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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
HYDERABAD.

O.A. No. 568/91.
TAX No.

PN

DATE OF DECISION

21.10.92

Abdul Khader

Petitioner

Shri K.S.R. Anjaneyulu

Advocate for the Petitioner(s)

Versus

Union of India, rep. by the
Secretary to Govt., Deptt. of
Revenue (Central Excise), New Delhi &
another.

Shri Naram Bhaskar Rao
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Sri C.J. ROY, Member (Judl.)

The Hon'ble Mr.

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?

MGIPRRND-12 CAT/86-3-12-86-15,000

HCJR
HCJR
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::
AT HYDERABAD.

O.A.No.568/91.

Date of Judgment: 9.1.1992

BETWEEN:

Abdul Khader

.. .. Applicant

Vs.

Union of India represented by:

1. The Secretary to Government
Department of Revenue
(Central Excise), New Delhi.
2. The Collector of Central
Excise, Hyderabad.
3. Assistant Collector,
Central Excise, Warangal.

.. .. Respondents

Counsel for the Applicant : Shri K.S.R. Anjaneyulu.

Counsel for the Respondents : Shri Naram Bhaskara Rao,
Addl. Central Government
Standing Counsel.

CORAM:

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

(Judgment of the Single Bench delivered by the
Hon'ble Shri C.J. ROY, Member (J))

This is an application filed under section 19 of the
Administrative Tribunals Act, 1985 to call for the records
and to declare the order of Collector, Central Excise,
Hyderabad in his C.No.II/39/89-Estt dated 28-11-1990
(Annex. 7) as arbitrary, illegal and set aside the same
and further direct the respondents to alter the date of
birth in service book from 16-12-1931 to 4-12-1933 and
allow the applicant to continue upto 4-12-1993 the date

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of retirement age on completion of 60 years and to pass such other order or orders.

2. The applicant was appointed in the year 1952 as Sepoy (18-4-1952). He studied upto X class. He alleges that at the time of his entering in service his date of birth was noted as 16-12-1931 without any proof or record and that after a few months, the Superintendent of Central Excise, Warangal vide his No.C.II/16/1/52 dt. 27-8-1952 asked the applicant to produce educational certificate in support of his date of birth. The applicant accordingly obtained certificate from Government High school, Khammam on 20-9-1952 (Annex. 1) giving his date of birth 4-12-1933 and produced the same and the same was forwarded under Khammam Range's OC No.382/52dt. 23-9-1952. He further alleges that again in 1955 the Assistant Collector, Central Excise, Warangal vide his letter C.No.II/30/3/35 dt. 20-6-1955 obtained a declaration regarding (1) date of birth, (2) date of joining, (3) place at which joined. The applicant furnished the particulars and the same were taken on record. The date of birth was as per school records entered long back. He alleges that the department also acted on it reducing the pay of the applicant by Rs.2/- on the ground that he was underaged at the time of appointment.

3. The applicant submitted representation dated 23-7-1988 (Annexure-2). The Assistant Collector Central Excise, Warangal vide his letter No.II/32/1/98-85 dated 16-11-1988 (Annex.3) addressed to the Inspector, Central Excise, Khammam replied stating that in the absence of original certificate of date of birth issued by the Registrar of Births & Deaths, nothing can be done at the distant date.

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4. The applicant, thereupon, had submitted representation dated 16-3-1989 (Annexure-4) fully explaining the facts; that his correct date of birth is 4-12-1933 and he produced Educational Certificate issued by Government Multipurpose High School, Khammam which is sufficient legal and valid proof; that the difference in pay at Rs.3/- per month was also recovered for the period during 4/52 to 8/52 taking that period as underage and acting on correct date of birth 4-12-1933; that he was born in a remote village near Wadi (now in Karnataka State) and in the olden days 5½ decades ago there ~~was~~ no Registrar of Births and Deaths in remote villages and even taking for granted that there was one the same were not maintained properly and parents due to ~~ignorance~~ were not furnishing the particulars; and that educational certificates were taken as sufficient legal and valid proof in support of age. He alleges that the Additional Collector, Hyderabad as per Assistant Collector, Warangal letter C.No.II/32/1-88/E-5 dated 18-1-1990 (Annexure 5) asked for all the original documents to be given under receipt for taking further action. Accordingly, the applicant furnished the original documents to Inspector of Central Excise, Khammam on 24-1-1990 (Annexure-6). The applicant was therefore hoping that his case will be considered fairly and justly and his correct date of birth 4-12-1933 will be taken into account for the purpose of retirement on 4-12-1993 after completion of 60 years. He alleges that the Collector, Central Excise, Hyderabad vide letter No.C.No.II/39/30/89-Estt.. dated 28-11-1990 (Annexure-7) replied by a cryptic and non speaking order stating that the request of the applicant for change of date of birth from 4-12-1931 to 4-12-1933 is rejected.

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The applicant alleges that the said order is arbitrary and unsustainable and also contrary to evidence on record.

5. The applicant alleges that applicant applied for alteration of date of birth as early as September, 1952 immediately after joining service April, 1952 and therefore his case gains credence by way of bonafides 1985 (3) SLR 412. He also alleges that he had produced School Certificate showing the date of birth entered at the time of admission from the Government High School and that the same was not disputed and the genuineness of it is also not questioned. The action in rejecting his request is arbitrary and unsustainable. Not to correct in the service book is the administrative error. The applicant cannot be made to suffer 1986 (2) SLJ CAT 264. The applicant further alleged that the School Certificate showing the date of birth at the time of admission is accepted as an authentic document and also to have a uniform practice for determination of age. Where an authentic and unimpeachable evidence about the date of birth is furnished the same cannot be ignored or brushed aside impinging upon the fundamental right of the applicant to continue in service till the prescribed age of retirement and cited a case reported in 1986(1) ATR CAT 435. He also cited in support of his contention for correction of date of birth, the decisions reported in 1987(3) SLR 284, 1987(1) ATR CAT 414, and 1987(1) SLJ CAT 65, and 1988 (2) ATR CAT 332. The applicant alleged that the action for retirement based on erroneous entry in service register will be illegal.

6. The applicant stated that his request for alteration of date of birth has been rejected by the Assistant Collector, Central Excise, Warangal on 16-11-1988 (Annex.3), and thereafter he had submitted a representation on 16-3-1989 (Annex.4) and on 24-1-1990 he had submitted all the original documents called for (Annexure-5), and that his representation was rejected on 28-11-1990.

7. The respondents have filed their counter affidavit with verification dated 18-12-1991, and the learned counsel for applicant received the copy on 20-12-1991. The case was heard on 27-12-1991. ~~During the arguments the learned~~ counsel for applicant has filed a xerox copy of letter dated 7-8-1991 issued by Sri Alluri Sreerama Raju Government Junior College, Santi Nagar, Khammam-507 001, which states that Government High School, Khammam was converted into Multipurpose High School as and when the scheme was introduced, and that the certificate with regard to date of birth recorded as 4-12-1933 Admission No.1530 issued in favour of Sri Abdul Kader is correct one.

8. The respondents countered the allegations made in the application, that the applicant was appointed as Sepoy on 18-4-1952 on appointment his service book was prepared showing his date of birth as 16-12-1931. As per Rule-79 and 80 G.F.R. any person newly appointed must declare his date of birth with documentary evidence such as Transfer Certificate etc. The applicant signed the Service Book, several times in the years intervening on 4-8-1952, 18-9-1959, 16-2-1974, 5-3-1979 and 194-1985 indicating that he agreed with correctness of the entries. They further state that only in 1988 after destruction of original records destroyed in 1983 did he come up with a representation to change his date of birth. His documentary evidence was a certificate alleging his date of birth has been 4-12-1933. This certificate was dated 19-8-1975. The delay of producing of certificate showing the different date of birth for almost 12 years during which time he had signed his Service Book as agreeing with the entries, creates doubt about his ~~bonafide~~ on the part of the applicant. They state that the certificate given to Department in 1988 purporting to have been issued in 1952 is in his hand-writing on the back of an old ~~excise~~ document. They also state that photo copy of the



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document filed by the applicant which is Annex.1 to the application is quite clear that under no circumstances it is original i.e., hand written copy without even attested copy. The respondents further state that proforma dated 22-6-1955 which was purported to have been sent by the applicant to the department showing his date of birth as 4-12-1933 is again not signed by any officer except the applicant and therefore has no evidencary value whatsoever. The respondents stated that it is a fact that when he joined in 1952 he was paid Rs.20/- Rs.0.50/- -Rs.35/-. It is only from 4-12-1953 that his pay became Rs.30/-. His services were terminated on 3-12-1953, again he was appointed as officiating temporary on 4-12-1953 and paid Rs.30/- as officiating pay. His services were again terminated on 12-12-54 and he was re-employed on 13-12-1954 @ Rs.30/- - Rs.0.80/- and that he was not getting normal increment which should have been Rs.0.50/-. It is only after 1955 his proper increment starts being given and his services were not terminated afterwards. They denied the allegation that he was given Rs.29/- because he was underage, ~~xx~~ and stated that it was only after 1955 he got the regular scale. The respondents stated that it is not known to them why his services were terminated and why he was re-employed and they have not mentioned any recoveries in his service book.

9. The respondents also countered the grounds raised by the applicant in his application stating that there is no proof not even a copy of reply to show that any representation was made.

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10. The respondents further state that the 1952 document is only a handwritten unattested copy made by the applicant on the back of an old excise document and therefore no reliance can be placed on it. The second certificate dated 1975 was not produced until 1988, a delay of 12 years, during which time he had seen and signed his Service Book agreeing with all entries. The respondents state that in the absence of supporting documents which were destroyed in 1983, it may not be possible to state whether any proof of age was produced. They state that no objection had been made by the applicant, he had appended his signature in the first page of service book on 4-8-1952 about the correctness of his bio-data. They also state that he last signed in the Service Book on 14-6-1988 agreeing with the entries made till that date about his service matters.

The respondents also stated that the applicant never bothered to bring to the notice of the ~~fax~~ department his alleged incorrect date of birth before 1988, and once appended his signatures in the Service Book as stated supra, four ~~or~~ ^{or} time, he is estopped from saying that incorrect date of birth was entered. The applicant cannot be allowed to retract from the same as per law established. The respondents stated that as per rules laid down in G.I.M.H.A. O.M.No.55/3/54-Estt. read in Note 5 below FR 56as amended dt. 5-6-1954, an application should be made within 5 years of entry into service in order to amend the date of birth and further stated that there is no proof except the applicant's statement that he did represent about change in his date of birth prior to 1988. Therefore, the department perfectly justified in 1988 and 1989 in refusing his request, and desired this application be rejected.

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11. The respondents also relied on a decision in O.A.No.944/90 dt. 12-6-1991 of (CAT-HYD) this Bench in a matter between T.V.N.Reddy Vs. Union of India and another.

12. The applicant filed 7 annexures, Annex. A-1 Date of Birth of applicant extract dt. 20-9-1952; Annex. A-2 Representation dt. 23-7-1988 of applicant; Annex. A-3 Letter of Asst. Collector, CE, Warangal C.No.II/32/1/88.E5 dt. 16-11-1988; Annex. A-4 representation of the applicant dt. 16-3-1989; Annex. A-5 is letter of Asst. Collector, Warangal letter C.No.II/32/1/88.E5 dt.18-1-90; Annex. A-6 is Acknowledgement by Inspector Central Excise, Khammam dt. 24-1-1990 of originals, and Annex.A-7 letter issued by the Collector, Central Excise, Hyderabad dt. 28-11-1990 bearing No.C.No.II/39/30/89-Estt. The applicant also filed a photo copy of letter dt. 7-8-91 issued by College authorities during the time of arguments, which is described supra.

13. I ~~have~~ heard the learned counsel for the Applicant Sri K.S.R. Anjaneyulu and Shri Naram Bhaskar Rao, learned counsel for the Respondents and perused the records carefully.

14. At the outset, it may be noted that the letter given across the Bar on the date of arguments by the learned counsel for the applicant dated 7-8-1991 is obtained subsequently though the case was filed on 12-5-1991. This hand-written letter on a letter signed ^{head} _x by the Principal with rubber stamp; neither the Principal was examined nor an affidavit was filed nor why it could

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✓ have been obtained and filed at the time of his original representations.

15. Secondly, Annexure A-1 states that it is a Government High School, Khammammet. Sri Samson Rama Krishna supposed to have signed this as Headmaster. It does not bear any seal, stamp or signature. The certificate is sought to be explained by the letter dated 7-8-1991 stating that the Government High School, Khammam was converted into Multi-purpose High School and later into ASR Govt. Junior College during August, 1981, but the factum of date of birth has not been supported by any evidence, as to how it has come into records, by whom it has been given, when he was admitted in the School and the original school register was also not produced. But even in 1952 he claims to have filed this Birth Certificate for considering his change of date of birth. Even his two representations do not state as to how this entry was brought into record, basing on what evidence, is totally not before me. Mere signing on the Service Book may not act as an estoppel as per the decision cited by the learned counsel for the Applicant, but how this could be established without supporting evidence, whether it acts as an estoppel or not, It is a different question altogether.

16. The reduction of pay claimed by the applicant of Rs.2/- or so was countered by the respondents because of not underage, but by way of termination as stated in para-8 supra and increment of Rs.0-50 ps. was not given and that he was regularised only in 1955. Hence this reduction of amount cannot be taken as a proof of the x

acceptance of the change of the date of birth. Taking advantage of the fact that the records are destroyed in 1983, now additional evidence, without supporting material and evidence, will amount giving an undue advantage to the applicant without proper verification. On the close look of Annexure A-1 the only fact that it is based on 20-9-1952 does not inspire that this is proved beyond reasonable doubt or as preponderance of probabilities which are in his favour. Having considered all the rulings and the observations made in the O.A.No.944/90 dated 12-6-1991 of this Tribunal in a case between Sri T.V.N.Reddy Vs. Union of India, rep. by its Secretary, Ministry of Finance (Revenue), New Delhi and another wherein the Hon'ble Members cited in para - 5 which reads -

"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 (1983) 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".

17. Besides, in O.A.No.240/91 decided by this Bench on 31-7-1991 between Sri M.Venkateswara Rao-II Vs. Union of India and others, the Hon'ble Members have discussed a decision of this Tribunal in a case of Heeralal Vs. Union of India which reads -

"At best that decision knocks out the contention of the respondents that the applicant is making such a request not within 5 years but long after that.".

18. In the instant case, even according to the applicant, he applied for change of date of birth, if what is stated by him is believed in 1952, Rules laid down in G.I.M.H.A. O.M.No.55/3/54-Estt. read in Note 5 below FR 56 as amended dt. 5-6-1954 is not applicable, as the said rule is applicable from 1954 which cannot be applied in this case. However, this matter cannot be decided on this point alone.

19. The applicant also admits that he was born in remote village near Wadi (now in Karnataka State) and in olden days 5½ decades ago there were no Registrar of Births and Deaths in remote villages and even taking for granted that there was one, the same were not maintained properly

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and parents due to ignorance were not furnishing the particulars. Even the applicant admits that it is not recorded as they are not maintained in the old village and even if it is maintained his parents were ignorant, so they could not get the entry recorded/made. Then, it goes beyond once comprehension ^{as to} ~~that~~ how this fixation of date of birth in 1933 has been arrived at. Considering all the citations, I am of the opinion that in the instant case the applicant has not been able to place before the Tribunal any supporting evidence to make (Annexure A-1) is genuine one without further investigation. ~~Under Article 216 the Tribunal can not investigate all the facts to arrive at a just conclusion; my~~

20. Under the circumstances, I give liberty to the applicant who has since supposed to have retired on 31-12-1991 as per averments of applicant, to make a representation to the respondents and the respondents are directed to consider his case within three months from the date of the communication of this order. While investigating the case they may collect all the information and they may come to a conclusion basing on the investigation. The evidence should be cogent, clinching and believable. With these observations, I remit back the case to the respondents. Under the circumstances no order as to costs.

urshay
(C.J. ROY)
Member (J)

Dated: 2nd January, 1992.
Deputy Registrar (J)

To

1. The Secretary to Govt., Union of India,
grh. Dept. of Revenue (Central Excise), New Delhi.
2. The Collector of Central Excise, Hyderabad.
3. The Assistant Collector, Central Excise, Warangal.
4. One copy to Mr. K. S. R. Anjaneyulu, Advocate, CAT. Hyd.
5. One copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd.
6. One ~~copy to Hon'ble~~ ~~copy to~~ ~~Mr.~~ C.J. Roy, member (J), CTT, Hyderabad.
7. one spare copy.

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*Form
Dated
6/1/92.*

fgr
2/1/92

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

:V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. ~~TR. R. THALASITHARAMANTAN~~ M(A)

AND

THE HON'BLE MR. C J Roy

M(J)

DATED: 2 - 1 - 1992

~~ORDER~~ JUDGMENT:

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

in

O.A.No. 568/91 ✓

T.A.No.

(W.P.No. ✓)

Remitted back to the Respondents

Admitted and Interim directions

Issued.

Allowd.

Disposed of with directions

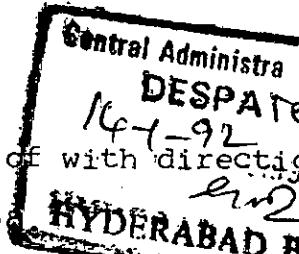
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A.Ordered/Rejected

No order as to costs.



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Date 12/1/92
61/SC