

(31)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 944/90.

Date of Decision : 12.6.99

T.A.No.

T.V.N.Reddy

Petitioner.

Shri P.Krishna Reddy

Advocate for the
petitioner (s)

Versus

Union of India rep. by its Secretary,
Min. of Finance (Revenue), North Block,
New Delhi & another

Respondent.

Shri N.Bhaskara Rao, Addl. CGSC

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J.Narasimha Murthy : Member(Judl)

THE HON'BLE MR. R.Balasubramanian : Member(Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *js*
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *js*
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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(32)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.944/90.

Date of Judgment 12.6.1991.

T.V.N.Reddy

.. Applicant

Vs.

1. Union of India,
rep. by its Secretary,
Min. of Finance(Revenue),
North Block,
New Delhi.

2. The Chief Commissioner of
Incometax, Ayakar Bhavan,
Basheerbagh,
Hyderabad.

.. Respondents

Counsel for the Applicant : Shri P.Krishna Reddy

Counsel for the Respondents : Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

This application has been filed by Shri T.V.N.Reddy
under section 19 of the Administrative Tribunals Act, 1985
against the Union of India, represented by its Secretary,
Ministry of Finance(Revenue), North Block, New Delhi
and another, seeking a change in his date of birth.

2. The applicant joined as an Assistant in the Central
Secretariat Service^{on 20-9-56} after passing the UPSC Competitive
Examination on 20.9.56. Subsequently, after passing
the UPSC Competitive Examination he was promoted as

Incometax Officer and at the time of filing the application he has been serving as Asst. Commissioner of Incometax. According to the entry in the Service Register his date of birth is 1.6.33. Sometime back, while casually discussing with his maternal uncle during a marriage function, the applicant came to know that his year of birth was 1934 and not 1933. On the basis of this information obtained from his maternal uncle, in the course of a casual conversation, the applicant filed an application on 26.9.89 before the Mandal Revenue Officer, Kodumuru, Kurnool District to verify and issue a birth register extract. The Mandal Revenue Officer, after verifying the records, gave an extract ~~dated 12.9.84~~ from the birth register. The applicant found his name wrongly entered as Venkatrami Reddy instead of Venkatnarayana Reddy. He presumes that this mistake has crept in in view of the fact that his paternal grandfather's name was Venkatrami Reddy and the entry in the register was made not at the instance of the applicant's father. Therefore, the applicant filed an application before the Revenue Divisional Officer, Kurnool who enquired into the matter and passed orders on 10.1.90 directing the Mandal Revenue Officer, Kodumuru to change the name of the applicant from Venkatrami Reddy to Venkatnarayana Reddy. ^{A corrected} Accordingly, ~~birth register extract was issued to the applicant on 12.1.90~~ ^{the applicant filed the birth register's extract dated 12.9.84.} On this basis the applicant sent a representation dated 17.1.90 to the 2nd respondent with a request to change his date of birth from 1.6.33 to 12.9.34. After waiting for more than six months ⁶⁵⁹ he filed an O.A.No.658/90 praying the Hon'ble Tribunal

to direct a change in the date of birth as per the certificate issued by the Mandal Revenue Officer, Kodumuru. The Tribunal by its order dated 27.8.90 disposed of the O.A. with a direction to the 2nd respondent to dispose of the representation dated 17.1.90 on merits within a period of two months from the date of receipt of the order. Accordingly, The 2nd respondent passed the impugned memorandum dated 8.11.90 rejecting the request of the applicant for a change in the date of birth. Aggrieved by that rejection, the applicant has approached this Tribunal praying that the memorandum dated 8.11.90 rejecting his request for a change in the date of birth be quashed and ^{seeking} for a direction to the respondents to treat 12.9.34 as his date of birth instead of 1.6.33.

3. The application is contested by the respondents. They are surprised that his 75 years old maternal uncle could correctly remember his date of birth and they are also suspicious of the different name mentioned in the original birth register, ^{extract.} It is pointed out by them that the person who had gone to inform the fact that the birth has taken place in the family would naturally give the correct information like name, sex or names of the parents etc. Otherwise, the whole purpose of recording the fact becomes meaningless. They suspect that the change in name effected in the birth register was an after-thought. It is also pointed out by them that after 21 years of continuous acceptance of the fact of the date of birth the applicant is now seeking a change on the strength of an extract of the birth register obtained recently and that too after getting

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the name changed. It is also pointed out by them that as per notification dated 30.11.79 a request from a Central Government Servant for change of his date of birth in the official records can be agreed to ^{only} if it satisfies certain conditions. Further, while incorporating the condition of 5 years time limit, in which to make ~~a~~ request for alteration of the date of birth in the service records, no distinction has been made in respect of Govt. servants already in service as on 15.12.79 and the future recruits. Any rule or regulation made by the Government in respect of conditions of service of its employees automatically applies to all serving persons unless it is specifically provided in such a rule that it shall not be applicable to a category or class of persons. They, therefore, rejected the applicant's contention that the 5 years time limit cannot be enforced in the case of Govt. servants like him.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. The applicant has cited a decision of the Delhi Bench of this Tribunal in 1987(2) SLR 319. He has highlighted the point that the Delhi Bench had held that mere signing of service record mentioning date of birth cannot operate as Estoppel and that the applicant was entitled to correction of the date of birth according to school records. We find that in that case the Bench had held that the restriction imposed by the Govt. of India notification dated 30.11.79 should not be applied to those already in service. But it does not mean that a person can come after nearly 25 years of service and seek a change in the date of birth towards the fag end of his career. Moreover, the Delhi Bench had held

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that the correction can be made according to school records and in this case according to school records the date of birth is 1.6.33. The respondents have cited a decision of the Delhi Bench of this Tribunal in 1(1989) ATLT (CAT) 289 in their favour. In this case, the Delhi Bench had held that the entry of date of birth in the Service Book cannot be changed at the fag end of one's career unless there is overwhelming evidence in support of the correct date of birth. The question then would ^{arise as to} ~~centre~~ ^{be} ~~round~~ whether there is overwhelming evidence in support of the applicant's claim or not. We find from the representation dated 17.1.90 of the applicant and the impugned order dated 8.11.90 that the date of birth in the service register was recorded as 1.6.33 based on the Secondary School Certificate. He had also contended that the date of birth in school records was wrongly and arbitrarily entered as 1.6.33 by the then Headmaster, Sri Kanyaka Parameswari High School, Dhone, Kurnool District in order to avoid extra work involved in making a reference to the Director of Public Instruction for exemption of age ^{limit for the S.S.C. examination} ~~rules~~. We find that the Headmaster had obtained special permission for the applicant to appear in the S.S.C. Examination only from the District Educational Officer, Kurnool. If the date of birth had been 12.9.34, such a permission for an under-aged candidate to appear in the S.S.C. Examination would have been necessary from the Director of Public Instruction. If the applicant's contention is to be fully accepted, then his very passing the S.S.C. Examination would become invalid and it would lead to a ~~strange~~ situation where his entire career ^{based} ~~obtained~~ on this invalid passing the S.S.C. Examination.

would become questionable. We, therefore, do not admit the contention of the applicant that the Headmaster arbitrarily and wantonly entered the date of birth as 1.6.33 merely to avoid a reference to the Director of Public Instruction.

5. Coming to the certificates he had obtained from the Mandal Revenue Officer after incorporating a correction in name, these certificates are obtained long after the occurrence of birth. In the case of O.S. Bajpai Vs. Union of India & another [1989] 9 Administrative Tribunals Cases 540, this Bench had observed:

"The recorded date of birth is corroborated by the entry in the Primary School where the applicant had studied and by the Matriculation Certificate. The only proof that the applicant has come up 26 years after joining the service and continuously accepting the recorded date of birth, is the attested copy of the Birth Register. I am not prepared to accept this as a conclusive proof of the date of birth of the applicant so conclusive as to reject the entries made in the School Leaving Certificate, Matriculation Certificate and the service record. It has been held by this Tribunal in M. Asokan alias Manuswamy Vs. General Manager [ATR (1986) 2 CAT 142] that a Birth Register entry is not of much evidentiary value and its entry denotes its factum of birth but not of date of birth. In Ghasite Lal Vs. Union of India [(1988) 6 ATC 224] the Tribunal held that when date of birth was recorded on an employee's own declaration and accepted by him, he is estopped from challenging it. The General Financial Rules 79 also confers an element of inviolability to the date of birth recorded in the Service Book. This is more applicable where the same has been allowed to go unchallenged by the applicant himself for more than two decades as in this case."

In the case of M. Asokan alias Manuswamy Vs. General Manager referred to in the judgment, the Tribunal had observed that the birth extracts are not of much evidentiary value for the reason that the entry in the Birth Register is also based on information furnished by the parents or third parties and the correctness of the entry will have to depend on the correctness of their information. We find that in this case even the name had not been correctly intimated. It is also

observed in the M.Asokan case that Courts have normally taken the view that the birth extract is only evidence of factum of birth and not the date of birth. In the instant case, the applicant comes up with a plea for change of date of birth after nearly 25 years of service after having all the time squarely accepted his date of birth as 1.6.33. The evidence furnished cannot be considered overwhelming.

6. In addition to the above cases, we find in (1989) ATLT (CAT) 273 the Allahabad Bench ^{of this Tribunal} had rejected the request of the applicant ^{therein} for a change in date of birth since he had acknowledged the entry in his Service Book for nearly 30 years without contradiction.

7. We find from the above that there is no case for change in the date of birth and therefore dismiss the application with no order as to costs.

MS

(J.Narasimha Murthy)
Member(Judl).

R. Balasubramanian

(R.Balasubramanian)
Member(Admn).

Nb
Dated 12th June 91

8/5/91
Deputy Registrar

To

1. The Secretary, Union of India,
Ministry of Finance (Revenue) North Block, New Delhi.
2. The Chief Commissioner of Incometax,
Ayakar Bhavan, Basheerbagh, Hyderabad.
3. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
4. One copy to Mr.N.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
5. One copy to Hon'ble J.NarasimhaMurthy, Member(J)CAT.Hyd.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

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

AND

THE HON'BLE MR. D. SURYA RAO: M(J)

AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)

AND

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

DATED: 12-6-1991. ✓

ORDER / JUDGMENT.

M.A./R.A./C.A. No.

in

T.A. No.

W.P. No.

O.A. No.

944/90 ✓

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed. ✓

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

25/6/91
Central Administrative Tribunal

DESPATCH

JUL 1991

HYDERABAD BENCH.