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Monday the Thirtieth day of October
one thousand Nine hundred and eighty eight
PRESENT:

THE HON'BLE MR. D. SURYA RAU, MEMBER (JUDL.)

ORIGINAL APPLICATION NO. 52 of 1988

BETWEEN

P. Marriah Das Applicant.

a n d

- (1) Union of India represented by the Secretary, Central Board of Excise & Customs, New Delhi-110 001.
- (2) Collector of Customs, Custom House, Madras - 600 001.
- (3) Addl. Collector of Customs, Custom House, Vizag-530 035.

This application is filed U/S 19 of the Administrative Tribunals Act, 1985 praying that in the circumstances stated therein the Tribunal will be pleased to declare that the correct date of birth of the applicant is 28.12.1939 and the impugned order Annexure-1 bearing No.S-8/53/84-Estt dated 17.11.1987 issued under the authority of the Assistant Collector of Customs (P & E) of the third respondent's office is accordingly unsustainable and consequently to direct the respondents to correct the applicant's date of birth in the service records as 28.12.1939.

This application coming on for final hearing upon perusing the application and upon hearing the arguments of Mr. C. Suryanarayana, advocate for the applicant and of Mr. G. Parameshwar Rao for Mr. P. Rama Krishna Raju, Sr. CGSC on behalf of the respondents, the ~~Trib~~ Tribunal delivered the following judgment:-

The applicant herein is an employee of the Central Excise Department working as Preventive Officer, Customs House, Visakhapatnam. He has filed this application questioning the Order Memo No.S8/53/84-Estt., dated 17.11.1987 of the third respondent (Addl. Collector of Customs, Custom House, Visakhapatnam) rejecting his request for change of date of birth.

2. The applicant states that he is a graduate of Andhra University, Visakhapatnam. He passed his B.A.



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examination in the year 1959 and joined as L.D.C. in the third respondent's office on 12.9.1960. Later he was promoted as Preventive Officer. He states that his correct date of birth is 28.12.1939 as per his horoscope and not 20.1.1935 as wrongly recorded in the S.S.L.C. certificate and other educational certificates. He, therefore wrote to the Andhra University to correct his date of birth. As the University authorities did not do so, he filed O.S.No.228 of 1963 before the District Munsif, Visakhapatnam and it was decreed on 30.8.1963. By the Court judgment and decree, the Andhra University vide the proceedings dated 19.3.1964 of the Vice Chancellor ordered correction of the applicant's date of birth in the University records. Thereafter, the applicant represented on 13.10.1964 to the Deputy Collector of Customs, Custom House, Visakhapatnam seeking correction of his date of birth in the service records. The matter was pending for a long time without any action. Subsequently by Memo dated 6.3.1975, the Deputy Collector directed the applicant to submit the originals of his SSLC., Degree and the proceedings of the Vice Chancellor of the University. The applicant did so. No action was taken thereon. The applicant again wrote a letter to the 2nd respondent on 5.5.1976. He was informed on 12.5.1976 that his request was carefully considered by the 1st respondent (Board) in ~~xxxxxx~~ consultation with the Department of Personnel & A.R. & Legal Affairs and that his request could not be acceded to. The applicant made another representation on 13.11.1984 and sought correction of his date of birth to 28.12.1939. He was once again asked to submit copies of the Vice Chancellor's proceedings dated 19.3.1964, decree and the original letter of the Andhra University by which his date of birth was altered in the University records etc. By another Memo dated 1.3.1985, he was asked to submit his Matric Book/Certificate for verification and return. He was also called upon to state whether the date of birth was corrected in his Matriculation Certificate. The applicant replied that his date of birth may be corrected in the service record on the basis of the date of birth as entered in the University record as subsequently

corrected. This was followed by subsequent correspondence by the applicant with the respondents. Subsequently the applicant was informed by the 3rd respondent vide Memo dated 21.11.1986 that the applicant's request could not be acceded to by the Collector of Customs as the applicant did not make his representation within the stipulated period. The applicant submitted a representation dated 11.12.1986 which was rejected by the 1st respondent by an order dated 17.11.1987.

3. The applicant states in his application that the date of birth as entered in the service record is not conclusive, that the entry in the service record raises a rebuttable presumption which the applicant has effectively rebutted by obtaining a decree from a Court of Law declaring that the correct date of his birth is 28.12.1939 and not 20.1.1935 and that on the basis of the earlier decisions of the Central Administrative Tribunal, he is entitled to have his date of birth corrected.

4. On behalf of the respondents, a counter affidavit has been filed denying that the applicant had ever made a representation in the year 1964. It is, however, admitted that he made a representation on 9.4.1974. But it was denied that the said representation of 1974 was a reminder to the earlier representations. It is stated that the representation dated 9.4.1974 was considered by the Department and that the applicant was informed that his request could not be acceded to. It is further stated in regard to the representation dated 13.11.1984 that it was made after a lapse of 8 years. It is further stated that the applicant neither referred to his original representation of 1984 (as stated by him) nor to the representation dated 1974 which was considered and rejected by the Department. Hence the same was treated as a fresh representation by the Department and as the representation was filed after a period of two decades from the date of his joining the Department, he was informed that his request was belated vide Memo dated 2.4.1986. The applicant sent a reply on 4.4.1986. Even therein, he did not refer to his earlier representations of 1964 and 1974 and the rejection of the latter by the

Department. The counter goes on to state that the representation of 1984 was made after 24 years from his entry into Government service and the same was not considered in view of the instructions contained in Note-5 below F.R. 56.

5. We have heard the learned counsel for the applicant and Shri G. Parameshwara Rao representing Shri P. Ramakrishna Raju, Senior Standing Counsel for the Central Government for respondents. The applicant relies on the decision of the Central Administrative Tribunal, Principal Bench in ATR 1987(2) CAT 506 (R.R.Yadav vs. Union of India and Ors.) wherein it was held that the entry in the service record not being conclusive and although it may raise a strong presumption of correctness because it stood undisputed for over 30 years, still it raises only a rebuttal presumption. In the said case, the decision of the Principal Bench in AIR 1987(1) CAT (PB) 414 (Hiralal vs. Union of India) in regard to applicability of five year period of limitation prescribed for the first time under S.O.No.3997 dated 15-12-1979 (Note-5 below F.R.56) to the Government servants who entered service before 15.12.1979 was upheld. It is contended by the learned counsel for the applicant that once there was a decree of a Court allowing correction of date of birth in the University records, it is the bounden duty of the Department to have considered this decree/judgment of the Court and ordered correction of his date of birth in the service record. If the Dept. wants to disagree from the decision of the Court, it could have done so only by giving specific reasons therefor. The Department cannot reject or ignore the decree arbitrarily. It is reiterated that the provisions of Note(5) below F.R.56 would not apply.

6. Admittedly, in this case Note (5) below F.R.56 would not apply. But the facts brought out in the application disclose lack of bona fides on the part of the applicant. The counter denies that the applicant had ever made a representation in 1964. The applicant made a representation in 1974 which was rejected in the year 1976. The applicant accepted this decision of the Department and kept quiet

acquiescing in the order that his date of birth does not merit consideration. Thereafter, he once again made a representation in 1984. This was annexed as Ex.A-6 to the application. In this representation, he made no mention whatsoever about his earlier having been made a representation and it having been rejected. He made the Department believe that this is a fresh and initial application having been made for the first time. Again when the Department asked him on 2.4.1986 to state the reasons why he remained silent about the change of his date of birth all these years, he replied on 4.4.1986 that it did not strike him immediately that his service records also should be changed after the decree has been passed by the Court. He gave certain other reasons also, the main reason being that the papers had been held up with the lawyer and he could locate them only in the year 1984. Thus the applicant had suppressed to Government the fact that his application was rejected earlier and thereafter obtained the order dated 17.11.1987 whereby the Department stated that it could not accede to his request for correction of his date of birth on the ground of delay as being barred by Note 45 below F.R. 56. Whatever be the wrong reason given by the Department, the fact remains that the applicant had received a rejection as long ago as in 1976 in regard to his plea for correction of his date of birth. He acquiesced in the said proceedings for eight long years and never made any representation thereafter till 1984. It is not as though the final orders ~~xxx~~ were passed in 1987 on his representation of 1984 was on reconsideration or review of the earlier order of rejection passed in 1970 based on a proper representation made by the applicant disclosing all relevant material and facts. The representation made in 1984 is one made clearly suppressing material particulars and as a result of which suppression, he had induced the respondents to pass an order as though the application of 1984 was an application made for the first time. The application is completely lacking in bona fides and as

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the applicant had by suppression of material obtained an order from the respondents, it would be wholly unnecessary to go into the legality or validity of the said impugned order. The application is accordingly dismissed. There will be no order as to costs.

Sd/-
(G. VENKAT RAO)
DEPUTY REGISTRAR (JUDL.)

/ TRUE COPY /

A. S. S. S. S. S.
SECTION OFFICER.

To

1. The Secretary (Union of India) Central Board of Excise and Customs, New Delhi - 110 001.
2. The Collector of Customs, Custom House, Madras-600 001.
3. The Addl. Collector of Customs, Customs House, Vizag - 530 035.
4. One C.C. to Mr. C. Suryanarayana, Advocate
1-2-593/50, Srinilayam, Srisri Marg, Gagan Mahal,
Hyderabad - 500 029.
5. One C.C. to Mr. F. ~~Rxxxx~~ Rama Krishna Raju, Sr. CGSC,
Hyderabad.
6. The Deputy Registrar, Central Administrative Tribunal,
Madras Bench, Tamil Nadu Text Book Society Building,
DPI Compound, Nungambalkam, Madras - 600 006.
7. The Deputy Registrar, Central Administrative Tribunal,
Calcutta Bench, CGO Complex, 234/4-AJC Bose Road,
Nizam Palace, Calcutta - 720 020.
8. The Deputy Registrar, Central Administrative Tribunal,
Bombay Bench, CGO Complex, (CBD), 1st Floor, New
Bombay - 400 614.
9. The Deputy Registrar, Central Administrative Tribunal,
Allahabad Bench, 23-A, Thorn Hill Road, Allahabad-211 001.
Dy.
10. The Registrar, Central Administrative Tribunal,
Chandigarh Bench, SCO No.102-103, Sector-34, Chandigarh.
11. The Deputy Registrar, Central Administrative Tribunal,
Bangalore Bench, Commercial Complex (BDA), Indiranagar,
Bangalore - 560 030.
12. The Deputy Registrar, Central Administrative Tribunal,
Gawahati Bench, Rajgarh Road, Off. Shillong Road,
Gawahati - 781 005.
13. The Deputy Registrar, Central Administrative Tribunal,
Ernakulam Bench, Kandamkulathil Towers, 5th & 6th
Floors, Opp. Maharaja College, M.G. Road, Ernakulam,
Cochin- 682 001.