

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT

HYDERABAD

(24)

~~TRANSCRIBED~~ / ORIGINAL APPLICATION NO. 459 of 1990

DATE OF ORDER: 6th July 1990

BETWEEN:

Mr. S.M. Subrahmanyam

APPLICANT(S)

Vs.

The Secretary to Govt., Dept. of Posts,
New Delhi and another

RESPONDENT(S)

FOR APPLICANT(S): Mr. K.S.R. Anjengyulu, Advocate

FOR RESPONDENT(S): Mr. N. Bhaskar Rao, Addl. CGSC

CORAM: Hon'ble Shri B.N. Jayasimha, Vice Chairman
Hon'ble Shri D. Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Bench of the Tribunal?
5. Remarks of Vice-Chairman on columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI B.N.JAYASIMHA, VICE CHAIRMAN

The applicant herein was working as Assistant Postmaster in the Postal Department, Secunderabad. He filed an application on 23.4.1990 to the Chief Postmaster General (Respondent No.2) to correct his date of birth in the service register as 22.4.1933 as against the existing entry of 1.7.1932. He was given a reply in letter No.ST/6-2/SD dated 31.5.1990 informing him that his request for the change of date of birth cannot be agreed to and such change could be made only within five years of the entry of the applicant into the Department. It is this order that is questioned in this application.

2. The applicant contends that the stand taken by the Department in refusing to correct the date of birth on the ground that an application should have been made within five years of his entry into service is invalid in view of the decision rendered by the Principal Bench of the Central Administrative Tribunal, Hiralal Vs. Union of India (ATR 1987(1) CAT 414). He contends that if there is an error in the service record and the same is shown to be incorrect, the government servant cannot be precluded from showing that the entry in the service record is not correct merely on the ground that he did not make his representation within five years of his joining the service. In accordance with the ratio decided in Hiralal's case, the respondents are bound to consider the representation of the applicant on merits.

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3. In the counter, the respondents admit that the applicant's request for correction of his date of birth has been rejected on the ground that the applicant did not submit his application within five years of his entry into the Department as per rules. Reliance is placed on Note-5 to FR 56 in support of the impugned order. The applicant who entered in service in 1952 did not represent at any time for correction of his date of birth till the year 1990. The application is, therefore, highly belated and it is liable to be dismissed.

4. We have heard the learned counsel for the applicant, Shri K.S.R.Anjaneyulu and the learned counsel for the respondents, Shri Naram Bhaskar Rao, Addl. CGSC. Note-5 to FR 56 reads as follows:-

"The date on which a Government servant attains the age of fifty-eight years or sixty 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 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

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servant can be made, with the sanction of a Ministry or Department of the Central Govt., 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 which 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 bonafide mistake has occurred; and
- c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Govt., service on the date on which he first appeared at such examination or on the date on which he entered Government service."

This question whether the employees who have joined service prior to the issue of Note-5 to FR 56 was considered by the Principal Bench of this Tribunal in Hiralal's case (ATR 1987(1) CAT 414). It ^{was} held that-

"Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms Notification No.19017/7/79-Ests.A dated 30th November, 1979, published as S.O.3997 in the Gazette of India dated the 15th December, 1979, takes effect from that date. It lays down that a request for the correction of the date of birth in the service record

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shall be made within five years of entry into Government service. But obviously the five year period of limitation prescribed for the first time under the said S.O.3997 cannot apply to those Government servants who were in service by that day for more than five years. In issuing the said S.O., it could never have been the intention of the Government that there should be two classes of Government employees - those employees who had entered Government service prior to 15.12.1974 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within 5 years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is, therefore, reasonable to infer that that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

The Bench further held that:-

"the mere fact that the applicant has signed the service record on a number of occasions does not operate as an estoppel against him so as to take away his right to get the erroneous entry as to date of birth corrected in the light of the Note 5 to FR 56."

In accordance with the above decision, the rejection of the representation of the applicant by the impugned order is, therefore, not valid.

5. Shri Bhaskar Rao urged that the applicant submitted his representation for correction of his date of birth only a few month prior to the date of his retirement

To

1. The Secretary to Government, Department of Posts, New Delhi.
2. The Chief Post Master General, Andhra Pradesh Circle, Hyderabad.
3. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A, Bakaram, Hyderabad.
4. One copy to Mr.N.Bhaskara Rao, Addl.CGSC, CAT, Hyderabad.
5. One Spare copy.

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without giving sufficient time to the respondents to consider the case on merits. Shri Anjaneyulu contends that the applicant had moved the District Revenue authorities well in advance and he could submit his representation only after the Revenue authorities gave him the certificate after detailed enquiry. We find from the impugned order that the respondents rejected the application only under the provisions of Note 5 to FR 56 and not that is belated. We see no merit in this contention ~~also~~ of Shri Bheem Rao.

6. In the result, the impugned order is set-aside. The applicant is directed to be reinstated to duty with back wages. This order does not preclude the respondents from disposing of his representation on merits.

7. The application is accordingly allowed. There will be no order as to costs.

(Dictated in the open Court).

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice Chairman

D.Surya Rao
(D.SURYA RAO)
Member(Judl.)

Dated: 6th July, 1990.

for Deputy Registrar (J)

~~13/7~~ CHECKED BY ~~RNS~~ 13/7 APPROVED BY

TYPED BY ~~13/7~~ COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B.N.JAYASIMHA : V.C.

AND

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

AND

THE HON'BLE MR. J.NARASIMHAMURTHY : M(J)

AND

THE HON'BLE MR. R.BALASUBRAMANIAN : M(A)

DATE : 6.7.90

ORDER / JUDGMENT

C.A./R.A./C.A./No. _____ in

T.A. No. _____ W.P. No. _____

O.A. No. 459/90

~~Admitted and Interim directions issued.~~

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. ordered/Rejected.

No order as to costs.

