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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.383 of 1994.

Between

Dated: 22.12.1995.

C.Rama Swamy

...

Applicant

And

Represented by the Secretary to Government,
Ministry of Home Affairs, Department of Personnel, New Delhi.

2. The State of Andhra Pradesh
3. The Director General and Inspector General of Police, Government of Andhra Pradesh, Hyderabad.

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Respondents

Counsel for the Applicant : Sri. Sudhender Kulkarni

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

: Sri. I.V.K.Redha Krishna Murthy,
SC for the State of A.P.

CORAM:

Justice V. Venkatesh Rao, Vice Chairman

Hon'ble Mr. R.Rangarajan, Administrative Member

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1985

This O.A. was filed praying for direction to the respondents to treat the date of birth of the applicant as 15-6-1941 instead of 17-6-1939 and to effect necessary correction accordingly in his service register maintained by the respondents by holding that the applicant is entitled to be retained in service until the age of superannuation based on his correct date of birth as 15-6-41.

2. The applicant is a direct recruit I.P.S. officer of 1968 batch and he was allotted to Andhra Pradesh State. His date of birth was noted as 17-6-39 in the school registers and the same was mentioned in his S.S.L.C. register and also in his application for appearing for civil services. He was selected for IPS.

3. It is pleaded for the applicant that he was born in Peruvalayam village, Arakonam taluk, North Arcot district, Tamilnadu and both his parents are not literates and his mother late Smt.Ettiayammal had given his date of birth as 17-6-39 at the time of his entry into the school and when he verified his records at this residence in his native place in 1982, he saw his horoscope wherein his date of birth was written in Tamil as "Vishu year 8th day of Aani month, Saturday" which corresponds to 16-6-1941 and even in the birth register his date of birth was noted as 15-6-41. Then he submitted representation dated 4-9-82 to A.P.State Government by enclosing all the original records of births of himself and his brothers and sisters obtained from the office of the Sub-Registrar, requesting for correction of his date of birth as 15-6-41. By Memo.

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dated 20-10-82 the said claim was negatived. Then he preferred an appeal to the Govt. of India by representation dated 1-12-82 and he again submitted letter dated 14-8-83 in regard to the same. The applicant again sent reminders on 25-1-88 and 26-9-88 and then by order dated 23-5-90 his request for alteration of date of birth was rejected.

4.4. But before that, by memo. dated 2-11-88 the applicant was informed through the Director General of Police to submit the rectified matriculation certificate sought for by the Govt. of India. He preferred O.A. 404/91 before the Central Admn. Tribunal, Madras Bench as at that time he was on deputation to the Govt. of India and was posted as D.I.G., Central Industrial Security Force, Southern Region with headquarters at Madras. But it is stated that as the State Government desired, by memo. dated 5-11-92 that the applicant should move the Hyderabad Bench of the Tribunal in regard to the correction of his date of birth instead of Madras Bench, he obtained permission for withdrawal of O.A. 404/91 on Madras Bench with liberty to move the Hyderabad Bench and on such permission being given, the O.A.404/91 was dismissed. The applicant filed O.S. No.401/91 on the file of District Munsiff, Sholinghur, Tamilnadu praying for correction of his date of birth in the matriculation certificate as 15-6-41 and the same was decreed on 29-10-92. It is stated that the Government was bound to correct the date of birth in his service register as 15-6-41 on the basis of the decree in O.S. 401/91 referred to supra.

5. It is also pleaded that it is one of discrimination when the representations for correction of date of birth of the applicant was not entertained, when they were entertained in regard to Sri Kakkar and Sri Radha, direct recruit IPS officers.

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6. Rule 16-A was incorporated in All India Services (Death-cum-Retirement Benefits) Rules, 1958 by notification dated 4-12-1971 and the same is referred to as AIS (DCRB) Second Amendment Rules, 1971. This provision was intended for determination of date of birth of All India Service Officers. Rule 16-A(4) of 1971 rules lays down that every member of the service holding office immediately before the commencement of AIS (DCRB) Second Amendment Rules, 1971 shall within three months from the said commencement, make a declaration as to the date of birth and on receipt of the same, it ^{has to} ~~will~~ be disposed of within 12 months (4 months was amended as 12 months) after making such enquiry. Rule 16-A (5) of the said rules stipulates that if no such declaration is made, the Central Government shall after taking into account such evidence as may be available to it and after giving such member a reasonable opportunity of being heard, make an order determining the date of birth of such member. But the said rule 16-A was deleted and a new Rule 16-A was inserted by way of amendment by notification No.25015/7/77-AIS(II) dated 7-7-78 by the Dept. of Personnel & AR, Ministry of Home Affairs, Govt. of India. Provisions similar to sub-rules (3) to (5) of Rule 16-A of 1971 rules do not find place in Rule 16-A of 1978 rules. It was pleaded by way of additional affidavit that it is not open to amend the rules passed in exercise of powers under Section 3 of the All India Services Act, 1951 with retrospective effect if it adversely affects the interests of the All-India Services officers. Hence by way of additional affidavit, it was pleaded that the deletion of sub-clauses (4) and (5) of Rule 16-A of 1971 rules by 1978 Amendment is not valid.

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7. When the matter had come up for consideration on 21-6-95, we felt that in view of the importance it is ~~desirable~~ ^{better} to hear the learned additional solicitor general, and Shri M. Chandrasekharan, the learned Additional Solicitor General appeared in this case and addressed ~~his~~ arguments for the respondents.

8. It is convenient to refer to Rule 16-A of 1971 Rules and Rule 16-A of 1978 Rules of AIS (DCRB) Rules, 1958 and they are as under:

1971 Rules

16-A: Determination of date of birth: (1) For the purpose of the determination of the date of superannuation of a member of the Service, such date shall be calculated with reference to the date of his birth as accepted, or determined, by the Central Government under this rule.

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

(a) the Indian Administrative Service under clause (a) or clause (aa) of sub-rule (1) 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, 1965;

the date of birth as declared by such person in the application for recruitment to the Service shall, in the absence of any cogent evidence to the contrary, be accepted by the Central Government on the date of birth of such person.

(3) The date of birth, in relation to a person to whom sub-rule (2) does not apply and who is appointed to the Service after the commencement of the All-India Services (Death-cum-Retirement Benefits) (Amendment) Rules, 1971, shall be determined in the following manner, namely:-

(a) every such member shall, within one month of the date on which he joins the Service, make a declaration as to the date of his birth;

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(b) on receipt of a declaration made under clause (a) the Central Government shall, after making such inquiry as it may deem fit with regard to the declaration and after considering such evidence, if any, as may be adduced in support of the said declaration, make an order, within four months from the date on which such member had joined the Service determining the date of birth of such member.

member of the Service holding office immediately before the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Scales, 1971, shall within three months from such commencement make a declaration as to the date of his birth.

(b) On receipt of a declaration made under clause (a), the Central Government shall, after making such inquiry as it may deem fit with regard to the declaration and after considering such evidence, if any, as may be adduced in support of the said declaration, make an order, within four months from the date of such declaration, determining the date of birth of such member.

- (5) In the case of a member of the Service referred to in sub-rule (3), or sub-rule (4), as the case may be, who fails to make a declaration in respect of the date of his birth as required by such sub-rule, the Central Government shall, after taking into account such evidence as may be available to it, and after giving such member a reasonable opportunity of being heard make an order determining the date of birth of such member.
- (6) Notwithstanding anything contained in this rule, no date of birth, other than the date of birth declared by a member of the Service, shall be accepted or determined, in relation to such member except after giving such member a reasonable opportunity of showing cause against the proposed action.
- (7) Every date of birth accepted, or determined, under this rule shall subject to rule 16B, be final.

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1978 Rules

" 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 birth as accepted by the Central Government.
- (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 (1) of rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954; or
 - (b) the Indian Police Service under clause (a) of or 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) or 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 person.
- (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 bona-fide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)"

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9. It is manifest from the above that Rule 16-A (4) of 1971 Rules was applicable in regard to All India Services officers who were appointed prior to 4-12-71. It had given an opportunity to the ^{p v - 1971} All India Services Officers to make a declaration as to the date of birth within three months from ~~such~~ commencement of 1971 second amendment rules. It also stipulated time limit for the Central Government to pass an order in regard to the same, after an enquiry. But Rule 16-A(5) of 1971 rules lays down that in case where no such declaration is filed, the Central Govt. shall, ~~make an order~~ after taking into account such evidence as may be available to it and after giving such a member a reasonable opportunity of being heard, determine the date of birth of such member. No time limit is fixed in regard to the same. It is urged that it enjoins upon the Central Government to make an ^{appoint prior to 4-12-71} order determining the date of birth of a member and the same shall be taken as basis for ordering retirement on attaining the age of superannuation. It is further contended that when no such time limit was fixed for determination of the date of birth, it is necessary for the Central Government to make an enquiry and determine the date of birth when material is placed before the Central Government to establish that the date of birth as already noted is not correct. // But the learned Addl. Solicitor General contended that as the applicant had made the representation for the first time only in 1982, and as by then Rule 16-A of 1971 was deleted and as there is no provision in Rule 16-A of 1978 amendment ^{Rules} corresponding to Rule 16-A (4) and (5) of 1971 Rules, the applicant cannot claim that it is necessary for the Central Government to determine the date of birth. It is further urged by the learned Addl. Solicitor General that

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Rule 16-A (3) of 1978 is equally applicable to direct recruits appointed prior to 4-12-71 and hence the date of birth as noted in the service register of the applicant on the basis of the date of birth furnished by the applicant in his application shall be treated as ^{entry in} official ^{record} and the same cannot be corrected unless there is a clerical mistake. It is also urged for the respondents that as no steps were taken prior to 7-7-78 in pursuance of Rule 16-A(5) of 1971 Rules the applicant cannot claim the benefit on the basis of sub-Rule (5) of Rule 16-A of 1971 Amendment Rules.

10. The main issue that arises is as to whether Rule 16-A(5) of 1971 amendment rules confer ^{any} vested rights on All-India Services officers. The said sub-rule states that the Central Government had to determine the date of birth of All India Services officers employed prior to 4-12-71, if he had not made any declaration within the time stipulated in regard to the date of his birth. It means that it is not a case where the date of birth already noted in the applicant's service register before 4-12-71 shall be taken as the basis for passing an order in regard to retirement on superannuation and it is necessary for the Central Government to determine the date of birth of such All-India Services Officers. It follows according to the learned counsel for the applicant that it is open for the applicant to place the necessary material available, at the time of enquiry for

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such determination and thus he had a valuable right of getting his date of birth corrected if there was a mistake in the original date noted and the right so conferred cannot be taken away by the subsequent amendment and if it has to be so held, it would be a case of amendment with retrospective effect and as it adversely affects the All India Services Officers the same is violative of All India Services Act 1951.

11. If a rule is formulated with regard to the recruitment or ^{seniority} ~~determination of service~~ or any monetary benefit, the same will be effective from the date on which it will come into effect. It is ^{well established} ~~stated~~ that in case of amendment of recruitment rules, the vacancies for promotees have to be considered on the basis of the pre-amended rule, similarly in the case of amendment in regard to seniority, seniority of those who had joined the seniority unit prior to the date of amendment ~~in regard to seniority~~ had to be determined in accordance with the pre-amended rules. If it is a case of conferring monetary benefit, one will get it from the date of notification ^{comes} ~~coming~~ into effect, unless it states otherwise. There might be also a case where the notification may be issued for withdrawal of the monetary benefit already given. ~~It is stated that if it is a case of~~ ^{if} notification with regard to the withdrawal is made retrospective, it is one of affecting the vested rights i.e. the right already accrued in regard to the benefit conferred prior to the date of such notification and hence it is necessary to consider as to whether such notification to the extent of retrospective effect is arbitrary. Thus, generally in regard to the various conditions of service, one can say as to whether the amended rule or pre-amended rule is applicable for it

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can be easily known as to whether the employee/officer ^{accrued} has got a right before amendment or not.

12. But a difficulty arises in regard to a provision for determination of the date of birth of the employee/officer. The date of birth of the employee/officer is ~~mainly~~ ^{mainly} important ~~only~~ ^{only} for determining the date of retirement on attaining the age of superannuation. In ~~near~~ ^{some} cases it is one of importance for fixation of seniority. It is also one of importance if any age limit is fixed for eligibility for promotion or for exemption for pension. ~~can it be stated as a right~~ ^{that} in regard to the determination of date of birth accrues ~~only~~ on the alleged date of retirement on attaining the age of superannuation or it is ~~one of~~ ^{or} a right which accrued on the date on which one joined the service or the date on which the provision is made, when no such provision was in existence by the date when one has joined the service. It is not proper to state that the right in regard to determination of date of birth ^{accrues} ~~arises~~ only at the time of alleged date of retirement on attaining the age of superannuation for two reasons: (i) Unless the date which has to be taken as basis is known, one cannot be issued an order in regard to the date of retirement on attaining the age of superannuation. And (ii) it is necessary to make an enquiry where the date of birth as already noted in the service register is challenged and such enquiry requires considerable time. There is no provision to indicate when or within what time before the date of retirement on attaining the age of superannuation as noted in the service register, ^{the date of birth} has to be determined. As already observed, ~~that the~~ time limit for determination under sub-rule (5) of Rule 16-A

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of 1971 Rules wasnot stipulated. So in the circumstances it is just and p. roper to hold that a right to get the date of birth of all-India service officers, ^{determined} had arisen on expiry of three months from 4-12-71 for the all-India service officers appointed prior to that date, when they failed to make a declaration in regard to date of birth. Such a right cannot be taken away, for proviso to Section 3(1) of All-India Services Act lays down that no amendment should be made with retrospective effect if it is going to affect the interests of All-India Services members, and an amendment which had the effect of taking away the right, ^{allowed} is in the nature of giving retrospective effect ~~for the amendment~~.

13. Sub-rule (3) of Rule 16-A of 1978 Rules reads as "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 documents maintained by the concerned Government shall be accepted by the Central Government as the date of birth of the person" (emphasis supplied). Sub-rule (2) of Rule 16-A of 1978 rules is applicable to all-India Services officers appointed on or after 4-12-71. So it means that sub-rule (3) of Rule 16-A of 1978 rules is applicable to both direct recruits and promotees who were appointed prior to 4-12-71, urged the learned Addl. Solicitor General. But it was urged for the applicant that as there will not be any official document in regard to the direct recruits, if he is fresh from college, ^{and as} ~~his~~ Birth register ^{can} ~~is~~ not ^{be} treated as official document as contemplated under the said sub-rule, ~~then~~ it has to be held that it is not applicable to pre-1971 direct recruits. But we cannot accede to the said contention for the applicant for even the entry in regard to the

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date of birth in the service register made on the basis of the date of birth as noted in the application can be held as an entry in the official document, as submitted by the learned addl. solicitor general. Thus, there are no grounds to read the emphasised portion as referring to only promotees prior to 1971, and that it is not applicable in regard to the direct recruits prior to 1971. Further it may be noted that sub-rule (4) of Rule 16-A of 1978 is applicable to both direct recruits and the promotees whether appointed prior or subsequent to 4-12-71. When there is no other provision in Rule 16-A of 1978 in regard to pre-1971 direct recruits and when Rule 16-A(4) of 1978 makes clear that it is applicable even in regard to pre-1971 direct recruits and when the include pre-1971 direct recruits, we hold that Rule 16-A(3) of 1978 is applicable even to pre-1971 direct recruits.

14. But as the said amendment in regard to the pre-1971 direct recruits cannot be held as valid in view of the proviso to Section 3(1) of the All-India Services Act, 1951, it has to be ^{held} ~~held~~ that the said amendment of Rule 16-A(3) of 1978 in regard to pre-1971 direct recruits has to be held as invalid, and hence the Rule 16-A(5) of 1971 Rules continues to operate in regard to pre-1971 direct recruits. We do not wish to express anything in regard to pre-1971 promotees as the same is not a matter for consideration in this case.

15. In the above view, there is no need to consider in regard to the plea of discrimination and hence we are not adverting to the same for the disposal of this O.A. As we held that sub-rule (5) of Rule 16-A of 1971

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To

1. The Secretary to Govt.,
Ministry of Home Affairs, Dept. of Personnel,
Union of India, New Delhi.
2. The Chief Secretary, Secretariat,
State of A.P. Hyderabad.
3. The Director General and Inspector General of Police,
Govt. of A.P. Hyderabad.
4. One copy to Mr. Sudhender Kulkarni, Advocate, CAT. Hyd.
5. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Mr. I.V. Radhakrishna Murthy, Spl. Counsel for A.P.
CAT. Hyd.
7. One copy to Library, CAT. Hyd.
8. One spare copy.
9. Copy to All Reporters as per standard list of CAT.
pvm. Hyd.

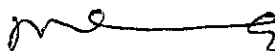
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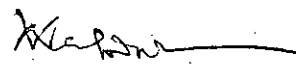
Amendment Rules continues to apply in regard to pre-1971 direct recruits and as there was no determination in regard to the date of birth of the applicant, it is necessary to give a direction to the respondents to determine the date of birth of the applicant, after giving opportunity to place the necessary material available with him. Hence it is not necessary to consider in regard to the effect of the ~~amendment~~ O.S. 409/91 on the file of DMC, Sholinghur, Tamilnadu. As such there is no need to refer to the various judgements relied upon for both the sides; and it is suffice to observe that the determination by the respondents ^{shall} be in accordance with the law.

16. In the result the respondents have to determine the date of birth of the applicant in accordance with the Rule 16-A (5) of AIS (DCRB) Rules, 1958 as amended by Second Amendment Rules of 1971. It is needless to say that in case it is found that the date of birth of the applicant has to be altered from 15-6-39 the necessary correction has to be made. The same has to be taken as basis for determination of the age of superannuation of the applicant ~~on attaining the age of superannuation.~~

17. Before we conclude, we are extremely thankful to Shri M.Chandrasekharan, the learned Addl. Solicitor General for addressing his arguments in this O.A. when we expressed, as per our order dated 21-6-95 that in view of the importance of the case we wish to hear the Addl.Solicitor General.

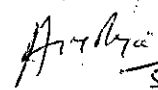
18. The O.A. is ordered accordingly. No costs. //


(R.Rangarajan)
Member/Admn.


(V.Neeladri Rao)
Vice-Chairman

Dated the 22nd day of December, 1995.

mhb/-


Deputy Registrar (DCC)

I COURT

TYPED BY

CHECKED BY

COMPARED 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. RANGARATNAM

Dated: 22-12-1996

~~ORDER~~ JUDGMENT

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

O.A.No.

T.A.No.

in

383/94

(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

