opinion that the O.A. fails both on the ground of limitation as well as on merits. Accordingly, the O.A. is dismissed with no order as to costs.


(B. S. HEGDE)

MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO.1/98 in
ORIGINAL APPLICATION NO.368/97.

T. B. Jadhav,
Line Mistry - SHI,
Machine Tool Prototype Factory,
Ambernath - 421 502.

Residing at -
H-19/3, Ordnance Estate,
Ambernath - 421 502.

... Applicant.

V/s.

1. Union of India through
The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
2. The General Manager,
Machine Tool Prototype Factory,
Ambernath - 421 502.

... Respondents.

TRIBUNAL'S ORDER ON REVIEW PETITION NO.1/98 IN ORIGINAL
APPLICATION NO.368/97.

Dated : 21/98

I Per Shri B. S. Hegde, Member(J) I

The applicant has filed this Review Petition seeking review of judgement dated 24/11/97. The OA was disposed of on merits as well as on ground of limitation. On perusal of the review petition, it is made out that the applicant has not made out any case for review of the judgement rendered earlier. The cases cited by the applicant has already been distinguished. Now it is made clear that at the time of recruitment the applicant had not produced any School Leaving Certificate and he was examined by Medical Officer who certified that his ~~Date of~~ Birth/2/7/1937 which is recorded in the service book. Subsequently, the applicant produced a School Leaving Certificate in which his Date of Birth is shown as 31/4/1940. It was not accepted by the Department which does not give him a right to agitate the matter at the time of retirement.

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2. Therefore, having considered the contention of the parties, the OA was disposed of on merits. Parties are well aware that the scope of the review petition is very limited, unless an error apparent on the face of the record of any new facts are brought to our notice, review of a judgement cannot be resorted to.

3. In the light of the above, I do not find any merit in the RP filed by applicant and there is no merit in the review petition. Accordingly, the review petition is dismissed by circulation.


(B. S. HEGDE)
MEMBER (J)

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