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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

O.A.No. 351/93

Date of Order 14.10.93

P.Marriah Das

.. Applicant

Vs.

1. Union of India rep. by the Secretary, Central Board of Excise & Customs, New Delhi.
2. Collector of Customs, Customs House, Madras - 600 001.
3. Collector of Customs, Customs House, Vizag - 530 035.

.. Respondents

Counsel for the Applicants : Mr.M.V.K.Viswanadham.

Counsel for the Respondents : Mr.N.V.Raghava Reddy Add. C.G.S.C.

CORAM:

THE HON'BLE MR.T.CHANDRASEKHARA REDDY : MEMBER (JDUL.)

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OA No. 351/93

Date of decision: 14-10-1993

O R D E R

(As per Hon'ble Shri T. Chandrashekara Reddy, Member(J))

This application is filed under Section 19 of the Administrative Tribunals Act to direct the respondents to correct the date of birth of the applicant from 20.1.1935 to 28.12.1939 in the service records of the applicant.

2. The facts giving rise to this OA in brief are as follows:

3. The applicant is a graduate from Andhra University Visakhapatnam. He passed his BA examination in the year 1959. He joined as Lower Division Clerk in the office of the Additional Collector of Customs, Visakhapatnam on 12.9.1960. Later, he was promoted as Preventive Officer. According to the applicant, his correct date of birth is 28.12.1939 as per his horoscope. In the School Records, by mistake, his date of birth was entered as 20.1.1935. The same date of birth (20.1.1935) was adopted when the applicant entered into service. The applicant after joining the service wrote to Andhra University to correct his date of birth from 20.1.1935 to 28.12.1939. But, the University authorities did not do so. Hence, the applicant filed OS 228/63 before District Munsiff Court, Visakhapatnam to declare that his date of birth is 28.12.1939. The said suit was decreed on 30.8.1963. In view of the decree obtained by the applicant in OS 228/63, the Andhra University, as per its proceedings dated 19.3.1964 corrected the date of birth of the applicant in its records as 28.12.1939.

4. Thereafter, the applicant, according to him, represented on 30.10.1964, to the Deputy Collector of Customs Visakhapatnam, the 3rd respondent herein seeking correction of his date of birth in his service records. By a memo

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6.3.75, the Dy. Collector directed the applicant to submit the originals of his SSLC, copy of the decree obtained in the Civil Court with regard to the date of birth of the applicant and the proceedings of the Vice-Chancellor of Andhra University. The applicant did so. According to the applicant, no action was taken. The applicant again wrote a letter to the 2nd respondent i.e. Collector of customs, customs House, Madras on 5-5- 1976. The applicant was informed on 12-5-1976 that the request of the applicant was carefully considered by the Central Board of Excise, New Delhi (1st respondent herein) in consultation with Department of Personnel and Administrative Reforms and Legal Affairs and that his request could not be accepted. The applicant made another representation on 13.11.1984 and sought correction of his date of birth. He was once again asked to submit his Matric certificate, proceedings of the Vice Chancellor of Andhra University and other documents referred to earlier. The applicant replied that his date of birth ~~will~~ ^{may} be corrected in the service records on the basis of the date of birth as entered in the University records and ^{which was} subsequently corrected. Some more correspondence took place in between the applicant and the respondents. Subsequently, the applicant was informed by the third respondent as per 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 again submitted a representation on 11-12-1986 which was rejected by the first respondent by an order dated 17.11.1987. So, aggrieved by the order dated 17-11-1987

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the applicant herein filed OA 52/88 on the file of this Tribunal for correction of his date of birth from 20.1.1935 to 28.12.1939. Counter was filed by the respondents ~~therein~~ opposing OA 52/88. After hearing both sides, as per the Judgement dated 31-10-1988, OA 52/88 was dismissed by a Single Member Bench of this Tribunal. After OA 52/88 was dismissed, the applicant put in a Mercy petition on 17.9.1992 to President of India, with a prayer to allow him to continue in service as per his amended date of birth by the University authorities, which is 28.12.1939. But the said Mercy Petition was dismissed on the grounds that this Tribunal had dismissed the OA filed by the applicant in that regard. The applicant was informed about the rejection orders passed by the President of India on 28.12.1992, as per the Memo No. S17/30/92-Estt., dated 31.12.1992. So, the present OA is filed by the applicant to quash the said memo dated 31.12.1992 and for the relief as already indicated above for correction of his date of birth from 20.1.1935 to 28.12.1939.

5. Counter is filed by the respondents opposing this OA.

6. Mr NV Raghava Reddy, Standing Counsel for the respondents maintained that the present OA is hit by the principles of resjudicata in view of the earlier decision delivered by this Tribunal in OA 52/88. Learned counsel for the ~~applicant~~ also relied on a decision reported in AIR 1993 SC 1367 Union of India Vs Harnam Singh

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and on the basis of the said decision, he contended that, this OA is liable to be dismissed.

7. In OA 52/88 and in the present OA 351/93, parties are one and the same. The issues raised in both the OAs are also one and the same. While disposing of OA 52/88 as per its Judgement dated 31-10-1988 this Tribunal held as follows:

".....
.....

But the facts brought out in the application disclose~~s~~ 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~~ 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 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 4/4/86 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(5) below FR 56. Whatever be the wrong reason given by the department, the fact remains that the applicant had received a rejection as long ago

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as in 1986 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 were passed in 1987 on his representation of 1984 was on consideration or review of the earlier order of rejection passed in 1976 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 fide and as the applicant had by suppression of material obtained an order from the respondents, it would be folly unnecessary to go into the legality or validity of the said impugned order. The application is accordingly dismissed....."

So, in view of the above findings in OA 52/88, we do not have any doubt to come to the conclusion that the present OA is hit by the principles of resjudicata. Hence, on the point of resjudicata this OA is liable to be dismissed. It would be appropriate to refer to ^{the} decision of the Supreme Court reported in AIR 1993 SC 1367 Union of India Vs Hanum Singh wherein it is laid down as follows:

ordinate and unexplained delay or laches
n the part of the respondent to seek the
cessary correction would in any case have
stified the refusal of relief to him.
en if the respondent had sought correction
the date of birth within five years after 1979
e earlier delay would not have non-suited him
t he did not seek correction of the date of
rth during the period of five years after

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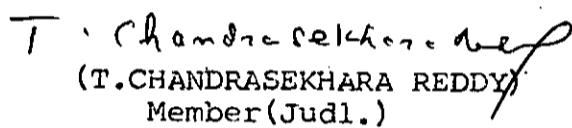
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the incorporation of Note 5 to FR 56 in 1979 either. His in-action for all this period of about thirty five years from the date of joining service, therefore, ~~present~~ precludes him from showing that the entry of his date of birth in service record was not correct."

The above observation made by the Supreme Court applies on all fours to the facts of this case. So, in view of this position, we see no other ~~is~~ alternative except to dismiss this OA, and the OA is accordingly dismissed leaving the parties to bear their own costs.


(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 14-10-1993

(Dictated in the open court)

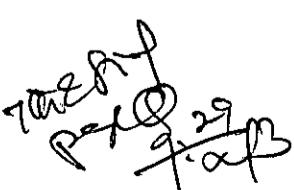
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By Registrar(Judl.)

Copy to:-

1. Secretary, Central Board of Excise & Customs, Union of India, New Delhi.
2. Collector of Customs, Customs House, Madras-001.
3. Collector of Customs, Customs House, Vizag-035.
4. One copy to Sri. M.V.K.Viswanadham, advocate, H.No. 8-3-678/69, Pragathi nagar, Yousufguda, Hyd-45.
5. One copy to Sri. N.V.Raghava Reddy, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-



O.A-351/93

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER(A)
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM: M(A)

Dated: 14/10/ -1993

ORDER/JUDGMENT:

M.A./R.A./G.A. No.

in

O.A. No.

351/93

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

Admitted and Interim directions
issued

Allowed.

Disposed of with directions
Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm

