

200

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.1007 of 1997.

Date of Order -

Between :

A.P.Rajan, aged about 56 years,
Son of A.V.Parameswaran Pillai,
Director General, Anti Corruption Bureau,
Andhra Pradesh, Hyderabad.

.... Applicant

And:

1. The Secretary to Government,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-110001.

2. The Chief Secretary to Government
of Andhra Pradesh, Secretariat,
Hyderabad.

.... Respondents

Counsel for the Applicant .. Mr. J. Sudhir.

Counsel for the Respondent No.1 .. Mr. N.R.Devaraj, SrCGSC.

Counsel for the Respondent No.2 .. Mr. P.Naveen Rao,
Special S.C. for Govt. of
Andhra Pradesh.

CORAM :

HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDL.)

O R D E R.

(Per Hon. Mr.B.S.Jai Parameshwar, Member (Judl.)

1. Heard Mr.J.Sudhir, learned counsel for the applicant and Mr. N.R. Devaraj, learned counsel for the respondent No.1. The respondent No.2 has filed his counter to the O.A.

2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 15.7.1997.

(Jai)

3. The point which arises for our consideration in this O.A. is whether the applicant is now entitled to ask for an alteration of his date of birth entered in his service record, which entry had been made at the time of his entry into service in 1964.

4. The applicant had appeared in the All India Services Joint Competitive Examination held during the year 1963. On the basis of the said examination, the applicant was selected as a direct recruit to the Indian Police Service (I.P.S. of 1964 batch). Later he was assigned to the State of Andhra Pradesh Cadre. In his Service Book the date of birth which was entered was 20.9.1939. The entry was made on the basis of his date of birth as recorded in the educational certificates and also in his application for appearing in the All India Civil Services Examination in the year 1963 in which he was selected. At the time of his appointment, the All India Services (Death-cum-Retirement Benefits) Rules, 1958 was in force.

5. By notification dated 4.12.1971 (Annexure-9 to the OA) the Rules 1958 came to be amended. By way of amendment, the new provisions, namely, Rules 16A and 16B were inserted. These amended provisions provided an opportunity to All India Service Officers to declare their actual and correct date of birth within a specified time. The notification was published in the Official Gazette dated 18.12.1971. As per Rule 16A (4) (a) the officers were required to declare their actual and correct date of birth on or before 18.3.1972. The amended rules are hereinafter referred to as '1971 Rules'.

However, on 6.5.1972 the I.P.S. Officers were directed to declare their dates of birth under the amended 1971 Rules.

JW

6. On 21.9.1972 the applicant submitted a representation stating that his date of birth entered in the Service records was not his actual date of birth and that he would be submitting a detailed representation.

7. On 16.3.1973 the applicant submitted a representation contending that the date of birth 20.9.1939 as entered in the service records was not correct and that his actual and correct date of birth is 23.10.1940. He further stated that his date of birth in the Birth Register has been entered according to Malayalam Era ; that the date as entered in the service records corresponds to 4.2.1115 which corresponds to 20th September, 1939 and that his actual and correct date of birth according to Malayalam Era is 7.3.1116 which corresponds to 23.11.1940; and that thus the applicant prayed for change of his date of birth in the service records from 20.9.1939 to 23.10.1940.

8. Though the applicant faintly submitted that the mistake in his date of birth was crept in at the time of admission in the Elementary School in Kerala, in his representation dated 16.3.1973 he did not elaborate as to who was responsible for furnishing the said incorrect date of birth. However, at page 5 in para 6(c) of the O.A. the applicant has come with a version stating that his uncle one Gopalaswamy Pillai was responsible for the said incorrect entry of his date of birth. The applicant claims to be the eldest son of his parents. He submitted the Certificate of Birth bearing No.241/70(1) dated 27.2.1973 (Annexure-6) issued by the Executive Officer, Anchal Panchayat of Kerala State. The Executive Officer further gave the corresponding dates in the Christian Era (Annexure-7). The applicant further states that his parents had three sons (including himself) and three daughters.

JKW

9. That on 8.2.1973 the Ministry of Home Affairs, New Delhi informed the Government of Andhra Pradesh through Inspector General of Police (Annexure-9) that the officers had made declaration of their date of birth after 18.3.1972 and therefore, the said representations have been considered as time-barred and that their existing dates of birth would stand good. This letter was communicated to the State of Andhra Pradesh on 13.2.1973.

10. On 13.4.1978 the applicant through a letter dated 13.4.78 enquired his higher officers as to the fate of his representation dated 16.3.1973. As a reply to the said letter, the Inspector General of Police directed the applicant to furnish a copy of the representation dated 16.3.1973. Accordingly the applicant submitted a copy of the representation dated 16.3.1973 through his letter dated 20.6.1978 (Annexure-14). The applicant has explained certain circumstances which prevented him from making declaration of his actual and correct date of birth before 18.3.1972. It is his case that he was deputed for training at Mount Abu on 3.4.1972. As per the amended 1971 rules, he was expected to submit his declaration regarding his date of birth on 18.3.1972. Therefore, his deputation to the training at Mount Abu on 3.4.1972 may not be relevant.

11. The applicant has relied upon the various citations in the O.A. and also relied upon the instances wherein the respondent No.1 had altered the dates of birth of certain I.A.S. and I.P.S. officers even after 7.7.1978. At this stage, it is to be mentioned that the amended 1971 Rules came to be substituted by an altogether new provision through the second amendment 1978. The said

Jan

second amendment came into force from 7.7.1978. the amended 1971 Rules which came into force from 18.12.1971 ceased to be operative effective from 7.7.1978. According to the applicant, his representation dated 16.3.1973 has not been considered. Further he has submitted a detailed representation dated 10.4.1996 (page-51 of the O.A.)

12. The applicant has filed this O.A. praying this Tribunal to direct the respondents herein to treat the applicant's date of birth as 23.10.1940 instead of 20.9.1939 by holding that he is entitled to remain in service until he attains the age of superannuation on the basis of his actual date of birth as 23.10.1940 and not as 20.9.1939 and that the Central Government is under a statutory duty under the amended 1971 Rules to determine his date of birth as 23.10.1940 instead of the present erroneous date of birth recorded in the service book.

13. The respondent No.1 has filed his counter contending that the application is bad for non-joinder of necessary parties; that the application is barred by time; that it has not preserved the file containing the representation of the applicant submitted in the year 1972-73; that it had not anticipated that the applicant would approach the judicial forum after a lapse of nearly 24 years; that the representation of the applicant dated 16.3.1973 has not reached it; that it is upon the applicant to prove that his representation dated 16.3.1973 had reached it; that by its letter dated 8.2.1973 it had rejected the representations of the officers who had declared their date of birth beyond 18.3.1972; that the same was communicated to the then Inspector General of Police through a letter dated 13.2.1973; that on 19.4.1979 the applicant was apprised of the said fact; that after rejection of his representation

through the letter dated 19.4.1979 the applicant has not submitted any Memorial to the competent authority within three months as contemplated under Rule 16-B of the 1971 Rules or under Rule 25 of the CCS(CCA) Rules, 1965; that the Rule 25 of the CCS(CCA) Rules provides a time limit of three years; that the applicant had not made any representation against the rejection which was communicated to him on 19.4.1979 till this date; that in view of the rejection of his representation through letter dated 19.4.1979, the alleged representation of the applicant dated 16.3.1973 became infructuous; that the amended 1971 Rules were substituted by the fresh rules which came into effect from 7.7.1978; that the second amended rules provide no scope for determination of date of birth in respect of All India Service officers; that the present application of the applicant has to be considered in the light of the second amended rules, 1978; that it has relied upon the decision of the Hon'ble Supreme Court of India in the case of Union of India vs. C. Ramaswamy and others (reported in A.I.R.1997 SC 2055 : 1997 SCC(L&S)1158); that it is not possible to state whether the reasons put forth by the applicant now for his late response for change of date of birth were considered or not; that it raised a doubt as to why the applicant remained quiet against the rejection of his earlier representation dated 21.9.1972; that since 19.4.1979 the representation came to be rejected as time-barred; the applicant did not come up with any representation or Memorial even on receipt of the letter dated 19.4.1979; that as per the amended 1971 rules, every officer was required to declare his date of birth within three months from 18.12.1971 and that therefore, any representation made beyond 18.3.1972 cannot be considered and that there is no obligation

on the part of the respondent No.1 to conduct an enquiry as to the date of birth of the applicant as claimed by him and that the O.A. be dismissed.

14. The respondent No.2 has filed his counter stating that the applicant had submitted his representation dated 21.9.1973 that the same was forwarded to the Government of India; that the respondent No.1 by its letter dated 13.2.1973 had treated all the representations submitted after 18.3.1972 as time-barred and further informed that the date of birth of those officers, who had declared after 18.3.1972, as entered in their Service registers would stand good; that thereafter the applicant had submitted a representation dated 16.3.1973; that when it was about to be sent to the Government of India, the State of Andhra Pradesh informed that in view of the decision of the respondent No.1 dated 8.2.1973 the representation dated 16.3.1973 need not be sent to the Government of India and that accordingly the representation dated 16.3.1973 of the applicant was returned to the office of the I.G.P. and that by the letter dated 19.4.1979 the decision was communicated to the applicant that necessary action had been taken on the basis of the amended 1971 Rules and the officers had been informed to declare their dates of birth within the time stipulated in the 1971 rules; that the representation dated 10.4.1996 has been submitted to the Government of India; that it is the Government of India who is to take a decision on the same.

The other averments made in the counter are not relevant for the purpose of considering the prayer made in the O.A.

15. Admittedly, the applicant had not submitted his declaration as to his correct date of birth within the time stipulated in the amended 1971 rules. The said rules came into force with effect from 18.12.1971. As per Rule 16-A (4)(a) an All India Service officer was required to declare his date

Not

208

of birth within 18.3.1972. However, the Inspector General of Police had on the basis of the letter dated 6.5.1972 requested the officers of the I.P.S. to declare their date of birth and in response to the said letter, some officers had declared their dates of birth and the applicant was one amongst them. When the State of Andhra Pradesh submitted the representations of those officers who had declared their dates of birth in response to the letter dated 6.5.1972/ 11.5.1972 the respondent No.1 considered and since those declarations were made beyond 18.3.1972, treated them as time-barred and therefore, the respondent No.1 specifically stated that the date of birth of those officers as entered in the service records would stand good. This letter dated 8.2.1973 was communicated to the State of Andhra Pradesh through letter dated 13.2.1973. However, the I.G.P. failed to communicate the information contained in the letter dated 8.2.1973 to the applicant till 19.4.1979. After 19.4.1979 the applicant claims to be under the impression that what the respondent No.1 rejected by letter dated 8.2.1973 was his representation dated 21.9.1972 and that his representation submitted on 16.3.1973 was still under consideration. Whether this can be considered as a justifiable ground for the applicant to keep quiet till 15.7.1997 the date on which the present O.A. was filed.

Before considering the merits of the application, we feel it proper to reproduce the 1971 rules. A copy of the rules is at pages 73-75 of the O.A. The 1971 Rules are reproduced below :

1971 Rules

16-A. Determination of the 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.

Jan

(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 5 of the Indian Administrative Service (Recruitment) Rules, 1945 or;
- (b) the Indian Police Service under clause (a) of 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.

(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 accepted in support of the said declaration make an order within four months from the date on which member had joined the service determining the date of birth of such member.

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

(b) On receipt of the 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

Jy

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 16-B be final.

16-B. Memorials. The provision of rule 25 of the All India Services (Discipline and Appeal) Rules, 1969 shall, so far as may be, apply to memorials against an order of the Central Government under rule 16-A subject to the modification that for the words "within a period of three years from the date of passing of such order" occurring in sub-rule (1) of the said rule 25, the words "within a period of three months from the date of the order" shall be substituted."

17. The learned counsel for the applicant vehemently contended that the representation dated 16.3.1973 of the applicant has not been considered; that in case the authorities are under the impression that the said representation was beyond 18.3.1972 then the case of the applicant falls squarely under Rule 16-A(5) of the amended 1971 Rules under which the respondent No.1 is under a statutory obligation to determine the date of birth giving the applicant an opportunity to establish his case. His main contention is that we must direct the respondent No.1 to determine the date of birth of the applicant in accordance with Rule 16-A(5) of the amended 1971 Rules. It is to be noted that as on today the amended 1971 Rules are not in existence. It has been repealed and a new provision has been inserted effective from 7.7.1978 through the second Amendment Rules, 1978.

18. The learned counsel for the respondent No.1 vehemently contended that the Tribunal cannot entertain the application of the applicant as it is barred by time.

Jai

At the time of admission, in fact the office of this Tribunal had raised the said question of limitation. Then the applicant submitted the reasons against the objections raised by the office. This Tribunal by its order dated 5.8.1997 over-ruled the objections raised by the office. But in our humble opinion, the said order dated 5.8.1997 does not deter us from considering the question of limitation. Therefore, we will try to consider whether the applicant was diligent in asserting his correct and actual date of birth.

19. Evidently on 19.4.1979 the applicant was fully aware of the fact that his representation for change of date of birth was rejected as time-barred and he was also informed by the said letter that the date of birth as entered in the service records would stand good. In that view of the matter, the applicant was expected to ascertain from the authorities as to what happened to his representation after 19.4.1979. It is only earlier to 19.4.1979 he made enquiries from his superiors as to the fact of his representation dated 16.3.1973. After 19.4.1979 the applicant has not made any efforts to ascertain the fate of his representation dated 16.3.1973.

20. The applicant is an I.P.S. officer. He cannot be compared to an illiterate person or a layman. He is expected to know certain rules, particularly the service rules. He is expected to know the implications of the amended Rules, 1971. He was fully aware that an officer was expected to declare his date of birth within 18.3.1972. Knowing fully well he has come with an explanation that he was deputed to the training at Mount Abu. According to his own version he was deputed to the training at Mount Abu on 3.4.1972. The declaration was expected to be made on or before 18.3.1972. In that view of the matter, the contention of the respondent No.1 that the representation of the applicant dated 16.3.1973

304

has become infructuous on the face of the reply dated 19.4.1979 has some force."

21. The learned counsel for the applicant attempted to distinguish the decision of the Hon'ble Supreme Court of India in the case of Union of India vs. C. Rama Swamy (supra). That case arose out of a decision of this Tribunal in O.A. No. 338/94. The learned counsel for the applicant relying upon the observations made by the Hon'ble Supreme Court of India in para-23 contended that still the amended 1971 Rules are in force and correct and that the interpretation made by this Tribunal on the said rules is still valid.

22. In that case, C. Rama Swamy, an IAS officer submitted his representation on 4.9.1982 for alteration of his date of birth. The Hon'ble Supreme Court held that the distinction made by this Tribunal in that O.A. as regards the IAS officers of pre-1971 and post 1971 batch was not correct and that the second Amendment Rules, 1978 are applicable to all the persons who were recruited earlier to 1971 or subsequent to 1978. This Bench in that case directed the respondents to determine the date of birth of the applicant therein in accordance with Rule 16-A(5) of the amended 1971 Rules. Admittedly, on the date when the O.A. was disposed of, the said rules were not at all in existence. Considering this aspect, the Hon'ble Supreme Court in paras-16 and 17 has observed as follows:-

" 16. The effect of a rule being substituted by a new rule clearly is that the old rule, which stands substituted, can under no circumstances have any application at least from the date when it ceased to exist. With effect from 7.7.1978 a new Rule 16-A having been incorporated in the Rules it was this rule alone which was applicable when the respondent represented for alteration in the date of birth by his first representation of 4.9.1982. Reading Rule 16-A as a whole it is clear that it applies to all persons including those who were in

17. Rule 16-A is a composite rule which was intended to and does apply to all persons of the All India Services to whom the principal rules of 1958 are applicable."

23. We have to consider whether the explanation offered by the applicant that he was under the impression that by the letter dated 19.4.1979 his first representation dated 21.9.1972 was rejected and that he was still under the hope that the respondent No.1 would consider again his representation dated 16.3.1973. No doubt, there may be some force in the said contention for the simple reason that the respondent No.1 rejected the representations of various IPS officers submitted by the State of Andhra Pradesh through their letter dated 8.2.1973. The applicant had submitted the representation on 16.3.1973. Therefore, one may accept the version of the applicant that he was under the impression that by the letter dated 19.4.1979 his first representation was rejected. In fact, in the first representation he did not specifically state what was his actual and correct date of birth. It was only in the representation dated 16.3.1973 the applicant came with a version that his date of birth is 23.10.1940.

24. Even his subsequent conduct remains to be seen. The letter dated 8.2.1973 was communicated to him on 19.4.1979. By then the State of Andhra Pradesh had already secured a copy of his representation dated 16.3.1973. But the idea of communicating the letter dated 8.2.1973 to the applicant on 19.4.1979 was to give him an information that the declaration of date of birth beyond 18.3.1972 was not permissible under the amended 1971 Rules. When ^{was} that ^{is} so, he should have been careful enough to ascertain what was the position after 18.3.1972. For an officer to get the alteration in his date of birth, in our humble opinion, mere submitting a representation and keeping quiet

J.M.

for a number of years may not be considered appropriate.

25. The learned counsel for the applicant now requests this Tribunal to give a direction to the respondent No.1 to decide the representation dated 16.3.1973 in accordance with the amended 1971 Rules. In the first instance, the amended 1971 Rules are not in existence as on today. As per the case of the respondent No.1, it has not seen the representation dated 16.3.1973 of the applicant. In such a situation, it may not be appropriate for this Bench to give a direction to the respondent No.1 to decide the representation dated 16.3.1973 of the applicant. Actually when it was submitted to the State of Andhra Pradesh, the State returned the same to the IGP stating that in view of the letter dated 8.2.1973 the Ministry of Home Affairs, New Delhi had clarified that any declaration of date of birth subsequent to 18.3.1972 could not be entertained. With this interpretation of letter dated 8.2.1973, the State of Andhra Pradesh sent back the representation of the applicant dated 16.3.1973 informing the IGP that it was not necessary to send it to the Ministry of Home Affairs for consideration. We feel that the stand taken by the State of A.P. was correct. The only thing is that the IGP failed to intimate the applicant about its decision as to the representation dated 16.3.1973. Merely because the officials in the State of Andhra Pradesh failed to communicate their decision on the representation dated 16.3.1973, it cannot be said that the said representation was still under consideration before the respondent No.2.

TE-2

26. As already observed, the amended 1971 Rules came to be repealed by the second Amendment Rules, 1978. The Rules 1978 came into force ~~from 7.7.1978~~. The effect of the amendment carried out in 1978 came up for consideration before the Lucknow Bench of this Tribunal in the case of V.P.Kapur vs. Union of India and another (reported in (1994) 27 ATC 383). In para-11, the Tribunal has observed as under :

" 11. It was argued that the rights conferred by the amendment Rules, 1971 cannot be taken away by the amendment Rules, 1978. It was submitted that whereas under the 1971 amendment Rules alteration in the date of birth could be done without any limit, restriction have been imposed by the amendment Rules of 1978 permitting alterations of the accepted date of birth only on the ground of a bona fide clerical mistake. If we look at the scheme of the rules, it becomes clear that so far as persons who entered service before the amendment Rules 1971 came into force, they were given one-time opportunity for corrections of their date of birth. A time-limit was fixed within which such persons could seek correction and if they failed to do so, the Government itself was required to examine the materials and take a decision after giving an opportunity of showing cause to the persons concerned. Sub-clause(7) of Rules, 1978, the date accepted under sub-rule (3) of Rule 16-A of Rules, 1978 cannot be altered except where it is established that a bona fide clerical mistake has been committed in accepting the date of birth. It is not the case of the petitioner, nor was it so argued that any bona fide clerical mistake was committed by the Central Government, when it accepted the petitioner's own request and declared 15.9.1936 as his date of birth. What the petitioner has claimed in his subsequent representations made in the year 1984 and in the further memorial in the year 1985 is that he has come in possession of fresh material to show that his correct date of birth is 21.12.1937, and that the said material should now be taken into consideration, and his date of birth be determined as 21.12.1937. In other words, what he claims in substance, is on review of earlier decision, not on the ground that bona fide clerical mistake was committed in arriving at the decision, ~~bent~~ on the ground that he has discovered fresh and new material which should be taken into consideration and the earlier decision reviewed. Rule 16-A(4) of the Rules, 1978 does not confer such power of review taking into consideration fresh materials and that the only limited scope for interference is when it is established that a bona fide clerical

but

De

mistake was committed in accepting the date of birth. We, therefore, have no hesitation in holding that the rejection of the petitioner's representations and the memorial on the ground that they cannot review a decision already taken in the light of the material furnished by the petitioner is right and does not call for any interference."

27. The vehement contention of the learned counsel for the applicant to direct the respondent No.1 to determine the date of birth of the applicant requires to be considered. He urged that unless the respondent No.1 determines the date of birth of the applicant as contemplated under Rule 16-A(5) of the amended 1971 Rules, it cannot retire the applicant from service. Thus he contended that a duty is cast upon the respondent No.1 to determine the date of birth of the applicant giving him an opportunity to place such material before it to establish his actual and correct date of birth. As already observed, the amended Rules, 1971 are not at all in existence. On the basis of the observations made by the Hon'ble Supreme Court in the case of C. Rama Swamy (supra) we feel that such a request cannot be entertained.

28. The submissions made by the learned counsel for the applicant run counter to the prayer made by the applicant in the O.A. In the prayer he prayed this Tribunal to direct the respondents to treat his correct date of birth as 23.10.1940. In our humble opinion, this Tribunal cannot issue such a direction. Such a course is dehors the amended Rules, 1971. The applicant has not placed any material in support of his prayer.

Jur

29. The respondent No.1 contended that the conduct of the applicant is not so acceptable as to grant him the relief. The learned counsel for the respondent No.1 submitted that even though the applicant was informed by the letter dated 19.4.1979, he failed to submit any memorial either under the Rules 1978 or under the CCS(CCA) Rules. Further the applicant remained quiet for nearly a decade and more.

At this stage, we feel it proper to reproduce ~~in~~ here/the observations made by the Hon'ble Supreme Court of India in the case of Burn Standard Co.Ltd and others vs. Dinabandhu Majumdar and another (reported in AIR 1995 SC 1499). In para-10 the Hon'ble Court has been pleased to observe as follows :

" 10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and whey they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with

Jax

a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement."

In fact, as enunciated by the Hon'ble Supreme Court of India in L. Chandra Kumar's case, this Tribunal is to exercise powers vested in the High Court under Articles 226 and 227 of the Constitution of India. The Tribunals must act as a supplement to the High Court. That means, this Court/Tribunal has to exercise powers under these Articles very cautiously. When that is so, we feel that in view of the conduct of the applicant, he is not entitled to any of the reliefs.

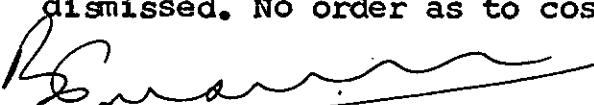
30. Even if the version of the applicant is true that his actual and correct date of birth is 23.10.1940 and that in his service records it is erroneously entered as 20.9.1939, he is to blame himself for his indolent attitude.

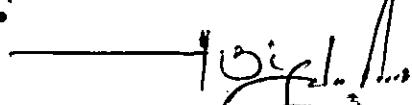
31. ^{and factual} In view of the above legal position, we feel it is not necessary to refer to the various decisions cited at the Bar.

B

32. The learned counsel for the applicant during the course of his arguments brought to our notice certain instances wherein the respondent No.1 had altered the dates of birth of certain IAS and IPS officers after 7.7.78 as if it was exercising its powers under the repealed amended Rules 1971. We feel surprised as to how it could pass orders under the repealed rules as if the repealed rules were still in operation on the respective dates of passing the orders. Further the respondent No.1 conceded the second request of an officer for alteration of date of birth after 7.7.1978 and that too after a lapse of many years of rejection of the first representation which was rejected on valid and tenable grounds. To these instances, judicial discipline reminds us to keep quiet. We are certain that had those orders been subjected to judicial scrutiny, the matter would have been different. Those orders were, no doubt, clear instances of abuse of power by the respondent No.1. We feel, those orders might have been passed without consulting the Ministry of Law and Justice. But in our humble view, discriminatory acts of the Executive cannot give a legal right or any semblance of such a right to the applicant to claim the reliefs as prayed for in the O.A. We just leave it at that. One wrong cannot be a precedent for another wrong (See J.T. 1995 (1) S.C. 445 Chauhan, Administration vs Jagat Singh). At the last but one day of the service of the applicant we have to remind him that "Law helps a diligent and not the indolent".

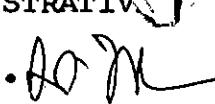
33. With the aforesaid observations, the O.A. is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDICIAL)


(H. RAJENDRA PRASAD
MEMBER (ADMINISTRATIVE)

Dated the 29th September, 1997.

DJ/


D.R.

O.A. 1007/97

To

1. The Secretary to Govt.,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi-1.
2. The Chief Secretary to Govt. of A.P.
Secretariat, Hyderabad.
3. One copy to Mr. J. Sudhir, Advocate, CAT. Hyd.
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One copy to Mr. P. Naveen Rao, Spl. Counsel for A.P. Govt. CAT. Hyd.
6. One copy to HBSJP. M. (J) CAT. Hyd.
7. One copy to D. R. (A) CAT. Hyd.
8. One spare copy.

pvm.

Off
6/10/97
Colin
8

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)

The Hon'ble Mr. B. S. Jayaraman : M(S)

DATED:- 29/9/97

ORDER/JUDGMENT.

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

in

O.A.No. 1007/97

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
Central Administrative Tribunal

DISPATCH

- 1 OCT 1997

HYDERABAD BENCH

RCB