

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1782 of 1998 decided on 3.6.1999
Name of Applicant : Shri Manohar Dutt
By Advocate : Shri S.C. Saxena

(10)

Versus

Name of respondent/s Secy. Min. of Def. & ors
By : Shri Trilochan Rout, Departmental
Representative

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal - No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1782 of 1998

New Delhi, this the 3rd day of June, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Manohar Dutt, S/o Shri Moti Ram,
Daftary of MS Branch, Army Headquarters
and resident of E-1216, Netaji Nagar,
New Delhi.

(11) - APPLICANT

(By Advocate Shri S.C.Saxena)

Versus

1. The Secretary, Ministry of Defence,
Govt.of India, South Block, New Delhi.
2. The Chief Administrative Officer,
Office of the C.A.O. (A-7), Ministry
of Defence, DHQ P.O., New Delhi.
3. The Military Secretary Branch, MS-6,
South Block, Room No.39-B, Government
of India, New Delhi.
4. The Record Officer, Artillery Records,
Nasik Road Camp, Deolali-422102.
5. The Commanding Officer, Kumaon Regt.
Centre, Ranikhet.

- RESPONDENTS

(By Shri Trilochan Rout, Departmental
Representative)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The prayer in this Original Application is
for a correction of date of birth from 23.2.1940
recorded by the respondents to 23.2.1946 on the
ground that the discharge certificate and other
documents received from the army indicate the date of
birth as 23.2.1946.

2. The applicant was recruited as a Cook in
Artillery Depot Regiment, Nasik Road, Deolali on
23.2.1966 when he was 20 years old. His date of
birth was recorded there as 23.2.1946 as evident from

letter No.1241003/GNR(CK)MANCHAR DUTT/NE/LIB dated

14.10.1995 (Annexure -II). Even according to the admission of the respondents, respondent no.4 affirmed and reaffirmed this date of birth by various letters and references and confirmed the same to the respondents also. The references by the respondents have arisen because the applicant joined the service of respondent no.2 with effect from 1.1.1973. At that time his date of birth was recorded as 23.2.1940. The grievance of the applicant is it was a mistake and the applicant being illiterate he did not verify at that time the service documents produced by the Army Centre Nasik. He, however, represented for correction of the mistake on 24.3.1995 and 7.12.1995. He did not receive any response. Respondent no.3, however, took up the matter with respondent no.4, who certified the date of birth of the applicant as 23.2.1946. The enquiry was repeated once again and yet respondent no. 4, the applicant's previous master, reiterated their earlier findings that the applicant's date of birth was 23.2.1946.

3. The respondents in the counter state that the applicant worked with the Artillery Depot Regiment Nasik Road upto October, 1971. When his appointment as a Civilian Cook in Kumaon Regimental Centre, Ranikhet was under consideration, there was a medical certificate from the Medical Officer of the Kumaon Regimental Centre and a declaration signed by himself, before the appointing authority. The medical certificate states that in the absence of any

(3)

other documents the applicant's age was mentioned as 32 years in February, 1972 implying thereby that his date of birth could be February, 1940. His own declaration is also to the same effect. These two documents persuaded the respondents to note his date of birth as 23.2.1940. He is due to retire on 29.2.2000 on attaining the age of 60 years. He represented to the respondents to count his combatant service in the Army for reckoning towards qualifying service for pension. On a reference from his present employer the Artillery Records Nasik road, Dedali forwarded all the details of verified service on a standard proforma in November, 1994 as per Annexure-R-4. In this proforma also the Record Officer indicated the date of birth of the applicant as 23.2.1946. The applicant again represented that it was a clerical mistake to record his date of birth as 23.2.1940. No doubt as per rules he is required to apply for change of date of birth within five years of joining of service but he could not do the needful due to illiteracy and ignorance. Note 6 under FR 56 was cited by the respondents as an authority to deny to applicant's claim. The respondents state that the applicant cannot seek alteration of date of birth after a lapse of 23 years. Under FR 56 the application for alteration of date of birth should be made within five years of entry into the Government service.

4. The learned counsel for the applicant cited the decision of Jabalpur Bench of this Tribunal in the case of Kashi Nath Vs. Union of India, 1987(1)

(A)

ATJ (1) 6. The facts in that case were that the applicant joined the Ordnance Factory on 18.11.1962 as a workman and his date of birth was recorded by the Medical Officer on the basis of visual impression and the applicant signed the relevant attestation form. The Tribunal held that under Section 45 of the Indian Evidence Act, 1872 medical opinion as to age based on visual impression of appearance is not reliable. In spite of the fact that the employee failed to raise objections during the first five years, the relief has to be granted because it is a case of correction of age and also because the employee was illiterate. The learned counsel for the applicant has also cited the decision in the case of K.C.Tyagi Vs. Union of India, 1994(1) ATJ 208 decided by this Court. That case only states that an authority cannot alter the date of birth unilaterally without giving the affected person opportunity of being heard.

5. The respondents resisted the claim of the applicant and stated that stale and belated applications for alteration of date of birth cannot be entertained. They relied on the decision of the Hon'ble Suprme Court in the case of Union of India Vs. Harnam Singh, 1993 (2) SLR 42. In Harnam Singh's case (supra) the date of birth was recorded as 20.5.1934 on his entry into Government service. At the time of his entry he was only matric failed. He subsequently passed the matriculation examination and the date of birth as recorded in the matriculation certificate was 7.4.1938. The

department did not correct the date of birth from 20.5.34 to 7.4.38. He represented in September 1991 and January, 1992. The Government urged before the Supreme Court that the OA before the CAT was barred under FR 56 (Note 5) and General Financial Rules 1979 and did not merit consideration. As he signed the service record bearing entry of his first date of birth as 20.5.1934, he knew about this and he should not be encouraged to change his date of birth after so much delay.

5. The respondents also relied on another case of the Supreme Court in the case of Union of India and others Vs. Kantilal Hematram Pandya, 1995 (3) SLJ 130, wherein alteration claimed at the fag end of career was considered to be objectionable.

7. It is important to note that in Harnam Singh's case (supra) as well as in Kantilal Hematram Pandya's case (supra) the fact is that the age was declared at the initial stage of their employment. What the applicant in this application seeks is rectification of a mistake apparent on the face of record. He has declared his date of birth initially at the time of entry into service as 23.2.1946. This was by mistake put in as 23.2.1940 when he joined civilian service in 1972. He is an illiterate person; otherwise he would not have accepted the patent mistake operating against him.

8. FR 56 deals with retirement. Note 6 under
FR 56 speaks as under -

"The date on which a Government servant attains the age 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 of 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 -

(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

(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."

(emphasis supplied)

9. The question is which is the date of birth "declared by the Government servant at the time of appointment and accepted by the appropriate authority...." We have a case here that the applicant was initially appointed in the Artillery Depot Regiment, Nasik Road, Deolali on 23.2.1966 and was subsequently taken in the Kumaon Regimental Centre as a civilian. The latter authority knew about the Army service of the applicant. He was not a fresh appointee. This was not a case where the medical

doctor can certify to a certain age merely on a visual impression. It was totally incorrect and inconsistent on the part of the Kumaon Regimental Centre to treat the age as 32 years on a visual impression as also note the age on that basis, knowing fully well that there was Army service record of the applicant and in that record he had declared a particular age which was accepted. The applicant is an illiterate person. He cannot read and write. No doubt he signed but with such a poor illiterate person respondents cannot stand on technical niceties to defeat a substantive claim. The question that would strike to anybody's mind is: what is the evidence of a particular date of birth? Kumaon Regimental Centre is also another wing of the Army only and it would have been most appropriate if the later centre ordered for the earlier service records. That was the minimum which any employer would do before accepting the applicant as a civilian employee. In fact all the certificates issued by the Artillery Depot Regiment, Nasik Road consistently maintained that the date of birth at initial appointment was only 23.1.1946. There is no other evidence either in the possession of the respondents here or produced by the applicant which conveys a contrary impression. Anybody who has a minimum awareness of the consequences could not have inflated his recorded age to his detriment and that too by six years. This is not a case of substitution of a particular age or alteration of a particular age.

This is a case of rectification of an error apparent on the face of record. The time limit under FR 56 Note 6 does not apply to such a case. (8)

10. The mistake is solely that of the respondents in not showing the minimum alertness in checking up the past record. The court and the law should always protect a citizen's right if he is in danger of losing his valuable rights on account of an innocent mistake committed by him. It is quite likely that the second employer, namely, Kumaon Regimental Centre had by mistake recorded the date of birth from 23.2.1946 to 23.2.1940. The last numeral Six might have been by mistake encoded as Zero. As this mistake superimposed on the minds of the Doctor, his visual impression was likely to have been influenced. I agree with the view recorded by the Division Bench of this Court that such a visual impression cannot have any evidentiary value under Section 45 of the Evidence Act.

11. I, therefore, hold that the limitation of five years under Note 6 FR 56 is not applicable to a case of rectification of a mistake apparent from the record. The earlier army service and civilian service is a continuous one in the sense that the applicant worked under the same employer at two different stations. The change may be from the Military to the Civilian wing of the Military but the entire discipline as well as the rules governing both the services are same. There has not been much of a gap when he was discharged from army service on

compassionate ground on 26.10.71 and he was employed again in the civilian branch of the Kumaon Regimental Centre during February, 1972. Therefore, knowing fully well that the applicant had the previous service, it was incumbent on the respondents to note his date of birth from his army record and having failed to do so and having guestimated the age they have been only asked to rectify the earlier mistake. Both Harnam Singh's case as well as Kantilal Hematram's case (supra) are cases of date of birth recorded at the initial appointment. Here initial appointment is only the first army appointment. I am of the considered view that the latter entry is a simple clerical mistake inadvertently mentioned in the service record and the impact of the mistake should not work to the detriment of an illiterate person who hardly understood the consequence.

12. In the result, the OA is allowed. The respondents are directed to record the applicant's date of birth as 23.2.1946 and all consequential benefits flowing therefrom may be allowed to him.

Narain Singh
(N. Sahu)
Member(Admnv)

rkv.