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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 1363/93.

Dt.of Decision : 30-9-94.

S. Janardhana Rao

.. Applicant.

Vs

1. Government of Andhra Pradesh, rep.
its Chief Secretary, Secretariat,
Hyderabad.

2. Government of India, rep. by its
Secretary, Department of Home
(Personnel), New Delhi.

.. Respondents.

Counsel for the Applicant : Mr. V.Venkata Ramana

Counsel for the Respondents: Mr. N.R.Devaraj, Sr. CGSC.

Mr. D.Panduranga Reddy, Spl.Coun sel
for A.P.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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OA.1363/93

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, VC)

Heard Sri V. Venkata Ramana, learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for Central Government and Sri D. Panduranga Reddy, learned Counsel for AP State Government.

2. The applicant who is promotee IAS officer filed this OA praying for declaration that he is entitled to continue in service till the end of July, 1992 as per the amended date of birth as per G.O.Ms.No.1505 Revenue(W)Dept. dated 18-10-1982 and for consequential direction to the respondent to continue him in service till the end of July, 1997 with all consequential benefits.

3. The applicant joined service as Peshkar on 5-7-1956 in Hyderabad State which was then Part-B State (The State of Andhra Pradesh had come into existence on 1-11-1956). The applicant got various promotions, and while according to him he was promoted as Deputy Collector in 1974, ^{it} is stated for the respondents that the applicant was promoted as Dy. Collector in 1976. Be that as it may, he was considered for promotion for IAS and he was selected and appointed on 12-11-1986.

4. The date of birth of the applicant as noted in his service book at the time of entry into service is 12-9-1936. He made a representation to the AP State Government on 12-11-1972 for correction of his date of

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birth from 12-9-1936 to 6-7-1939 by alleging that the date of birth of his elder sister is 8-5-1936 and hence his year of birth could not be 1936, and as his paternal uncle stated that the applicant was five or six years ~~younger~~ to him i.e. his paternal uncle and on the basis of the date of birth of his paternal uncle his date of birth should be 6-7-1939. The applicant also produced Janmapatrika. At the first instance it was observed by the concerned authority that there are no merits in the claim of the applicant. But it appears that later on the said representation was again considered, and his claim was accepted for correction of his date of birth from 12-11-1936 to 6-7-1939. Accordingly, GOMS.1505 dated 18-10-1982 was issued. In pursuance of the same, the correction was made in the service book of the applicant on 25-11-1982.

5. While sending the particulars of the Deputy Collectors who were eligible for consideration for promotion to IAS, the Central Government was informed about the date of birth of the applicant as 12-9-1936. It is stated that the same was accepted. Then the applicant made representation to the Central Government to correct his date of birth as 6-7-1939 as per GO dated 18-10-1982. The applicant filed this DA when it was not done so.

6. 16-A of All India Service (Death-cum-Retirement) Rules, 1958, which is relevant for consideration of this DA is under :

"16-A. Acceptance of date of birth

(1) For the purpose of determination of the date of ~~superannuation~~ of a member of the service, such date shall be calculated with reference to the date of his

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birth as accepted by the Central Government under this rule.

(2) In relation of a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971,

a) the Indian Administrative Service under clause(a) or clause (aa) of sub-rule(4) of Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954; or

b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Police Service (Recruitment) Rules, 1954; or

c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) of rule 4 of the Indian Forest Service (Recruitment) Rules, 1966, the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.

(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be accepted by the Central Government, as the date of birth of such persons.

(4) The date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule(2) or (3).

As the applicant is a promotee IAS Officer, Rule 16(A)(3) is applicable. He states that the "date of birth as recorded in Service Book or other similar official

(GCL)

document maintained by concerned Government shall be accepted by the Central Government as the date of birth of such person." (emphasis supplied).

7. It is urged for the applicant that the date of birth as noted in the service book of the applicant as on date of his promotion for IAS should be treated as his date of birth ^{and it has to be} accepted by the Central Government, and as by the date of his promotion, the said date of birth was noted as 6-7-1939 in his service book, he has to be retired by the end of July, 1997.

8. But it is urged for the respondents that as per Rule 28(b) Hyderabad Civil Service Rules,

"^{No} ~~Any~~ person can be appointed to the inferior service unless his age is atleast 18 years"

and if the date of birth of the applicant has to be held as 6-7-1939, ~~he~~ would not have been eligible for appointment in 1956 as then he was less than 18 years ^{and hence} ~~he~~ ^{he} is estopped from ~~not~~ contending that his date of birth is not July, 1936 and is only 6-7-1939. It is further stated for the Central Government that it was not known as to why they were informed about the date of birth of the applicant as 12-9-1936 if in fact it was correct ^{ed} as 6-7-1939 by the date of the consideration of applica~~at~~ for promotion to IAS.

9. As the GO was issued on 18-10-1982, in regard to the correction about the date of birth of the applicant, there is nothing to doubt the entry dated 25-11-1982 in the service book of the applicant in regard to the correction about the date of birth.

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10. Rule 16-A(3) does not specifically indicate that the date of birth as recorded in the service book of the officer by the date of consideration of his promotion for IAS should be taken as basis. Service book will be opened shortly after entry into the service on regular basis. The question arises as to whether 16(A)(3) has to be interpreted to the effect that the date of birth as noted in the service book at the time of entry into the service has to be taken as basis, or whether the later corrected date of birth in the said service book, if corrected, has to be taken as basis. It can be seen from 16 A(2) that in case of Direct Recruits, the date of birth as noted in the application for appearing in the said examination should be taken as basis. It does thus indicate that it was felt that it will not be proper to permit the IAS officers to make representations for correction in regard to the date of birth after they were selected except in case of bonafide clerical mistakes. So, we feel that it is just and proper to construe even Rule 16-A(3) which is applicable in regard to Promotee IAS Officers that the date of birth as entered at the time of date of entry into the service or at best the corrected date if corrected, by the date 16-A was incorporated should be taken as basis for the purpose of Rule 16-A(3) and the subsequent correction unless it is by way of bonafide mistakes had to be ignored.

11. Hence, in the above view, the date of birth of the applicant for the purpose of Rule 16-A(3) should be treated as 12-9-1936.

..7.

Copy to:-

1. Government of Andhra Pradesh, rep. by its Chief Secretary, Secretariat, Hyderabad.
2. Government of India, rep. by its Secretary, Department of Home (Personnel), New Delhi.
3. One copy to Mr. V. Venkata Ramana, Advocate, 62/2 RT, Saidabad Colony, Hyderabad.
4. One copy to Mr. N. R. Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A. P.
6. One copy to Library, CAT, Hyderabad.
7. One spare.

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12. It was already noticed that if the applicant had given a date of birth as 6-7-1989 he would not have been considered for the post of Peshkar in 1956. Hence, the contention for R-2 i.e. the Central Government that the applicant is estopped from contending his date of birth as 6-7-1939 cannot be held as untenable.

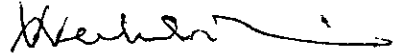
13. Further, various factors relied upon in the GO dated 18-10-1982 (Annexure-4) cannot be held as irrefutable to hold that the date of birth of the applicant is 6-7-1939, and at best it might be plausible. The Supreme Court held in JT 1993(5) SC 404 (Secretary and Commissioner, Home Department and others vs. R. Kirubakaran) that unless there is an irrefutable material it is not just and proper to give a direction for correction of date of birth, and as such material is lacking in this case.

14. Anyhow, as we held that the date of birth as noted *not but the date corrected by the date of incorporation of 16-A,* at the time of entry into service, and not later.

corrected date in the service book if there is correction, the date of birth of the applicant for the purpose of Rule 16-A(3) has to be held as 12-9-1936. Hence, he was rightly informed that he ^{has} to retire today i.e. 30-9-1994.

15. Thus, this OA does not merit consideration. Accordingly, it is dismissed. No costs./


(R. Rangarajan)
Member (Admn)


(V. Neeladri Rao)
Vice Chairman

Dated : Sept. 30, 94
Dictated in the Open Court


Dy. Registrar (Judl)

12/11

04-1863/73

TYPED BY

CHECKED BY

COMPALED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADJN)

DATE: 30-9-94

~~ORDER/JUDGMENT~~

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

O.A.No. 1863/73

~~(T.A.No.)~~

~~(W.P.No.)~~

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

NO SPARE COPY

[Signature]
8/10/94

pvm

