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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.961 of 1991

DATE OF JUDGMENT: 21<sup>st</sup> August, 1992

BETWEEN:

Mr. G.V.Ratnam

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Applicant

AND

1. The General Manager,  
South Central Railway,  
Secunderabad.

2. The Union of India  
represented by the Secretary,  
Railway Board,  
New Delhi.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. V.Rama Rao

COUNSEL FOR THE RESPONDENTS: Mr. D.Gopala Rao, SC for Rlys.

CORAM:

Hon'ble Shri C.J.Roy, Member (Judl.)

JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE  
SHRI C.J.ROY, MEMBER (JUDL.)

This is an application under Section 19 of the  
Administrative Tribunals Act, 1985 filed by the applicant

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claiming a relief to direct the respondents to correct his date of birth in the service record as 20th May 1939 instead of 27.5.1938 with all consequential benefits. Brief facts of the case are as follows:-

The applicant herein is the Chief Engineer, South Central Railway, Secunderabad. Based on the SSLC certificate, his date of birth was recorded in the service register as 27.5.1938. In the year 1988 during the discussions at family function, the applicant learnt that his date of birth in fact is 20th May 1939 and not 27.5.1938 as recorded in the service register and the said fact is also recorded in the Register of Birth for the year 1939 maintained for the Bommaluru Village, Earstwhile Gudivada Taluq, Krishna District. Thereupon, the applicant obtained certified copy of the relevant extract of the Register of Birth in which his date of birth was recorded as 20.5.1939 which is at Annexure-I to this application. Based on the extract, the applicant submitted a representation to the Director of School Education on 23.5.1988 requesting for correction of his date of birth in the school certificates which is at Annexure-II. In response to the representation, the applicant received a copy of the letter issued by the Director of School Education dated 25.5.1988 instructing the District Educational Officer, Krishna District to obtain the original certificates from the applicant and send the same to the District Collector for enquiry which is Annexure-III.

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Pursuant to the said communication, the District Educational Officer, Krishna District vide proceedings dated 13.6.1988 called the applicant to resubmit the application along with the original documents, which is Annexure-IV. Accordingly, the applicant submitted the required original documents along with his representation dated 29.7.1988, Annexure-V. The applicant learnt that the Mandal Revenue Officer, Gudivada vide proceedings dated 6.12.1988 submitted his report to the District Collector observing that the evidence on record pertaining to the date of birth of the applicant is prima facie established confirming the entry in the concerned register of Birth and further observing that the request of the applicant for correction of his date of birth is not objectionable. In spite of the said facts and record, it is learnt that the District Collector, Krishna District vide proceedings dated 7.4.1990 observed that the proposal for correction of date of birth of the applicant is in contravention with the instructions vide proceedings No.3300/H1/72, dated 5.9.1972 of the D.P.I., A.P., Hyderabad and the Memo F.9/1/61/Estt./8, dated 7.6.82 of the Government of India, Ministry of Home Affairs, New Delhi and as such the request of the applicant does not deserve any consideration. The applicant was informed by the District Educational Officer, Krishna District vide proceedings dated 8.7.1990 that the proposal sent to the Director of School Education for alteration of his date of birth has been negatived as per the instruction referred to above.

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2. The applicant submitted a representation to the 2nd respondent through the 1st respondent on 10.1.1991 which is Annexure-VI and the same was rejected vide proceedings dated 25.6.1991, of the 2nd respondent. Hence, the applicant filed the present application for the said relief.

3. The respondents filed a counter, the contents of which, in brief, are as follows:-

The recorded date of birth of the applicant in the various records maintained by the Railway administration is 27.5.1938 as per the information furnished by the applicant at the time of his entry into Railway service on the basis of his SSLC book, which is the basic document in support of proof of his date of birth. Since the basic record, SSLC certificate, itself has not undergone any alteration even on date, the Railway administration has not taken into account the various evidences produced by him and instead took a decision to reject his request, as per the rules applicable. The provisions of Rule 225 of Indian Railway Establishment Code, Vol.I have been followed while rejecting the request of the applicant. The efforts taken by the applicant to pursue his case with various State authorities are not relevant to the respondents. The contention of the applicant that he was completely unaware of the fact of his correct date of birth for nearly 50 years,

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is something which cannot be believed. As long as the entries in the SSLC certificate do not undergo a change, the recorded date of birth cannot be altered. Hence, the respondents state that the applicant has not made out any case and the application is liable to be dismissed.

4. [redacted] I heard the learned counsel for the applicant, Mr. V.Rama Rao and Shri N.Rajeswara Rao for Mr. D. Gopala Rao, learned Standing Counsel for the respondents.

5. The point for consideration is whether the date of birth of the applicant is 27.5.1938 or 20.5.1939. The applicant joined service on 30.7.1962 as Assistant Engineer. He claims that his date of birth was entered in his service register as 27.5.1938 basing on the SSLC certificate. The applicant learnt in the year 1988 during the discussion at the family function that his date of birth is 20.5.1939 but not 27.5.1939. The date of birth as 20.5.1939 was correctly recorded in the Register of Births for the year 1939 maintained for the Bommaluru Village, Earstwhile Gudivada Taluk, Krishna District. Based on the said information, the applicant approached the concerned Mandal Revenue Officer and obtained certified copy of the relevant extract of Register of Birth in which the date of birth of the applicant has been recorded as 20.5.1939. The date of birth extract in original issued by the Mandal Revenue Officer, Gudivada, Krishna District on 15.10.1990 is also

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filed. Based on this evidence, he represented to the Director of School Education on 23.5.1988 requesting for correction of his date of birth. The Director of School Education instructed the D.E.O. to obtain the original certificate from the applicant and send the same to the District Collector for enquiry with reference to the extract of Register of Births of the applicant. The District Educational Officer, Krishna District, in pursuance of the said letter dated 25.5.1988 of the Director of School Education (Annexure-III), called the applicant to resubmit the application along with the original documents which is Annexure-IV. The applicant accordingly submitted the documents in original along with his representation dated 29.7.1988 which is Annexure-V. Subsequently, the applicant learnt that the Mandal Revenue Officer, Gudivada vide proceedings dated 6.12.1988 submitted his report to the District Collector giving particulars of the date of birth of the applicant and his brothers.

But, the Collector vide his proceedings dated 7.4.1990 observed that the date of birth of the applicant is in contravention with the instructions vide proceedings No. 3300/H1/72, dated 5.9.72 of the D.P.I., A.P., Hyderabad and the Memo F.9/1/61/Estt./8

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dated 7.6.1982 of the Govt. of India, Ministry of Home Affairs, New Delhi and as such the request of the applicant does not deserve any consideration. The applicant was informed by the District Educational Officer, Krishna District vide proceedings dated 8.7.1990 that the proposal sent to the Director of School Education for alteration of the date of birth of the applicant has been negated as per the above referred instructions. The applicant also made a representation to the 2nd respondent through proper channel on 10.1.1991. This representation was rejected on 25.6.1991.

6. As this is the latest representation that is rejected and the O.A. is filed on 4.10.1991, taking the rejection order, order as final as a point of limitation, I hold that the application is within time under Section 21 of the Administrative Tribunals Act, 1985.

7. The objection taken by the Department/Respondents in the counter at Page-3 that the rejection of the request of the applicant has been done under the provisions of Rule 225 of Indian Railways Establishment Code Vol.I.

8. In, "Mallela Sreerama Murthy and another Vs. Union of India and others (1990 LIC 547)" decided by the Full Bench of the Central Administrative Tribunal, the Bench had considered this aspect and for the sake of

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convenience, it is reproduced below:-

"Apart from the interpretation of the rule, another ground for holding that the right of employees in service on 3.12.1971 cannot be taken away is the ground of discrimination. It has been held by the Principal Bench in (Heeralal Vs. Union of India (supra) that Note 5 to FR 56 does not take away the right of a Government employee who is appointed prior to coming into force of the said Note to have their date of birth corrected. The provisions of Note 5 to FR 56 and Rule 145(3)(iii) are similar as can be seen from a summary of these provisions placed in juxtaposition below:-

Note 5 to FR 56

Rule 225(4) (Old) 145(3)

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| 1. The date of birth recorded in accordance with these rules shall be held to be binding and no alteration shall ordinarily be permitted.        | 1. The date of birth declared by the Govt. servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. |
| 2. It is open to the President in the case of Gr. A & B and General Manager in the case of Gr. C and D to cause the date of birth to be altered. | 2. An alteration of the date of birth of a Government servant can be made with the sanction of a Ministry or Deptt. of the Central Government.                        |

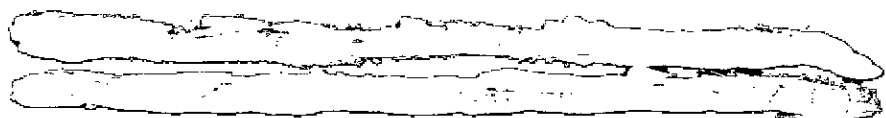
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| 3. For correction a satisfactory explanation of the circumstances in which the wrong date came to be entered is to be furnished by the Railway servant. | 3. If it is clearly established that a genuine and bonafide mistake has occurred, the date of birth can be corrected. |
| 4. The explanation (application) for correction should not be entertained after completion of the probation period of 3 years whichever is earlier.     | 4. The request for alteration is to be made within five years of entry into Government service.                       |

Thus the provisions relating to Government servants and Railway employees are almost similar in regard to the right to get their date of birth altered except that the time limit prescribed for Government servants is larger than that is available to Railway servants. The relevant portion of the Judgment in Heeralal's case reads as follows:-

"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 other who entered the service within five 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 invadious discrimination unsustainable in law. It is, therefore, Reasonable to infer that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."



Applying the dicta laid down in Heeralal's case and on an interpretation of Rule 145(3) (iii) ie., reading the rule as a whole, it would follow that all Railway servants have a right to get their date of birth altered. In regard to employees who joined service after 3.12.1971 the rule making authority has prescribed a time limit for making applications to get their date of birth altered. Because the rule is silent regarding those who joined service before 3.12.1971 it cannot be inferred that their right is taken away. Since the rule does not prescribe any limitation in regard to such employees making applications, any representation or application made by such an employee for correction of his date of birth cannot be rejected in limine on the ground that it is time barred."

Therefore, I hold that rejecting the claim of the applicant under Rule 225 of Indian Railway Establishment Code Vol.I as time barred is not correct.

9. Besides, in, "Jagannath Sharma Vs. Union of India (SLR 1987(1) CAT 410)", the Hon'ble Members of the Central Administrative Tribunal, Chandigarh Bench, held that, "correction of date of birth is an important legal right and it cannot be denied merely on the basis of administrative instructions. As such, every such request has to be decided in the peculiar circumstances and the facts of the case." In, "Manak Chand Vaidya Vs. State of Himachal Pradesh and others (SLR 1976(1) Himachal Pradesh High Court, page-402)", their lordships held that-

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"A Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. He is entitled to show that the recorded entry, which determines the date on which he attains the age of superannuation, does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service. Therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If on application made by the Government servant, the Government finds that there is substance in the claim, it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force in law."

10. In, "Hiralal Vs. Union of India (ATR 1987(1) CAT 414)", their lordships of the Central Administrative Tribunal, Principal Bench, held-

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"The age of a Government servant as of any one else has to be counted with reference to the date on which the person was born. any error in the service record as regard the date of birth in the service record cannot alter the date of birth. Of course there has to be some record or proof as to what the correct date of birth is. If there is any error in the service record in that entry, that has to be corrected, unless some service rule prohibits correction or ordains that irrespective of what the date of birth of a Government servant may be he shall be deemed to attain the age of superannuation based on the date of birth as entered in the service record and once entered that entry cannot be altered. In the absence of any such rule, a Government servant cannot be precluded from showing that the entry in the service record is not correct. Whenever a question arises whether the entry of the date of birth in the service record is correct or not, that has to be enquired into and that had been done in this case in accordance with law. 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 and Administrative Reforms Notification No.19017/79-Estt.-A, dated the 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

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the date of birth in the service record shall be made within five years of entry into Government service. But obviously the five years period of limitation prescribed for the first time under the said S.O. 3997 cannot apply to these Government servants who were in service by that day for more than 5 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 Govt. service prior to 15.12.79 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within five 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."

10. The above two decisions viz., "Shri Manak Chand Vaidya Vs. State of Himachal Pradesh and others" and "Hiralal Vs. Union of India", were referred <sup>to</sup> with approval in the case of, "Mallela Sreerama Murthy and another Vs. Union of India and others".

11. It is pertinent to mention here that the Mandal Revenue Officer, Gudivada in his letter No.L.P.T.S.A.1.18/88,

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dated 6.12.1988, an attested copy of which is filed at Page-14 of this application addressed to the District Collector, Krishna District, Chilakalapudi, stated that the written evidences are true and correct. The letter dated 6.12.1988 of the Mandal Revenue Officer, Gudivada reads as follows:-

"Kind reference is invited to the letter cited above, Sri. Gutta Venkataratnam s/o Venkatacharyulu, Bommuluru village has requested for correction of his date of birth from 27.5.1938 to 20.5.1939. Sri. Gutta Venkatacharyulu is having children as follows:-

Name	Actual Date of birth	Document produced as evidence	Remarks
1.Gutta Gopala Krishna Rao	24-3-1933	Secondary School Certificate	Name is not registered in Bommuluru Village Register.
2.Gutta Aravinda Ghosh	18-5-1935	Produced copy of Births Register of Bommuluru village.	--
3.Gutta Venkata-Ratnam	20-5-1939	-do-	His date of birth is recorded as 17.5.1938 in Secondary School Register.

Sri.Gutta Venkatacharyulu through prescribed formats has declared that he has no children other than the above and the copy of Birth

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Register dt. 20-5-1939 of Revenue Office, Gudivada Mandal belongs to his son Sri. Gutta Venkata Ratnam. The above two forms were authorised by Central Government Gazetted Officer.

The above written evidences are true and correct. As the father of the applicant Sri. G.Venkatacharyulu is residing at Hyderabad he could not be enquired. I have enquired in Bommuluru Village. There is no person who can tell the actual date of birth of the applicant. As the Borthor-in-law of Sri.Gutta Venkatacharyulu, Sri. Moturu Prasada Rao is residing at Gudivada, he is enquired, he stated that the above particulars are correct, he stated that Sri.Gutta Venkatacharyulu is having three children but he don't know the correct dates of birth of them.

Through the above particulars, I hereby state that there is no objection to alter the date of birth of Sri. Gutta Venkata Ratnam as 20-5-1939."

12. The observations of the Mandal Revenue Officer, Gudivada were not counter<sup>-ed</sup> by the respondents.

13. Therefore, applying the above principles in the judgments cited above, it can be seen that the valuable right of date of birth can be questioned at any stage. In view of the decisions cited above, the contention of the Department that there is no positive material evidence

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available nor there was a delay and the applicant approached for change of his date of birth at a belated stage and that it should be first altered in the SSLC Book, cannot be accepted. The record of Births and Deaths as shown by the Mandal Revenue Officer can be accepted as a positive evidence and the explanation offered by the applicant is also satisfactory.

14. Therefore, I hold that the applicant has made out a case for change of his date of birth. The respondents are directed to consider the case on merits for change of the date of birth of the applicant, within a period of three months from the date of receipt of this order.

15. The application is accordingly allowed with no order as to costs.

(C.J.ROY)  
Member (Judl.)

Dated: 21<sup>st</sup> August, 1992.

25/8/92  
Deputy Registrar (J)

To

1. The General Manager, S.C.Rly, Secunderabad.
2. The Secretary, Union of India, Railway Board, New Delhi.
3. One copy to Mr.V.Rama Rao, Advocate  
3-6-779, Himayatnagar, Hyderabad.
4. One copy to Mr.D.Gopala Rao, SC for Rlys,CAT.Hyd.
5. One spare copy.
6. One copy to Hon'ble Mr.C.J.Roy : Member(J)CAT.Hyd.

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

THE HON'BLE MR.

AND

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

AND

THE HON'BLE MR. T. CHANLASEKHAR REDDY:  
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 21 - 8 - 1992 ✓

~~ORDER~~ / JUDGMENT

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

in

O.A.No. 961/91

T.A.No. (W.P.No )

~~Admitted and interim directions  
issued~~

Allowed.

~~Disposed of with directions~~

~~Dismissed~~

~~Dismissed as withdrawn~~

~~Dismissed for default~~

~~M.A. Ordered / Rejected~~

~~No orders as to costs.~~

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