

34 CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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HYDERABAD

O.A. No. 426 of 1987

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DATE OF DECISION 27/10/1987

Mr. V. Surya Ramam

Petitioner

Mr. S. M. M. Razvi

Advocate for the Petitioners)

Versus

Mr. K. Jagannadha Rao, C.G.S.C. for Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B N JAYASIMHA (VICE CHAIRMAN)

The Hon'ble Mr. D SURYA RAO (MEMBER JUDL)

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?

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Original Application No. 426 of 1987

(Order of the Bench prepared by Hon'ble Sri. D.Surya Rao)
Member(Judicial).

The applicant ^{has} ~~had~~ retired ^{on 1.8.1987} as an Audit Officer

in the Office of the Accountant General, Audit-I, Hyderabad.

Prior to retirement, he has submitted an application dated

18.6.1987 to the Accountant General, Audit, Hyderabad (1st

respondent) requesting alteration of his date of birth in

his Service Book from 10.7.1929 to 1.7.1930. The applicant

states that his date of birth as recorded ^{vis} 10.7.1929 in the

Service Book is on the basis of an entry in the S.S.L.C.

Register. He was, therefore, liable to retire from service

on 1.8.1987. The applicant further states that one year ago

while verifying the date of birth of his son and also verifying

the entry ^{relating to} of ^{own} his date of birth, ^{he} found that his date of birth

as maintained by the Registrar of Births is 1.7.1930. The

applicant then began making efforts for obtaining a true

extract of his date of birth. He got it in June 1987.

Immediately after getting the true extract from the Mandal

Revenue Office, Palakoderu, Bhimavaram Taluk, West Godavari

District, the applicant requested the 1st respondent on

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18.6.1987 to correct his date of birth in the Service Book. This request was rejected by an order dated 25.6.1987 on three grounds viz; (1) that the request for alteration of date of birth is not made within five years of his entry into Government service (2) that there is no genuine and bona fide mistake on the part of this (Accountant General's Office) in recording the date of birth as 10.7.1929 and (3) that in the successive gradation list, his date of birth was shown as 10.7.1929 and it was accepted by him till now. The applicant states that reasons 1 and 2 are based on Note-5 below F.R. 56 which was introduced with effect from 15.12.1979 and that it has no retrospective effect and cannot be applied to deny the applicant his right to get his date of birth altered as he was in service long prior to 15.12.1979. ^{His acceptance of the incorrect date in the gradation list cannot also act as an estoppel.} He, therefore, seeks a direction to the respondents to alter his date of birth from 10.7.1929 to 1.7.1930.

2. On behalf of the respondents, a counter affidavit is filed stating that the applicant has not availed the remedies available to him under his Service Rules and that Sec.22 of the Administrative Tribunals Act is a bar to this application. It is stated that the date of birth

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as entered in the Service Book of the applicant
was based on the S.S.L.C. Register which was produced by
the applicant at the time of his initial appointment in the
year 1953. It is stated that the entry in the S.S.L.C.
Register is based upon a declaration given by the parent
of the applicant about 42 years ago when he joined the School.
If there was any error, nothing prevented the applicant from
getting it corrected all these years. It is stated that a
vain attempt is made by the applicant by raking up this
issue just a few days prior to his retirement. It is further
contended that the decision relied upon by the applicant viz;
1987 ATR (1) CAT 414 Hiralal vs. Union of India is not
applicable to the case of the applicant. It is stated that
the applicant ought to have got his date of birth corrected
before he became quasi-permanent. It is further stated
that since the applicant had not availed of the opportunity
of getting his date of birth corrected despite being given
an opportunity to do so every year by verifying the entry
in his Service Book and gradation list etc, ^{and since he did so} ~~but~~ at the fag
end of his service i.e., just before retirement he ^{cannot} ~~is seeking~~
be permitted to get his date of birth altered at this late stage.
~~to get his date of birth altered.~~ It is further stated that the
applicant ought to have approached the Comptroller Auditor

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General of India in terms of ^{Note} ~~Note~~-5 under F.R.56 and as ^{such} ~~such~~ he had not exhausted the departmental remedy available to him under his Service Rules. It is, therefore, contended that the application is liable to be dismissed.

3. The short question is whether on the basis of the decision rendered by the Principal Bench of the Central Administrative Tribunal in ATR 1987 (1) CAT 414 (Hiralal Vs. Union of India), the applicant is entitled to correction of his date of birth, as relied upon by the learned counsel for the applicant. In this decision it was held that, "Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record which was substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No.19017/79-Estt.-A dated the 30th November, 1979, takes effect from that date, that the 5 years period of limitation prescribed for the first time under the said notification could not mean that there ^{would} ~~be~~ a division of Government servants ^{into two classes -} ~~one -~~ who entered service prior to 15-12-1974 whose date of

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birth could not be corrected, and ^{an} other set of employees who entered within 5 years of the said notification coming into force who could get their dates of birth in the service record corrected." The Division Bench, was therefore, of the view that the period of limitation prescribed would be applicable to those who entered into service after 15-12-1979. ~~Thus~~ The Division Bench was also of the view that no question of estoppel would arise and mere signing of the service record on a number of occasions does not operate as an estoppel against him to get the erroneous entry as to date of birth corrected." No doubt the question of limitation would not apply to a case of an application for correction of date of birth in regard to an employee who joined service prior to 15-12-1979 i.e., prior to the introduction of amendment of Rule 5 of F.R. 56. But the question is whether it is open to the applicant to come just a few days prior to his retirement and put in a claim for such correction. Hiralal's case before the Principal Bench was not such a case and this

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question was never posed before the Division Bench of the Principal Bench of the Tribunal. While discussing the Supreme Court decision in State of Assam Vs. D.P.Deka , wherein the claim was rejected on the ground that the applicant had filed the application more than 3 years before the date of actual superannuation as ^{as required} laid down under the rules ^{pertaining to that case (Deka case)} ~~then in force~~. The Principal Bench was of the view that in the case of the applicant before it (i.e. Principal Bench) the facts were different. The applicant before the Principal Bench was due to retire on 30-11-1986 on the basis of the entry in the service register. He made a representation on 11-10-1982 for correction of the entry in the service record. That representation was rejected. / He made a further representation on 25-8-1983, which was entertained and a report called for from the District Magistrate, Agra. The District Magistrate, caused an enquiry to be made and after considering the relevant documents including the records relating to the applicant having joined the School, confirmed the date of birth of the applicant as claimed by the applicant. It is on this ground that the Principal

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Bench held that representation of the applicant was entertained, a report called for, and that the report fully supported the applicant's claim. Thus, the applicant had made an application for correction of his date of birth about 4 years prior to his retirement. The instant case is not one similar to Hiralal's case. The applicant herein was due to retire on 1-8-1987. He has made an application for correction of his date of birth only on 18-6-87 i.e., about one month and 12 days prior to his retirement. He has stated that he had come to know about his date of birth one year ago when he had occasion to visit his native place for getting a birth certificate relating to his son. He sought to explain away the delay on the ground that he took much effort to obtain a copy of his birth extract. This has been denied by the respondents who have asserted and produced evidence to show that he had made an application for an extract of his date of birth before the Mandal Revenue Officer only on 3-4-1987.

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Earlier thereto he had applied in December, 1986 for his pension on the assumption that his correct date of birth is 10-7-1929. If the interpretation sought to be put by the learned Counsel on the decision rendered by the Principal Bench in Hiralal's case is to be accepted, it would mean that an employee can ask for correction of his date of birth just one day before his date of retirement or even on the day of his retirement. We are of the view that the applicant must seek relief at the earliest time and not wait for a last date giving no opportunity for the Department to consider his application. If the applicant had applied sufficiently early he would have given sufficient scope for the Department to apply its mind and to pass a considered order. Assuming that the Department was wrong, the applicant always have a right of appeal or representation to the Controller and Auditor General who could have always rectified any defect in the stand of the Department. He never gave scope to the authorities to do so. We are of the opinion that though there is no limitation prescribed for correction of date of birth, an application should be made sufficiently early to enable the Department to properly apply its mind as to whether the correction can be permitted. Such reasonable

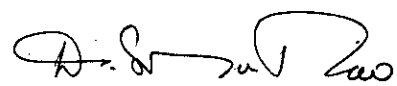
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time would differ from case to case depending upon the facts of that case. In the instant case we are not satisfied that the applicant had sought relief at the earliest point of time when it was open to him to do so. The applicant had not availed of the opportunity of getting his date of birth corrected sufficiently in advance though he had knowledge over a year prior to his retirement that the date of birth as entered in his service book was not correct. He deliberately kept quiet till about 42 days before retirement and then only made an application for correction of date of birth. We are, therefore, of the view that the position as laid down in Harilal's case will not apply to the applicant. As already stated supra in Harilal's case, the applicant was making efforts 4 years prior to his date of retirement to get his date of birth corrected. This is not the position in the instant case. Thus, there are no valid grounds for interference and for grant of the relief prayed for.

4. The application is accordingly dismissed with no order as to costs.


(B. N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL)

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Dt. 27th October, 1987.

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