

A THE NATIONAL AIRPORT AUTHORITY

v.

SHRI M.A. WAHAB

APRIL 29, 1994

B [S.C. AGRAWAL AND M.K. MUKHERJEE]

Service Law/Civil Services :

C *Fundamental Rule 56 (m) Note 5 and Administrative Reforms Notification dated November 30, 1979—Correction of date of birth in service record—Plea barred by time—Tribunal holding Note applicable only to those retiring after December 15, 1979—Held, Tribunal's finding unsustainable.*

D *Administrative Tribunals Act, 1985, S.19—Correction of date of birth in service record—Tribunal allowing plea for correcting date of birth from January 1, 1934 to March 1, 1939—Held, Tribunal's findings not borne out by the records.*

E **The service book prepared at the time of the Respondent joining the appellant's services showed his date of birth as January 1, 1934. After the respondent passed the matriculation examination an entry regarding this qualification was made in his service book. Not heeding to the respondent's request on June 4, 1990 to correct his date of birth as March 1, 1939 as shown in the matriculation certificate, the appellant asked him to retire on December 31, 1991.**

F **The respondent's application was allowed by the Central Administrative Tribunal which held that the respondent gave his date of birth as January 1, 1934 under compelling circumstances and that Note 5 of Fundamental Rule 56(m) as substituted by an Administrative Reforms Notification dated November 30, 1979 requiring all claims for correction of date birth by government servants to be made within five years of entry into service applied only to those employed after December 15, 1979.**

Allowing the appeal, this Court

H **HELD : 1. The amended Note 5 of Fundamental Rule 56 (m) applies also to government servants already in service before December 15, 1979;**

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they may seek correction of date of birth not later than five year after the amendment. The Tribunal's finding cannot be sustained. [807-D, 806-H] A

Union of India v. Hamam Singh, [1993] 2 SCC 162, applied

1.2. It cannot be said that the respondent had given his date of birth as January 1, 1934 under compelling circumstances. Indeed, the respondent did not raise such plea even in the application. [806-H] B

1.3. In the instant case, none of the findings of the Tribunal is borne out by the records, and hence cannot be sustained. [806-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3935-36 C of 1994.

From the Judgment and Order dated 20.5.92 & 8.9.92 of the Central Administrative Tribunal, Gauhati Bench in O.A. No. 243/91 & R.A. No. 17 of 1992. D

Ms. Rachna Joshi Issar for the Appellant.

P.K. Goswami, Rajeev Mehta and Kailash Vasdev for the Respondent.

The Judgment of the Court was delivered by E

M.K. MUKERJEE, J. Special leave granted.

In these appeals the appellant assails the decision of the Central Administrative Tribunal, ('Tribunal' for short) Gauhati Bench, whereby the respondent's application for alteration of his date of birth from January 1, 1934, as appearing in his service record, to March 1, 1939 has been allowed. F

The respondent joined the service of the appellant as a peon on October 15, 1957. At the time of his entry into the service his service book was prepared with his date of birth recorded as January 1, 1934 and educational qualification as read upto Class IX. Later on in 1962 the respondent passed the matriculation examination of the Gauhati University and on the basis of a certificate dated August 27, 1962 issued by H.M. Thanga H.E. School Gauhati an entry regarding this qualification was made in his service book. Consequent upon his success in the matriculation G

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A examination the respondent got the job of a clerk and in due course he was promoted to the post of Senior Assistant in the office of the Senior Aerodrome Officer, Civil Aerodrome, Imphal. While so employed he sent an application to the appellant on June 4, 1990 along with a photostat copy of his matriculation certificate with a request to remove the wrong entry of his date of birth as appearing in the service book and correct it as March 1, 1939, as appearing in the certificate. The appellant did not heed to his request and, on the contrary, relying upon the date of birth as appearing in the service book asked him to retire on December 31, 1991 by its memorandum dated September 12, 1991. On receipt of that memorandum the respondent made yet another representation which was also turned down. He then filed an application before the Tribunal in accordance with Section 19 of the Central Administrative Tribunal Act, 1985 which culminated in the impugned order dated May 20, 1992. An application preferred by the appellant for review of the above order was rejected.

D From the impugned order we find that the reasons which principally weighed with the Tribunal in allowing the application of the respondent are as under :

E (i) though appellant claimed that the respondent's date of birth was recorded as January 1, 1934 in the service book on the basis of school certificate furnished at the time of appointment, neither any document nor the service book was produced to substantiate such claim;

F (ii) though the respondent had, along with his letter dated August 28, 1962 forwarded his matriculation certificate, which showed his date of birth as March 1, 1939, for making necessary correction in the service book in accordance therewith no action was taken by the appellant; and

G (iii) the certificate issued by the Sub-Registrar, Birth and Death of Imphal Municipality indicated that the respondent's date of birth as recorded in their register tallied with the date as appearing in the matriculation certificate.

H On perusal of the records, we are constrained to say that none of the above findings is borne out thereby. Besides other documents, the respondent himself enclosed a copy of the service record as Annexure A/2 to his application filed before the Tribunal and in that record it has been clearly mentioned that his date of birth was 1.1.1934 as per the school certificate.

That apart in paragraph 3 of the application he stated that at the time of his appointment he had read upto Class IX and a school certificate issued in that behalf was produced (before the appellant) in proof of his educational qualifications and that in that school certificate it was alleged that his date of birth was recorded as 1.1.1934. A

As regards the second finding we may first refer to the averments made by the respondent in paragraphs 5 and 6 of his application. In paragraph 5 he stated that with the permission of the Authority (the appellant) he appeared in and passed the matriculation examination of the University of Gauhati in the year 1962 and as per the matriculation certificate his age, as on March 1, 1962 was 23 years. In support of this statement he enclosed a true copy of the duplicate matriculation certificate, as Annexure A/3, which he claimed was issued to him by the University of Gauhati on September 1, 1962. In paragraph 6 of the application he stated, *inter alia*, that he had enclosed that copy along with the letter he had sent to the Aerodrome Officer, Civil Aviation, Imphal on August 28, 1962 for entry of his educational qualifications and correction of the date of birth in his service book. A copy of the letter was also enclosed as Annexure A/4 to the application. On perusal of this letter we find that thereby the respondent had informed the Aerodrome Officer that he had passed his matriculation examination successfully from University of Gauhati in the year 1962 and that he was enclosing a certificate to that effect in original for perusal and for making necessary entry in the service book. The certificate (Annexure A/3) which the respondent claimed to have enclosed with that letter read as under : B C D E

"UNIVERSITY OF GAUHATI
1962
MATRICULATION CERTIFICATE
(Duplicate certificate) No. 000224

I certify that Muhammad Abdul Wahab Mia Diphu Roll No. 27, aged 23 years X months X days on the First of March, 1962 duly passed the Matriculation Examination, 1962 of this University and was placed in the Third Division. G

GAUHATI, ASSAM
The 1st Sept., 1962

Countersigned by

Sd/-

Sd/- C. Das

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Registrar

Date : 16.5.62

Registrar

It, however, appears from unimpeachable materials produced before us that the respondent did not enclose copy of any Matriculation Certificate (Annexure A/3) with the letter dated August 28, 1962 but had only enclosed a certificate dated August 27, 1962 issued by the Headmaster of a school to say that he had passed the matriculation examination of 1962 and that he was aged 22 years on March 1, 1962. Indeed, copy of a matriculation certificate purportedly issued on September 1, 1962 could not have been enclosed with a letter which the respondent claimed to have sent on August 28, 1962. The other document which intrinsically and conclusively proves that matriculation certificate could not have been issued in favour of the respondent on September 1, 1962 is the letter dated June 6, 1964 written by the Registrar of Gauhati University in reply to the letter of the Aerodrome Officer dated April 24, 1964. When by the later the Aerodrome Officer requested the Registrar to confirm whether Mohd. Abdul Wahab Mia (the respondent) had passed the matriculation examination of 1962 and, if so, whether the University had issued certificate for the same, the Registrar intimated that though he had passed the matriculation examination of the year 1962 certificate of that year had not till then been issued to the respective schools. In such circumstances the appellant cannot be blamed for not incorporating the date of birth as appearing in the certificate issued by the School, which was only enclosed with the letter dated August 28, 1962, more particularly when his specific request was for change in his educational qualification - which was duly acceded to - and not for the change in date of birth. It will be pertinent to point here that according to this certificate the respondent's date of birth will be 1.1.40 and not 1.1.39. It appears to us that the respondent advisedly did not insist upon correction of his date of birth on the basis of the school certificate for in that case he would have been ineligible for entry into Government service in 1957.

Coming now to the third finding of the Tribunal, we notice that the certificate purportedly issued by the Sub-Registrar, Birth and Death Imphal Municipality is dated 10.11.1989. It, however, appears that the appellant wrote to the Municipal authorities to ascertain the authenticity of the above certificate and in reply thereto they were told that the Registration of Birth and Death Act, 1969 came into force in the State of Manipur with

effect from January 1, 1971 and that therefore the birth of Shri Mohammad A Abdul Wahab Mia son of Late Haji Tomcha Mia (the respondent) could not have been recorded in their register on November 10, 1989. The Municipality further stated that on examination they found the certificate to be a fake one. However, according to the Municipality, they issued a non-registration certificate to the respondent on December 4, 1991 on the basis of an affidavit sworn before the Court of the Judicial Magistrate, Imphal in May, 1990 showing his date of birth as March 1, 1939. B

Apart from the above infirmities in the impugned order, we find that the Tribunal failed to appreciate the other contentions raised on behalf of the appellant in opposing the application of the respondent. The appellant had contended before the Tribunal that the request made by the respondent in June, 1990 for correcting the date of birth could not be entertained because till March, 1990 the respondent had, in all matters connected with his service mentioned January 1, 1934 as the date of his birth. In support of this contention the appellant had relied upon the following documents C executed by the respondent : D

- (i) application filed by him on January 11, 1978 for withdrawal of provident fund; E
- (ii) particulars furnished by him on March 7, 1980 for preparation of seniority list; E
- (iii) declaration made by him on February 20, 1990 for family nomination and F
- (iv) bio-data submitted by him on March 8, 1990 for claiming pension and terminal benefits. F

The other contention raised by the appellant against entertainment of the request was that it was barred by time. In support of this contention they had relied upon Note 5 of Fundamental Rules 56(m) governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt-A dated November 30, 1979 published as S.O. 3997 in the Government of India Gazette dated December 15, 1979. The said Note reads as under : G

"Note 5 - The date on which a Government servant attains the age H

A of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an administrator of a Union Territory under which the Government servant is serving if –

D (a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine *bona fide* mistake has occurred; and

E (c) the date of birth so altered would not make him ineligible to appear in any school or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

F In negativing the above two contentions of the appellant, the Tribunal observed that the respondent gave his date of birth as January 1, 1934 in the above documents under compelling circumstances and that the above quoted note had no application to the case of the respondent as he was appointed long before the same came into effect. Both the grounds canvassed by the Tribunal to repudiate the contentions of the appellant cannot be sustained. There is nothing on record from which it can be said that the appellant had given his date of birth as January 1, 1934 under compelling circumstances. Indeed, the respondent did not raise any such plea even in the application. The Tribunal's finding that the above note is applicable only to persons employed after December 15, 1979, cannot be sustained in view

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of the judgment of this Court in *Union of India v. Harnam Singh*, [1993] A 2 SCC 162 wherein this Court while interpreting the above quoted note observed as follows:

"It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but the case of Government servant who applied for correction of date of birth only after 1979 stands on a different footing. *It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those Government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule-making authority.*"

(emphasis supplied)

On the conclusions as above, we allow these appeals and set aside the impugned orders of the Tribunal. There shall, however, be no order as to costs.

S.M.

Appeal allowed.