

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,

AT HYDERABAD.

O.A.No. 856/96.

Date of decision: 15.10.1997

Between:

D.V.Krishna Rao.

.. Applicant.

And

- 1.The Controller of Defence Accounts
(Navy) No.1, Cooperage Road, P.B.No.589,
Bombay, 400 039.
- 2.Controller General of Defence Accounts,
West Block-V, R.K.Puram, New Delhi, 110 066.
3. Union of India rep. by the Secretary,
Department of Defence Accounts,
New Delhi. .. Respondents.

Counsel for the applicants: K.K.Chakravarthi.

Counsel for the respondents: V.Rajeswara Rao.

JUDGMENT.

(By Hon'ble Sri H. Rajendra Prasad, Member (A).)

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The applicant was initially appointed on 15.12.1962. The Secondary School Leaving Certificate submitted by him at the time of his initial appointment shows his date of birth as 15.12.1938. On 5.8.1991, i.e., more than 28 years after his initial appointment, the applicant submitted a representation to Respondent No.1 requesting that his date of birth be changed from 15.12.1938 (as originally recorded) to 11.9.1939. The request was based on two documents:

- (i) a certificate issued by a Private Hospital on 5.8.1983, and

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(ii) a certificate issued by the Registrar of Births & Deaths, Guntur Municipality in the Department of Medical Health (Vital Statistics), Government of Andhra Pradesh. His representation was recommended and forwarded by his immediate superior officer but was rejected by the Respondent No.1 vide Annexures 2 and 3 to the O.A. The applicant thereupon submitted one more representation to the 2nd respondent in November, 1994. This was rejected once again in January, 1995.

2. Aggrieved by the decision of the respondents the applicant prays for setting aside the impugned order (A.5) and to direct the respondents to consider his representation on merits and to effect the necessary change in the date of birth as recorded in the official records.

3. The respondents in their counter affidavit submit that the date of birth 15.12.1938 was recorded on the basis of the SSLC submitted by the applicant himself at the time of his initial appointment and that No^{te} 6 under FR 56 does not permit the acceptance of the applicant's request. They further point out that even though the applicant had secured a certificate from the hospital as well as from the Registrar of Births and Deaths as long back as 1983, he submitted his request for change only in 1991 i.e., after more than 8 years. It is also pointed out that the SSLC still shows the applicant's

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date of birth as originally recorded and no alteration has been made therein. They state that the request for alteration in the date of birth has come 28 years after the initial appointment and that a reply given to him on his representation in January, 1995 (impugned order) cannot create a fresh ground for the applicant to agitate his grievance in disregard of the limitation aspect of the case. The respondents add that having accepted the date of birth that was recorded in their documents without any protest for more than two-and-a-half decades, the applicant is estopped from seeking any alteration therein since he had many opportunities of verifying the correctness of the date as entered in the Service Book.

4. Based on these arguments the respondents assert that the applicant's claim is without any merit and deserves to be dismissed.

5. A considerable amount of case-law, besides Note 6 below FR 56, have been cited in the case. Some of those are discussed below:

6. Sri K.K.Chakravarthy, the learned counsel for the applicant cited the following cases:

- 1) CHARLES WILSON VS. UNION OF INDIA AND ANOTHER
(ATR 1987 (1) CAT 103.)

In this case the Tribunal allowed the O.A., in view

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of the oral and documentary evidence produced in support of the petitioner's claim for change of date of birth. It was noted that while joining service the applicant's record of service was prepared but the column regarding 'other documents' was ^{left} vacant in the said form which established that the Secondary School Leaving Certificate was not the basis for recording of his date of birth. The Tribunal held the view that if the authorities failed to apply their mind objectively to the documents produced by the applicant, as was evident from the facts of the case, the claim has to be examined even subsequently at a later stage of service. Also, there was no indication at all in the service register that the applicant was a Matriculate, although in fact he was one. Further more, a number of over-writings were also seen to exist in the said Register.

7. In the present instance, however, a Matriculation Certificate was duly available and in fact formed the sole basis for the initial entry of his date of birth in the service documents of the applicant. The case cited has, therefore, ^{to} be distinguished from the present one, because of the obvious difference in facts.

8. In HIRA LAL Vs. UNION OF INDIA (1987(3) ATC 13) it was held that any error in the service records as regards the date of birth can be corrected if there is satisfactory record of proof as to what the correct date is. If there is

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any error in the service record the same has to be corrected since no service rule prohibits ^{such} 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 entry in the service record is not correct. It was held therefore that notwithstanding rule 79 of GFR, 1963 the question as to whether a government servant has to retire on attaining the age of superannuation or not has to be determined though primarily it is to be determined on the basis of entry of date of birth in service record, that person is entitled to show that that entry is not correct and Rule 79(2) cannot stand in the way of the applicant for getting the entry in the service record corrected.

9. On a close scrutiny, it is, however, noticed that this Judgment was based on the fact that the original date of birth was not recorded on the basis of any authentic document. The following extract from para 12 of the said judgment makes it obvious:

"But even from that record it is evident that that date was not based upon any school record

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or any other authentic document. Even the S.O. recognises the entries in the service records could be erroneous and makes provision for rectification. Hence the mere fact that the applicant has signed the service record on number of occasions does not operate as an estoppel against him so as to take away his right to get the erroneous entry as to date of birth corrected in the light of Note 5 to F.R.56."

Thus the case cited and the present application can be distinguished on the facts and the conclusions based on those facts.

10. The applicant cannot, therefore, draw any support on either of the two cases cited by him.

11. Mr. V.Rajeswara Rao, learned counsel for the respondents on the other hand cited a number of cases which could go to disprove the correctness or admissibility of the applicant's claim. Some of the citations are mentioned below.

A.I.R.1993 S.C. 2647 (SECRETARY & COMMISSIONER,
HOME DEPARTMENT V. R. KIRUBAKARAM.)

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The Hon'ble Supreme Court in SECRETARY & COMMISSIONER,
HOME DEPARTMENT vs. R. KIRUBAKARAM (A.I.R.1993 S.C.2647) held:

" An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature is made out the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in

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accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed with the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth.

Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases, it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of entries in respect of their dates of birth in the service books. By this process, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal, must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

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The Hon'ble Supreme Court further held:

"If an application is made for correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of growing tendency amongst a section of public servants to raise such a dispute, without explaining as to why this question was not raised earlier.

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12. In UNION OF INDIA vs. KANTILAL HEMATRAM PANDYA (A.I.R.1995 S.C.1349) the Hon'ble Supreme Court while referring the case in UNION OF INDIA vs. HARNAM SINGH (1993 AIR SCW 1241 at page 1246) opined:

"A Government servant, after entering into service acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil service is thus of utmost importance for the reason that the right to continue in service stands decided by the entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a Civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals.

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It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age."

13. In UNION OF INDIA & OTHERS vs. Mrs. SAROJ BALA

(1961) 1 S.C.J. 326) the Hon'ble Supreme Court in para 5 of the Judgment held:

"It is unthinkable that having been born in an educated family and having remained in service for 18 years she discovered that her date of birth would be wrong. Under these circumstances, the Tribunal was wholly unjustified and obviously illegal in allowing the application and directing correction of the date of birth. Though Mr. Suri sought to bring to our notice that she made her representation in the year, 1981, it is of little importance for disposal of the matter on merits."

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14. Based on the judgments and the opinions cited above, the learned Additional Standing Counsel for the respondents submitted that there is no substance in the claim of the applicant and the O.A., deserves to be rejected.

15. The conspectus judgments on the subject leaves one in no doubt that it is primarily for the applicant to enable the authorities to have the date of birth altered as per his claims on the basis of valid supporting documents within a reasonable time. A request of this nature cannot be made at any point of time of his choosing beyond the time limits fixed for the same.

16. The plea by way of extenuation of this inordinate delay in this case is that the applicant happened to have some discussions with his mother only in 1991 which revealed to him for the first time that his date of birth recorded in the Matriculation Certificate as well as service documents was incorrect. This plea is too preposterous to be accepted. Here it is worth noting that even after obtaining what the applicant calls authentic Proof from the Registrar of Births and Deaths and also from a Private Hospital, the applicant waited for 8 years more before making a request for the alteration in his

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date of birth. The long delay of 8 years is nowhere explained. There can be little doubt^{that} the applicant was all along aware of the date which was recorded in the Matriculation Certificate, and also on the same basis entered in the Service Register at the time of his initial entry into service. The applicant is an educated person and could not have been oblivious to the date as contained in these two documents i.e., Matriculation Certificate and the Service Register, and the implication thereof in terms of his superannuation. If he has acquiesced in the action of the respondents in entering certain date of birth in the records, he has done so with full knowledge of all facts and has also unaccountably waited for full 28 years after his initial appointment. It will be futile to contend now that the date needs alteration at this belated stage.

I find no merit in the O.A., and disallow the same. No costs.

H. RAJENDRA PRASAD,
MEMBER (A)

Date of decision: 15 OCT 97

Deputy Registrar

O.A. 856/96.

To

1. The Controller of Defence Accounts (Navy)
No.1, Cooperage Road, P.B.No.589,
Bombay, 400 039.
2. The Controller General of Defence Accounts,
West Block-V, R.K.Puram, New Delhi-66.
3. The Secretary, Union of India,
Dept.of Defence Accounts,
New Delhi.
4. One copy to Mr.K.K.Chakrabarty, Advocate, CAT.Hyd.
5. One copy to Mr.V.Rajeswar Rao, Addl.CGSC..CAT.Hyd.
6. One copy to HHRP.M.(A) CAT.Hyd.
7. One copy to D.R.(A) CAT.Hyd.
8. One spare copy.

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I. Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE-CHAIRMAN

And

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

DATED:- 15/10/97

ORDER/JUDGMENT.

M.A.,/RA.,/C-A.No..

in

Q.A.No. 856/96.

T.A.No.

(W.P.)

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No.order as to costs.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
दस्तावेज/DESPATCH
21 OCT 1997
हैदराबाद न्यायपीठ
HYDERABAD BENCH