

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

Tues DAY THE twelfth DAY OF January.
ONE THOUSAND NINE HUNDRED AND EIGHTY ~~7~~/EIGHT

;PRESENT;

THE HON'BLE MR. B.N. JAYA SINHA: VICE-CHAIRMAN
AND

THE HON'BLE MR. D. SURYA RAO: MEMBER (Judl.)

ORIGINAL APPLICATION NO. 505 of 1987

BETWEEN:-

ESR. Murthy

....Applicant.

AND

- 1) The Union of India, represented by the
Director General; Posts; Daktar Bhau
Parliament Street; New Delhi.
- 2) The Post Master General, Andhra
circle; Hyderabad.
- 3) The Director of Postal Services; AP
Eastern Region; Vijayawada-
Kondina Dist.

....Respondents.

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Application under Section 19 of the Administrative Tribunals Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to

direct the respondents herein to alter the date of Birth of the applicant herein in his Service Book and other official records from 1-2-1930 to 9-11-1931 and to determine his date of superannuation accordingly.

final hearing

This Application coming on for ~~orders~~ upon perusing the application and upon hearing the arguments of Mr. T. Jayaram Advocate for the Applicants and of Mr. R.V. Subbarao

Addl. CGSC on behalf of the Respondents.

The Tribunal made the Following Order:-

(vide separate sheets attached)

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[Signature]

ORDERS OF THE TRIBUNAL

The applicant herein seeks to question the order No. 9/58/86-S.P.G. dated 23-6-1987 issued by the 1st respondent - Director General, Posts, New Delhi communicated through the Postmaster General, Andhra Circle, Hyderabad - the 2nd respondent herein by his letter dated 20-7-1987, rejecting the request of the applicant for change of his date of birth from 1-2-1930 as entered in the Service Book to 9-11-1931 which according to him is his right date of birth.

2. The applicant was appointed as Time Scale Clerk in the year 1952 and his date of birth was recorded as 1-2-1930 on the basis of the entry in the S.S.L.C. Register. He states that on the basis of his birth day having been celebrated every year, his date of birth would have been entered as 9-11-1931. He was able to secure an abstract from the Date of Birth Register maintained in the office of the Registrar of Births and Deaths only on 8-6-1979 showing his date of birth as 9-11-31. He made a representation to the Postmaster General for correction of his date of birth vide his representation dated 1-7-1979. The Postmaster General informed him on 21-7-1979 that his file was transferred to the Director of Postal Services for

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disposal. The Assistant Superintendent of Post Offices, Anakapalle, vide his letter dated 28-6-1980 sent a verification certificate stating that the verification disclosed that the date of birth contained in the records of the Registrar of Births and Deaths is satisfactory. Thereafter, the applicant made representations dated 15-8-1982 and 21-2-1983. On 22-4-83 the Post Master General directed the applicant to clarify how the name of his father and Grand father was mentioned as Ramesam. The applicant had submitted necessary clarification. No orders have been passed despite the applicant sending reminders continuously from 1984, 1985 and 1986. The applicant even sent a Lawyer's notice dated 23-9-1986 to which also there was no reply. Thereafter, he filed O.A.No.564 of 1986 for alteration of his date of birth. By an order dated 19-12-1986, this Tribunal directed the respondents therein to pass orders on the representations of the applicant for correction of his date of birth within three months. The Postmaster General, A.P.Circle thereafter, by his letter dated 23-1-1987 directed the applicant to get the change effected in the Secondary School Certificate from the Educational Authorities within a month for taking further action in the matter. The applicant replied on 8-4-87 that it is not possible for him to get the Secondary School Certificate corrected at this distance of time and requested to

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change his date of birth on the basis of his Birth Extract which was verified and found correct by the Department.

Thereafter, the impugned order dated 21-6-1987 was passed by / the 2nd respondent informing the applicant that the 1st respondent had rejected his request for alteration of his date of birth. No reasons were given for rejection of his request.

3. On behalf of the respondents a Counter has been filed stating that the applicant has not explained the delay of 27 years i.e. from 1952 to 1979 for getting his date of birth corrected. He had verified his Service Book entries on various dates between 1959 and 1975 and never complained about the discrepancy. The date of birth as contained in the SSLC Register was accepted by the Department at the time of his entry into service and the applicant ought to have made representation to the Education Department for correction of his Date of birth in the S.S.C. Register. It is stated that the cause of action of the applicant lies on the Government of Andhra Pradesh and not with the Department. It is further stated that the applicant has not been able to prove that the Birth Extract relates to him. It is further stated that the Assistant Superintendent of Post Offices, Anakapalle while reporting the result of the verification of the Birth Extract of the Sub Registrar, Anaka-

palle mischievously endorsed that the verification was satisfactory. The provisions of note 5 below F.R.56 have been extracted which requires that the request for change of date of birth should be made within 5 years of his entry into Government service and it must be established that a genuine bonafide mistake has occurred. Since the applicant did not get altered his date of birth in the SSLC register as called-upon, the matter was referred again to the Director General, Posts, New Delhi - 1st respondent and after consideration of he had the matter, rejected the application of the applicant for correction of his date of birth. In terms of Note 5 to F.R.56, it is stated that the request for alteration of his date of birth was not made within time and since the entry in the service book was made on the applicant's own representation based on the SSLC register, he cannot seek an alteration of his date of birth and that too after 27 years.

4. We have heard the learned Counsel for the applicant Shri T.Jayant and Standing Counsel for the respondents Shri K.V. Subba Rao. Shri Jayant relies on ATR 1987(2) CAT 506 (R.R.Yadav Vs. Union of India and others) where-in it was held as follows:-

"As held by this Bench in Hiralal Vs. Union of India (ATR 1987(1) CAT (P.B.) 414) wherein it has been held:

"the five year period of limitation prescribed

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for the first time under the said S.O.3997 dated 15.12.1979 cannot apply to those Government servants who were in service by that day for more than 5 years that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

It is, therefore, not open to the Department to contend that in terms of Note 5 below F.R.56, the applicant is not entitled to raise the question of his date of birth after 5 years of his joining the service. So far as the direction of the Department to correct his date of birth is ^{as} contained in his SSLC register and that his cause of action lies only with the Government of Andhra Pradesh and not with the Department, we are unable to agree with the said contention. It is ^{the case} ~~because~~ of the applicant that the date of birth as entered in the SSLC register is incorrect and that only the evidence available i.e. the date of birth as contained in the Birth Extract register maintained by the Registrar of Births ~~is an authentic~~ ^{is} ~~for~~ ^{it is for} the Department to determine whether the evidence produced by the applicant showing his correct date of birth as 9-11-1931 is bonafide and genuine and not to direct him to get SSLC register corrected. ~~since xxxxxxxxxx~~ The Department had failed to consider and dispose of the application on merits, but merely rejected his request without giving any reason.

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It is clear that the claim of the applicant for correction of his date of birth was not examined on merits. There is no determination by the respondents whether his date of birth is 9-11-1931 as contained in the ^{records of} Registrar of Births maintained by the Registrar or whether it is 1-2-1930 as entered in his service book on the basis of his SSLC register. The Department had deputed one of its officers for verification of his birth extracts with the original maintained by the Sub Registrar and ^{he} ~~latter~~ reported that he verified and found it to be correct. No reasons have been given by the Department for rejecting the Birth Extract ^{apart from} ~~not~~ simply saying that the officer who was deputed to report the fact was mischievous (in the counter). We are unable to accept this ~~as the~~ reason for rejecting the request of the applicant for change of his date of birth. The department had not considered all relevant factors ~~into~~ ^{the} ~~account~~ before passing orders. We, therefore, direct that the Department should dispose off by a speaking order, the application on merits keeping in view the decisions rendered in Hiralal Vs. Union of India (ATR 1987(1) CAT (R.B) 414) and R.P.Yadav Vs. Union of India and others (ATR 1987(2) CAT 506) before he retires on 31-1-1988. In the event of the department not disposing off the matter before 31-1-1988 the applicant

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shall be continued in service until disposal of the said application. With these directions the application is disposed off. There will be no order as to costs.

B.N. Jayasimha

(B.N. JAYASIMHA)
Vice Chairman

D. Surya Rao

(D. SURYA RAO)
Member (Judl.)

Dated: 12th January, 1988.

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S. Venkatesh
Deputy Registrar
(Judl.)