

(1997) 04 SC CK 0078

In the Supreme Court Of India

Case No : Civil Appeal No. 12087 of 1996

Union of India

APPELLANT

Vs

C. Rama Swamy and others

RESPONDENT

Date of Decision : 09-04-1997

Acts Referred:

Administrative Service (Recruitment) Rules, 1954 — Rule 5
Police Service (Recruitment) Rules, 1954 — Rule 4

Citation : AIR 1997 SC 2055 : (1997) AIRSCW 1879 : (1997) 4 JT 605 : (1997) 3 SCALE 528 : (1997) 4 SCC 647 : (1997) SCC(L&S) 1158 : (1997) 3 SCR 760 : (1997) 4 Supreme 158

Hon'ble Judges : J. S. Verma, C.J.;B. N. Kirpal, J

Bench : Division Bench

Advocate : N.N. Goswamy, Hemant Sharma and P. Parmeswaran, for the Appellant; H.S. Gururaja Rao and T.V. Ratnam, for the Respondent

Final Decision : Allowed

Judgement

B.N. Kirpal, J.—The question which arises for consideration in this appeal is whether the respondent was entitled to ask for an alteration of his date of birth as entered in his service record, which entry had been made at the time when he had joined service.

2. The respondent had taken the All India Joint Service Competitive Examination in the year 1967. On the basis of the said examination he was selected as direct recruit to the Indian Police Service (IPS) of 1968 batch. In his service book date of birth which was entered as 17th June, 1939. This entry was made on the basis of his date of birth as recorded in the senior school leaving certificate and also in his application for appearing for civil services examination of the year 1967 in which he was selected.

3. Nearly fourteen years after the respondent had joined service he submitted a representation dated 4th September, 1982 to the Andhra Pradesh State Government, the cadre to which he has been assigned, for changing his date of

birth to 15th June, 1941. In the said application it was, inter alia, stated that after the demise of his mother, while going through various papers in his house, he found from his horoscope that his date of birth which was written in Tamil corresponded to 15th June, 1941. He also stated that he had obtained extracts from the record of birth from Sub-Registrar's office which indicated that his date of birth was 15th June, 1941. Accordingly he requested that his date of birth be altered from 17th June, 1939 to 15th June, 1941.

4. Vide memorandum dated 20th October, 1982 respondent was informed by the State Government that his request for alteration of his date of birth could not be agreed to. Thereafter the respondent wrote a letter dated 1st December, 1982 to the Director General and Inspector General of Police, Andhra Pradesh requesting him to ask the State Government to forward to the Government of India a representation for correcting his date of birth. To this letter the respondent received a memorandum dated 11th March, 1983 from the Chief Secretary, Another Pradesh to the effect that the Government did not see any reason to re-open the case which had already been rejected. Thereupon the respondent against vide letter dated 14th August, 1983 requested the State Government to forward his representation to the Government of India.

5. The aforesaid representation was rejected by the Central Government vide its order dated 23rd May, 1990.

6. Still in pursuit of his desire to get his date of birth altered the respondent adopted a novel method. He filed a suit in the court of the District Munsif, Sholinghur, impleading the Director of School Education, Madras; District Educational Officer, Vellore and his eldest sister Kamla as the defendants. In the suit the relief claimed was for a decree of mandatory injunction for directing defendants 1 and 2 to alter his date of birth from 17th June, 1939 to 15th June, 1941 in his SSLC book. It is pertinent to notice that neither the State of Andhra Pradesh nor the Union of India were impleaded as parties. The court on 28th October, 1992 decreed the suit and granted the mandatory injunction and ordered that the date of birth of the respondent should be corrected in the SSLC book so as to reflect the respondent's date of birth as being that of 15th June, 1941 instead of 17th June, 1939.

7. Armed with a duly corrected senior school leaving certificate, pursuant to the aforesaid decree having been passed by the Court, the respondent once again made a representation to the Government of India for altering his date of birth to 15th June, 1941. Vide order dated 15th November, 1993, passed in exercise of its power conferred by Rule 16A of the All India Services (DCRB) Rules, 1958 the representation of the respondent for change of the date of birth was rejected. Not deterred by this, the respondent made yet another representation on 4th January, 1994 to the Secretary, Department of Personnel, Government of India, Ministry of Home Affairs, inter alia, contending that the government had not considered the documentary evidence which had been produced by him and his date of birth should be altered so as to entitle him to continue in service till 30th

June, 1999. He also sought to place reliance on the cases of two officers where the Government of India had accepted their representation and altered the date of birth. This representation again met with no success and, vide letter dated 11th April, 1994 the respondent was informed about the rejection of the representation.

8. Having failed to get relief from the government the respondent filed OA No. 383 of 1994 before the Hyderabad Bench of the Central Administrative Tribunal requiring it to direct the alteration of his date of birth to 15th June, 1941. On behalf of the appellants herein, apart from contending that no case had been made out for agreeing to the change in the date of birth, reliance was placed on Rule 16A which had been amended vide notification dated 7th June, 1978 and it was submitted that the date of birth as recorded in the service book had to be accepted as final and correct.

9. By an involved reasoning the Tribunal came to the conclusion that Sub-rule (4) and (5) of the 1971 Amendment Rules continued to apply to pre 1971 direct recruits even after the promulgation of the new Rule 16A in 1978 and under the 1971 Rules no determination with regard to the date of birth of the respondent had taken place. The Tribunal accordingly directed the appellants herein to determine his date of birth after giving the respondent an opportunity to place the necessary material available with him. It was further directed that in case it was found that the date of birth of the respondent herein had to be altered from 17th June, 1939 then necessary correction had to be made in his service register and the same had to be taken as the basis for determination of the age of superannuation of the respondent.

10. Aggrieved by the aforesaid direction the Union of India has filed the present appeal. It is contended by Mr. N.N. Goswami, learned senior counsel for the appellants, that not only was the application filed before the Tribunal barred by time but the Tribunal completely misrepresented the said rules and came to a wrong conclusion that the date of birth of the respondent had to be determined under the 1971 Rules. On behalf of the respondents it was submitted that the order of the Tribunal calls for no interference and that the 1971 Rules apply and as there had been no determination of the respondent's date of birth under Rule 16A as introduced in 1971, therefore the Tribunal rightly directed such a determination to be made. Learned Counsel for the respondent also sought to place reliance on certain decisions in an effort to show that relief with regard to alteration in the date of birth has been granted in appropriate cases. In particular, reliance was also placed on a decision of the High Court of Himachal Pradesh in (1996) 1 SLR 402 wherein it was observed that the principle of estoppel does not apply to such cases of changes in date of birth.

11. In order to examine the rival contentions it is necessary to refer to Rule 16A as inserted by the notification dated 4th December, 1971 and the new Rule 16A, which substituted the earlier rule, as inserted vide notification dated 7th June, 1978. These rules read as follow :

1971 Rules

16A 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 to 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 (a) of Rule 5 of the Indian Administrative Service (Recruitment) Rules 1945 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 the Sub-rule (2) of the 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 such 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 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 be subject to Rule 16B be final.

1978 Rules : Acceptance of date of birth

16A 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 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.

(a) The Indian Administrative Service under Clause (a) or Clause (aa) of Sub-rule (a) of Rule 4 of the Indian Administrative Service (Recruitment) Rules, 1954; or

(b) The Indian Police Service under Clause (a) or Clause (aa) or Sub-rule (1) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954; or

The Indian Forest Services under Clause (a) or Clause (aa) of Sub-rule (2) of 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).

12. For the view which we are taking it is not necessary to decide whether the application of the respondent before the Tribunal was time barred because, in our opinion, on a correct interpretation of the said rules no relief could have been granted to the respondent.

13. The respondent had entered the IPS in 1968. At that point of time Rule 16A

was not in existence. The date of birth which was recorded in his service book was that of 17th June, 1939. In the application which had been filed by the respondent, the correctness of the contents of which were duly certified by him, it was clearly indicated that his date of birth was 17th June, 1939. It is also not disputed that the school leaving certificate contains the same date of birth. The descriptive roll of the service book (photo copy of which was placed on record) also shows the date of birth having been recorded as 17th June, 1939 and this roll has been signed by the respondent as far back as on 24th December, 1968.

14. The first time when the respondent agitated for his date of birth to be changed was when he submitted his representation dated 4th September, 1982. As on that date Rule 16A as inserted vide notification dated 7th July, 1978 was in existence. This rule had replaced the earlier Rule 16A which had been incorporated vide notification dated 4th December, 1971. Therefore, Rule 16A as incorporated in 1978 was applicable as on the date of his representation and the question of applicability of the repealed Rule 16A which had been incorporated in 1971, could not possibly arise as the same was not in existence as on that day.

15. The Tribunal approached the problem in an incorrect manner. It interpreted repealed Rule 16A as incorporated in 1971 and came to the conclusion that Sub-rules (4) and (5) of that Rule 16A required a specific determination of the date of birth, after giving opportunity to the officer concerned. The Tribunal then interpreted the new Rule 16A of 1978 and concluded that this did not apply to a direct recruit who had entered the service before 4th December, 1971 and, therefore, determination under Sub-rules (4) and (5) of the original Rule 16A of 1971 should be done by the Government.

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 atleast from the date when it ceased to exist. With effect from 7th July, 1978 a new Rule 16A 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 4th September, 1982. Reading Rule 16A as a whole it is clear to us that it applies to all person belonging to the All India Services who were in service and the said rule does not pre 4th December, 1971 direct recruits from its application, as has been held by the Tribunal.

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

18. Sub-rule (1) of Rule 16A states that for the determination of the date of Superannuation the date is to be calculated with reference to the date of birth as accepted by the Central Government under this Rule. The use of the word "accepted" in Sub-rule (1) is indicative of the fact that except in a case where there may be a correction on account of bona fide clerical mistake having occurred the Central Government accepts, and does not determine, the date of

birth in the manner specified in Sub-rule (2) and Sub-rule (3). Sub-rule (2) is applicable to a person appointed after commencement of the All India Services (Death-cum-retirement Benefits) Amendment Rules 1971. According to this the date of birth of the appointees as declared in their applications for recruitment shall be accepted by the Central Government as the date of birth of such persons. The effect of this is that atleast as far as post 4th December, 1971 appointees are concerned the question of the Central Government accepting any date of birth other than that indicated in the application for recruitment to the service does not arise. The implication of this clearly is that with the insertion of new Rule 16A (2) there would be no occasion for the Central Government to even entertain an application for alteration in the date of birth, as the Government is enjoined to accept only that date which is declared by such person in his application for recruitment. This of course is subject to the limited circumstances under which correction can be effected under Sub-rule (4) of Rule 16A, namely, in cases where a bona fide clerical mistake had occurred in accepting the date of birth under Sub-rule (2) or Sub-rule (3).

19. The opening words of Sub-rule (3) of Rule 16A state that the said sub-rule applies in relation to a person to whom Sub-rule (2) does not apply. As Sub-rule (2) applies to a person appointed to the All India Service after 4th December, 1971 it is obvious that Sub-rule (3) would be applicable to all other officers to whom All India Services Rules apply which would necessarily include the direct recruits who were appointed prior to 4th December, 1971. There are no words of restriction in Sub-rule (3)(a) which can persuade us to take a different view. With Rule 16A as incorporated in 1971 having been superseded by the new Rule 16A, if the contention of the respondent is accepted the effect would be that an incongruous situation would arise whereby there would be no rule in existence dealing with cases of persons other than those who were appointed after 4th December, 1971. Neither the plain language of Rule 16A, and Sub-rule (3) in particular, nor the intent of the said rule suggests that an artificially restricted meaning should be given to the opening words of Sub-rule (3) of Rule 16A so as to exclude pre 1971 direct recruits from its operation. In our opinion, direct recruits like the respondent who had joined service before 4th December, 1971 would be covered by Sub-rule (3) of Rule 16A. Sub-rule (3) of Rule 16A requires the Central Government to accept that date of birth as has been recorded in the service book or other similar other official documents as maintained by the concerned government in respect of such an officer. Admittedly the date of birth of 17th June, 1939 was recorded in the service book of the respondent. Under Rule 16A of 1978 it is this date of birth which was required to be accepted by the Government.

20. Reading Sub-rules (2) and (3) together it is clear that whereas in the case Sub-rule (2) the date of birth has to be accepted which is indicated in the application for recruitment but in the case covered by Sub-rule (3) if the date of birth as recorded in the service book is different from the one which was contained in the application, possibly because of an alteration having been made

at the instance of the officer concerned, then that is the date which has to be accepted by the Central Government.

21. The date of birth as recorded in the service book, in the case of a pre 4th December, 1971 entrants, and the date as declared by an officer in the application for recruitment, in the case of post 4th December, 1971 entrants, has to be accepted as correct by the Central Government and, as already indicated, this can be altered only if under Sub-rule (4) it is established that a bona fide clerical mistake had been committed in accepting the date of birth. It is for this reason we find that in the orders rejecting the representation of the respondent the Central Government has stated that there was no bona fide clerical mistake which had been committed.

22. It was faintly submitted that on the basis of the birth certificate obtained from the Sub-Registrar's office by the respondent as well as his horoscope it should be held that there was a bonafide clerical mistake and, therefore, the date of birth could be corrected. We are unable to accept the submission. Bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded. In the present case admittedly the date of birth indicated in the application form filled in for the purpose of taking the competitive examination was that of 17th June, 1939. This date was then incorporated in his descriptive roll kept in his service record and this was duly signed by the respondent. Admittedly the respondent also believed this to be his correct date of birth, therefore, it was not a case where the date of 17th June, 1939 had been incorrectly recorded in the service book as a result of any bona fide clerical mistake. In fact in his original representation it was not even suggested by the respondent that there had been any clerical mistake. The positive case put forth by the respondent was that it is after the demise of his mother that he had discovered that his real date of birth was 15th June, 1941 and not 17th June, 1939.

23. Inasmuch as Rule 16A as amended on 7th July, 1978 had come into operation at the time when the respondent had first made his representation in 1982, it is not necessary to examine the interpretation of the original Rule 16A as introduced on 4th December, 1971 and we express no opinion on the said old as interpreted by the Tribunal.

24. Before concluding we may note that learned Counsel for the appellant referred to certain decisions where amendment to the date of birth had been allowed. It is not necessary to deal with the said decisions because none of them relates to the relevant Rule 16A on the interpretation of which we find that this statutory rule, except in cases where a clerical error has occurred, does not entitle an officer to ask for change in the date of birth which is once recorded in his application as mentioned in Sub-rule (ii) or in the service book as mentioned in Sub-rule (iii) of Rule 16A . It is, however, appropriate to refer to one decision relied upon by Mr. H.S. Gururaja Rao, learned senior counsel for the respondents

which is of the Himachal Pradesh High Court in *Shri Manak Chand Vaidya v. State of Himachal Pradesh and Ors.* (1976) 1 SLR 402. In that case correction of date of birth was sought by the petitioner. It was contended on behalf of the State that the petitioner therein was estopped from pleading a different date of birth when the entry in that regard in his service record had been entered on his representation at the time when he entered service. This contention was repelled by the High Court with the observation that it had not been shown that the petitioner gained any advantage by representing a particular date of birth at the time of entry into the service.

25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

26. In such a case, even in the absence of a statutory rule like Rule 16A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in *Manak Chand's* case does not lay down the correct law.

27. For the aforesaid reasons while allowing the appeal the order of the Tribunal is set aside the effect of which would that OA No. 383 of 1994 filed by the respondent would stand dismissed and the date of birth of 17th June, 1939, as recorded in his service book would remain unaltered. There will be no order as to

costs.