

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./T.A. No. 1671 of 1996 Decided on: 27/11/92

Shri Hari Singh KincheeApplicant(s)

(By Shri M.P. Raju Advocate)

Versus

NCT Dlihi & OthersRespondent(s)

(By Shri N.S. Mehta & Mrs. Jyotsna Kaushik Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? Yes
2. Whether to be circulated to the other Benches of the Tribunal? 2

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1671 of 1996

New Delhi this the 15 day of November, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Hari Singh Khinchee
S/o Late Shri Jug Lal
A/42 Ganesh Nagar,
Tilak Nagar,
New Delhi-110 018.

....Applicant

By Advocate Shri M.P. Raju.

Versus

1. NCT of Delhi
through Secretary, Home,
Old Secretariat,
New Delhi.
2. Commissioner of Police,
Delhi Police,
Police Headquarters,
Indraprastha Estate,
New Delhi.
3. Government of India
through the Director (CPS),
Ministry of Home Affairs,
Delhi.
4. Shri J. SRivastava
Dy. Secretary,
Government of India,
Ministry of Home Affairs,
North Block,
New Delhi.

...Respondents

By Advocate Shri N.S. Mehta and Mrs. Jyotsna Kaushik.

ORDER

The applicant is aggrieved by the decision of the respondents in the impugned letters rejecting his request for change of date of birth. Applicant, who is an Assistant Commissioner of Police in Delhi Police, claims that at the time when he entered service believing his date of birth as given in the educational certificate to be correct, has given the date of birth as 17.6.1941. He has come to know that his date of birth has been wrongly recorded as the date of birth of his elder

brother was shown as 17.8.1941 as given in the certificate dated 21.7.1961 by the Principal of the concerned college, where he had appeared for the B.A. Examination in April, 1961. On the basis of this information, the applicant represented to the Hon'ble Lt. Governor with a prayer for alteration in his date of birth and correcting the same as 24.6.1942 on the basis of the birth certificate obtained by the applicant from the Chief Medical Officer, Gurgaon. On further investigation of the matter by the respondents, applicant's case was rejected and thereafter, the applicant sought a personal interview before the Lt. Governor of Delhi with all the connected documents and a further inspection was arranged on the basis of the representation dated 15.5.1990. The Chief Medical Officer, Gurgaon, who was addressed in the matter by the respondents, had attested the photocopy of the original entry in the Birth Register which is annexed here as Annexure-10 and Annexure-11. Thereafter, the respondents conducted further enquiries. Regarding the name of the applicant occurring in the birth certificate and the identity of the name shown as Hardeva in relation to the applicant, he contends that the findings of the said enquiry conclusively proved the date of birth of the applicant as 24.6.1942 and the identity of Hardeva is also established as the applicant himself and he relies on the details of the enquiry report dated 13.2.92 and 27.8.1992 annexed as Annexure-12. The matter was referred to the Ministry of Home Affairs, being the competent authority cited for concurrence in the matter of change of date of birth but the said Ministry vide impugned order dated 15.1.1996 had regretted that it was

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not found possible to accede to the applicant's request for change of date of birth at this belated stage and as per the rules, the officer was required to make the request for change of date of birth within 5 years of the date of his joining the service. It was also stated that even otherwise, the documents produced by the applicant in support of his contention were not found satisfactory warranting relaxation of the provisions. The applicant is, therefore, before the Tribunal with a prayer to quash the order of the respondents.

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2. The applicant contends that respondents did not comply with the orders of the Tribunal passed in O.A. No. 974/1995 wherein the respondents were directed to dispose of his representation taking into account the recommendations and the report submitted by respondent Nos. 1 and 2. He also contends that subsequent to the initial rejection of the representation in June, 1989 and subsequent consideration of the representation of the applicant, detailed enquiry was conducted by the respondents as part of this consideration and, therefore, the question of delay did not exist and, therefore, his case could not be rejected on grounds of delay. He also submits that respondent No.4 could not have rejected his representation as ordinarily such cases would have to be considered by the Hon'ble Minister of the concerned Ministry and, therefore, the applicant's case was considered and was rejected/disposed of by the authority, which was not delegated with the power for this purpose.

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3. The respondents have refuted the grounds taken by the applicant. They have averred that the applicant had defaulted in taking the immediate rectification of his date of birth as soon as the matriculation certificate was issued by the school authorities. He also failed to apply for change of date of birth immediately after he joined the Government service in 1966 and for 23 years he had nothing to indicate to his office that his date of birth was not properly recorded. The plea that he had come to know of the date of birth of his elder brother, could not be a sufficient ground to agitate for the change of his date of birth so belatedly. The matter was thoroughly enquired into and it was held by the Ministry of Home Affairs that the request was not covered under the rules. The respondents also rely on the judgment of the Hon'ble Supreme Court in Harnam Singh's case in which it was held that "in-action on the part of the applicant would preclude him from showing that the entry of his date of birth in the service record was not correct." They have also contended that in the photocopy of the date of birth certificate issued by the CMO, the name of one Shri Hardeva was shown to have been born on 24.6.42. The respondents contend that it is well known that in the birth register, the entry is made as male child or female child whereas in the document produced by the applicant issued by the CMO, the name of the child was also mentioned, which was against the established practice and raised a doubt about the entry itself. They also further contend that the extract of entry No.63 also raised a doubt as the entry shows the caste as Thakur, Hindu whereas the certificate of the Sarpanch shows that Hardeva belongs to Khatik caste and

in view of this, it was found that the document produced by the applicant did not support his case. Thus, the respondents contend that both on account of delay and also on merits of the case, there was no good ground for the respondents to entertain his request for change in date of birth by relaxing the rules in his favour.

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4. I have heard the learned counsel for the parties and have perused the record.

5. Admittedly, the applicant's case is that because he came to know of the date of birth of his elder brother as having been shown as 17.8.41, he had moved the respondents for change of his own date of birth. Prima facie, this does not seem to be convincing. Ordinarily, the applicant should have been aware of his own date of birth as recorded in his school certificate and as given by him at the time when he entered the service and to say that he had come to know the date of birth of his elder brother after such a long time, cannot come to his support. The counsel for the applicant relies on the decision in M. Murtuza Ali Vs. Secretary, Central Board of Excise and Customs, New Delhi and Others, 1988 (8) ATC 632 decided by the Hyderabad Bench of this Tribunal wherein it was held that certified extract from the birth register was a better evidence than the matriculation certificate and delay in obtaining the same would not affect its authenticity. In the present case, however, the respondents have clearly stated that the document as given by the CMO could not be taken as reliable document in view of the averments made by the respondents in this behalf as pointed out above. Their Lordships in The

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Secretary & Commission, Home Department & Others Vs. R.


Kirubakaran, AISLJ 1994(1) ASJ SC 141 held that

"Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier." As stated earlier, the reason for belated application for change of date of birth on the ground that he came to know the date of birth of his elder brother as recorded in his college record which led to the conclusion that his date of birth was incorrectly recorded at the time of entry into the school, cannot be considered as a valid ground which could be raised after several years of service and also at the time when the applicant was due to retire from service. Evidentiary value of the extract of the certificate issued by the CMO has not been accepted by the respondents, who have made detailed enquiries in this behalf and the competent authority, namely, the Union Home Ministry had rejected the same not only on the grounds of delay but also on the merits of the case. It is not for the Courts and Tribunals to substitute their judgment and arrive at a conclusion of their own. In U.O.I. Vs. C. Ramaswamy,

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and Others, 1997(2) SCSLJ page 118, it was held by the Apex Court that "there will be an estoppel when the date of birth was communicated at the time of entry into the Government service and no alteration in date of birth can be permitted unless there is a bona fide mistake". Even in terms of the decision in Union of India Vs. Harnam Singh, 1993(2) SCC 162, application for change of date of birth in respect of their employees which was filed prior to 15.12.79, could be considered and such applications from employees in service prior to 15.12.79 filed beyond 5 years from that date, could not be entertained, in terms of the relevant rules in this behalf. Admittedly, the applicant had made a representation only in February, 1989 and, therefore, he is estopped from seeking correction in the date of birth and that too after 23 years of his service and just before his retirement and, therefore, in the circumstances, there is no ground for interference by the Tribunal in the matter.

6. In the light of the foregoing discussion, this application is devoid of merit and is accordingly rejected. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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