

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 389/96

HON. SHRI R.K. AHOOJA, MEMBER 'A'

NEW DELHI, THIS THE 23rd DAY OF DECEMBER 1996.

SHRI P. SASI
r/o Sector 5/583
R.K. Puram
NEW DELHI-22

... APPLICANT

'By Advocate Shri K.B.S. Rajan'

VERSUS

1. Union of India, through
The Secretary
Ministry of Defence
South Block,
NEW DELHI.
2. The Joint Secretary (Trg.) & CAO
Ministry of Defence
C-II Hutsments
Dalhousie Road
NEW DELHI.

3. The Secretary
Ministry of Personnel, Pension
and Public Grievances
Government of India
North Block
NEW DELHI.

... RESPONDENTS

'By Advocate Shri V.K. Mehta'

ORDER

divt
The applicant is aggrieved by the order dated 7.2.94 passed by the respondent No.2 'A-1' whereby his request for change of ^{date of} birth has been rejected.

contd. ... 2/-

11

2. The applicant submits that the date originally entered in his SSLC certificate is 10.4.1954. He had deposited the certificate with the educational authorities while prosecuting higher studies and got it back in 1979. He then initiated steps for correction of his date of birth from 10.4.1954 to 23.12.1957. For this, he obtained the extract of the admission register from the school where he had joined the First standard. Thereafter, he entered into correspondence with the Government of Kerala, Department of Panchayats, after completion of various formalities. On 19.10.81, he also joined service with the respondents as LDC. He kept on pursuing with the authorities of State Government of Kerala for correction of his date of birth. After a thorough scrutiny and verification, the Secretary, Public Examination, Trivandrum, had corrected the date of birth in his SSLC book from 10.4.54 to 23.12.57, on the basis of an order passed by the Government of Kerala vide Annexure A-13. Thereafter, he made a representation to the respondents on 11.4.89 ('A-14') for correction of his date of birth in the service records. However, the same was summarily rejected on 26.4.89 ('A-15'). Another representation ('A-16') was filed on 13.6.90 by the applicant, but the same was also rejected on 3.12.90. On 5.10.93, the applicant again filed a detailed representation which resulted in final rejection in consultation with the Department of Personnel, vide Annexure A-1 which is impugned in this case. The applicant submits that he could not take steps for correction of his date of birth in the service records until the correction in his School Leaving Certificate was made by the Kerala

Dr

12

Government and that is the only reason why he could not approach the respondents within five years limitation period after joining government service. Furthermore, the request for correction of date of birth had not been made at the fag end of his service which would debar him in terms of Supreme Court judgement.

3. The respondents in their reply have raised a preliminary objection that the applicant has been slack in seeking remedy before this Tribunal. He ~~joined~~ joined service in 1981 but he sought correction only in 1989, which was rejected. He again waited for one year before filing his second representation and after that was rejected, he waited another three years till 1994 for filing more representations and the same were also rejected. Thereafter he took another two years to approach this Tribunal. The recording of the date of birth is regulated as per GFR 79'1', which prohibits alteration of the recorded date of birth except in the case of clerical error without the previous order of the Government of India. Note 6 below FR 56 regulates alteration of date of birth in case of clerical error and provides that such an alteration can be made within five years of entry into the government service. The respondents submit that this time limitation has been prescribed to give finality to the recorded date of birth. The Apex Court also upheld this position when challenged in UOI Vs. Harnam Singh JT 1993 '3' SC 711, and Secretary and Commissioner, Home Department & Ors. Vs. R. Kirbakaran, 1993 '5' SC 404. Since the applicant has not challenged the

DW



constitutionality and applicability of rules, he could not dispute the action taken by the respondents which is strictly within the ambit of the rules, as submitted by the applicant himself. The respondents therefore pray that the application may be dismissed.

4. I have heard Shri Rajan, counsel for the applicant, and Shri Mehta, counsel for the respondents. Shri Rajan vehemently argued that the limitation of five years in this case could not apply because it had taken Government of Kerala over nine years to take a final decision and to correct basic documents, i.e., SSLC. The applicant could not have come to the Tribunal till this basic document was altered. He submitted that no motive could be made out to the applicant since his retirement is due after 2010 and he has many more years of his service left to him. It was thus not a case of an employee seeking change of date of birth in order to obtain two/three years more of service at the fag end of his career. Shri Rajan further pointed out that the correction had been done by the Government of Kerala and since there is no dispute that the correct date of birth as recorded in the SSLC was of 1957, the respondents were duty bound to make the necessary correction in the service record. In this respect, he also cited the decision of this Tribunal, Ernakulam Bench, in K.N. Bal Vs. UOI and Anr. in OA 915/95 decided on 21.9.1995, '1996' 33 ATC 531. In that case, the applicant had initiated action to get the entry regarding date of birth rectified in service records when he was 46 years old, even though

(14)

DA NO.389/96

the rules contemplated correction of entry only when there was a bonafide clerical mistake, yet the Tribunal directed the government to consider the applicant's request, keeping in view the fact that the State Government had rectified the entry.

5. I have carefully considered the arguments of both the counsel. There is no doubt that the applicant has been slack in pursuing his case. Firstly, he passed the SSLC examination in the year 1974, yet on his own admission initiated steps to have the correction made only in 1980. Thereafter, when the actual correction was made in SSLC in 1989 though his repeated representations were rejected by the respondents, the applicant came for remedy before the Tribunal only in 1996. The applicant has sought to explain the delay on the ground that he was over-worked. An application for condonation of delay has also been filed by MA 429/96. In this, he states that the delay was caused on account of domestic problems. He further submits that since his was a meritorious case, it should not be dismissed on technical grounds. As held in S.S. Rathore AIR 1990 SC 10, the cause of action shall be taken to arise on the date of the order of the higher authority disposing of the appeal or representation. It has further been held therein that repeated representations do not enlarge the period of limitation. The first representation of the applicant was rejected in 1990 though he made further representation in a fitful manner

£

(14)

contd ... 6/-

and the last one was rejected in 1994. The applicant chose to sleep on his claim. The explanation given by him of domestic problem and of heavy burden of work cannot be considered satisfactory. When he could pursue his case by filing representations, he could have equally sought his remedy before the Tribunal. The MA for condonation of delay has no merit. The application is thus time barred.

6. Even on merits, the applicant does not have a strong case. Even though he claims that he had initiated action in 1980 before the school authorities for correction of date of birth in SSLC, he seems to have not mentioned it to the respondents when he joined service in 1981 that he was taking such steps. So far as the plea that the date of birth has been corrected by the Government of Kerala is concerned, the order passed by the authority, copy of which is enclosed by the respondents at R-1, specifically states that the decision for correction of service record is independent of the action taken for correction of date of birth in SSLC. As the 1d. counsel for the respondents submitted, the relevant rules and provisions have stood the test of judicial scrutiny and that being so, the decision of the respondents is within the ambit of the rules. No direction can therefore be given to them to act otherwise. The 1d. counsel for the applicant, Shri Rajan, relying upon K.N. Bal (Supra)

- 7 -

pleaded that a direction be given to the respondents to consider the representation of the applicant. In the present case, no such direction can be given since the representations have already been considered by the respondents. Therefore no purpose will be served by asking the respondents to consider a similar representation afresh.

In the light of the above discussion, the application is dismissed. No costs.

R.K. Ahuja
'R.K. AHOOJA'
MEMBER 'A'

'rbf'