

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR
BENCH, JAIPUR.

O.A. No. 26/93

Date of order: 10.3.1993

S.R.Nanda

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr.R.D.Aneja : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents

PER HON' BLE MR.GOPAL KRISHNA, MEMBER (JUDICIAL):

Applicant Shri S.R.Nanda has filed this application under Sec.19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents for correcting his date of birth as 3.2.37 as also for a direction to give all consequential benefits to him for the period due after the desired correction is made in the service records.

2. The averments of the applicant as set out in the application and the rejoinder are as follows:

The applicant was initially appointed as Circle Service Telegraphist in the Post & Telegraph Department on 4.8.1956. After completion of training for the said post he had joined his duties on the aforesaid date in the Indian Post & Telegraph Department, Ajmer. The applicant was promoted to the post of Telegraphic Traffic Supervisor in the year 1972 and in the year 1982 he was further promoted to the post of Telegraphic Traffic Services Group-B. On the date of the presentation of the petition the applicant was working as Assistant Chief Superintendent (General) in the Central Telegraph Office at Jaipur. The applicant was born on 3.2.1937 at Bhera, Distt.Sargodha situated

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in West Pakistan and entries regarding his birth were made in the Municipal records of the Municipal Committee Bhera, Distt. Sargodha, West Pakistan. But after the partition of the country the applicant had migrated to India. In the absence of any record regarding his date of birth the school authorities had recorded his date of birth as 18.2.1935 in spite of the fact that the applicant's parents had stated that the date of birth recorded by the school authorities was wrong. The applicant as well as his parents tried to search out the record but they could not be successful for a long time. After receiving the Municipal record regarding his date of birth from the Municipal Committee Bhera, Distt. Sargodha, the applicant made a representation through proper channel to the Chairman Telcom Board, Deptt. of Telecommunications on 16.11.89 as the relevant record had been received by the applicant in the month of July 1989. The applicant received a letter dated 15.10.92 (Annex A1) by which he was informed that the matter was under consideration. It is further alleged that the applicant's date of birth has not been corrected due to the arbitrary and capricious working of the department.

3. The petition has been contested on behalf of the respondents on several grounds. It is averred that the applicant had made representation for correction of his date of birth to the concerned authority on 16.11.89 i.e. about 2½ years before his retirement on superannuation on the basis of the date of birth recorded in his service book. Since the applicant had received an extract from a ^{Copy of} birth register in July 1989 and thereupon made

representation on 16.11.89 and the representation was not decided by the competent authority within a period of 6 months, he ought to have approached this Tribunal by filing the petition within a year of the expiry of a period of 6 months of the making of representation i.e. the applicant ought to have filed this petition within a period of 18 months from 16.11.1989. The respondents have raised the plea of limitation because this petition was presented on 11.1.93. It is alleged by them that the petition is barred by limitation. It is further averred by the respondents that the school authorities do not record any date of birth suo moto and the definite date of birth as 18.2.35 had been stated by the father of the applicant and if the date of birth as 18.2.35 had been erroneously recorded by the school authorities, the applicant's father ought to have made efforts for getting the same corrected at that time. It is also stated that the applicant's date of birth as 18.2.35 has been recorded in the Secondary School Certificate for the examination held in 1955 by the Board of Secondary Education M.P, and the proper course for the applicant was to get the date of birth mentioned in the said certificate corrected and he should have approached the respondents for the desired alteration in his date of birth, on the strength of the said certificate. The applicant at the time of his entry into Govt. service had declared his date of birth as 18.2.35 on the basis of the Secondary Certificate issued by the Board of Secondary Education M.P, Nagpur (Annex.R1). Accordingly, in his Service Book the date of birth has been recorded as



18.2.35 and the applicant had appended his signatures on his service book on various dates in token of his having accepted the said date of birth as correct vide (Annex.R2). It has been emphatically stated by the respondents that an entry at Sl.No.89 in the extract from the birth register (Annex.R3) has been crossed and a fresh entry of the name of the applicant has been made and the said cutting and over-writing has not been attested by any concerned officer of the Municipal Committee, therefore, the extract from the birth register cannot be accepted as correct and authentic. The representation of the applicant dated 16.11.89 for alteration of his date of birth has been rejected by the competent authority vide O.M. dated 12.2.93 and the rejection of the representation has not been challenged by the applicant.

4. I have heard the learned counsel for the parties. I have carefully perused the records.

5. A preliminary objection as to limitation was raised on behalf of the respondents. It is true that the applicant had represented to the department for correction of his date of birth on 16.11.89. The respondents had from time to time made queries from the applicant and the applicant had been replying the same. The applicant's representation was however decided on 10.2.93. The present petition was filed on 11.1.93 much before the representation could be disposed of by the respondents. It is urged on behalf of the applicant that the applicant has a right to show that the recorded entry of his date of birth is incorrect and he could seek relief before this Tribunal for such a right during his

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service period and the same can not be rejected as time barred because such a right lives as long as his service continues. The applicant was in service on the date of presentation of this petition. In the circumstances, the respondents' plea that the application is time barred is not sustainable.

6. The present controversy centres round the question of the applicant's true date of birth. The learned counsel for the applicant cited rulings reported in 1987(2) SLR 319 (Hira Lal Vs. Union of India), 1991 (5) SLR 117 (Chairman & M.D., Punjab & Sind Bank & Another Vs. Jasbir Singh Dhillon & Ors.) and 1991 (3) SLR 167 (Bhagat Singh Vs. Union of India & Anr.) which have been duly considered. The applicant's date of birth as recorded in the Secondary School Certificate (Annex.R1) and in his service record is 18.2.35. The plea of the applicant is that the entry made in the Secondary School Certificate (Annex.R1) and the service record does not represent the applicant's correct date of birth and the recorded entry of his date of birth as 18.2.35 is incorrect. The claim of the applicant rests mainly on the following documents produced by him:

- i) Postal cover Annexure:3A;
- ii) Xerox copy of the entry in the birth register maintained by the Municipal Committee Bhera, Distt.Sargodha, West Pakistan (Ann.A4);
- iii) Letter from the Indian High Commission, Islamabad to the applicant dated 24.1.92 (Ann.A18);
- iv) Letter from the Indian High Commission, Islamabad to the applicant on 29.4.92 (Annex.A19);
- v) Xerox copy of a bank draft for Rs.150/- dated 8.2.92 (Annex.A19A);

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vi) Extract from the birth register duly attested by the High Commission of India, Islamabad (Annex.A21) with a covering letter (Annex.A20);
 vii) Affidavit of the applicant dated 10.7.92;
 viii) Affidavit of Smt.Sushila dated 1.3.93;
 ix) Affidavit of Smt.Savitri dated 1.3.93.

7. The learned counsel for the applicant strongly relied on the extract from the birth register maintained by the Municipal Committee, Bhera, District Sargodha in West Pakistan, wherein the date of birth of Sant Ram is shown as 3.2.37, and since an extract from the same birth register was duly attested by the High Commission of India at Islamabad vide Annex.A21, it has been urged on behalf of the applicant that these extracts are public documents within the meaning of section 74 of the Evidence Act and the register from which the extracts were obtained is maintained in a foreign country, there arises a presumption of its correctness and such a presumption has to be rebutted by cogent evidence. It is evident that the applicant had received a Xerox copy of the entry in the birth register maintained by the Municipal Committee, Bhera from Dr.Mehboob Shah Pirzada who used to come to Ajmer during Urs. It is also evident that the applicant had requested Dr.Mehboob Shah Pirzada to procure a copy of the entry in the birth register but the date on which this request was made is not known. However, a xerox copy of the aforesaid entry in the said birth register (Annex.A-4) was sent to the applicant under postal cover (Annex.A3A). The learned counsel for the respondents has drawn my attention to column No.3 in Annex.A-4. The entry in column No.3 pertaining to the name of the child has been crossed and the name of Sant Ram has been inserted therein. The

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cutting or over-writing has not been attested by any officer. The entry attested by the High Commission of India, Islamabad, vide Annex.21 is only an extract of the entry at Sl.No.89 in the document Annex.A-4. It is evident from the letter dated 29.4.92 (Ann.A19) that the entry attested by the High Commission of India related to an extract from the birth register which was sent by the applicant to the High Commission of India, Islamabad. There might have been interpolations made in column No.3 of the extract from the birth register maintained by the Municipal Committee at Bhera. Though, the entry regarding birth in a birth register is receivable in evidence, it is wrong to assume that mere filing of a copy of the entry in the birth register proves if-so facto that the entry relates to the applicant and that the applicant was born on the date mentioned therein. Evidence has to be introduced to connect that entry with the person whose date of birth has to be established. Connection of the identity of the person under the entry must be established by other evidence. Entries of names in a register of birth cannot be positive evidence of the birth unless their identity is fully established. It transpires that the entry regarding the date of birth in so far as the applicant is concerned has been manoeuvred for the purpose of making a representation and securing undue benefit by getting the date of birth altered. The applicant cannot be allowed to take advantage of such documents to extend his tenure of service.

8. The contention of the applicant that the school authorities had recorded his date of birth as 18.2.35 suo moto is controverted by the fact that the entry as to his date of birth was made at the instance of the applicant's father vide applicant's representation dated 16.11.89 (Ann.A3). The respondents have produced an extract from the service record of the applicant Ann.R2 wherein the applicant's date of birth is recorded as 18.2.35. There are signatures dated 18.8.56, 5.7.62, 8.1.68 and 12.8.73 of ^{the} applicant on the extract from the service records of the applicant Ann.R2 which states that the date of birth of the applicant is 18.2.35. The applicant had entered Govt. service on 4.8.56. For more than 30 years the applicant had declared and stated that his date of birth was 18.2.35. As he was reaching the age of superannuation, he sought its correction on 16.11.89. How can the applicant be allowed to go back on this clear and unequivocal admission regarding his date of birth recorded in the Secondary School Certificate and in the service records and turn round now and say that his date of birth is not 18.2.35 as earlier declared and admitted by him but 3.2.37. The applicant sought alteration in his date of birth by way of this petition at the fag end of his career. I find no merits in this petition.

9. In view of the above discussions, this application merits rejection and the same is dismissed with no order as to costs.

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(Gopal Krishna)
Member (Judl.).