

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1404/94

New Delhi this the 15th day of July 1994.

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri L Raman,
Superintendent of Customs (Air)
Indira Gandhi International Airport,
New Delhi.

Resident of 108 Sector H,
DIZ Area Baba Khark Singh Marg, Applicant
New Delhi.

(Shri R. Venkataramani, Sr. Advocate)

Vs

1. Union of India,
Through the Seceta.,,
Government of India,
Ministry of Home Affairs,
North Block, New Delhi.
2. Collector of Customs & Central Excise,
Custom House, I.P. Estate,
New Delhi.
3. Collector of Customs & Central Excise,
Central Revenue Bulding,
P.B. No. 5400, Queen's Road,
Bangalore-560 001.
4. The Secretary, Central Board of
Excise & Customs,
Ministry of Finance,
Department of Revenue,
New Delhi.

... Respondents

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant joined as Sub Inspector of Custom and Excise in the month of December 1959. He was promoted as Superintendent of Customs (AIR). The recorded date of birth of the applicant in the school register as well as in the service record is 10.3.1939. The same date of birth is

Contd..2.

b

3

recorded in his Matriculation Certificate and the same is shown by him when he got appointment as Sub Inspector. As per the date of birth the applicant joined the government service when he was of about 20 years 9 months of age. Since 1959 the applicant continued to serve in government service. For the first time the applicant made a representation on 29.11.1992 to the Collector of Customs and Central Excise, Bangalore followed by another representation dated 20.11.1993 stating therein that his correct date of birth is 16.3.1941 instead of 10.3.1939 which has been wrongly shown in the service record. He enclosed a copy of the birth certificate from the register of birth and death, Bangalore which he obtained in November, 1993. His representation was rejected by the order dated 26.11.1993. Earlier to this he was also informed in a similar manner in March 1993.

2. The applicant filed this application in June 1994 which came for hearing on 12.4.1994 praying for the grant of the relief that FR 56 (Note 6) be struck down as ultra vires, unconstitutional and void and further to quash the order dated 26.11.1993 passed by the respondents and that the respondents be directed to correct the date of birth of the applicant from 10.3.1939 to 16.3.1941.

3. We heard the learned counsel for the applicant at the admission stage. FR 56 (Note 6) has been considered by the Hon. ble Supreme Court recently in a judgement Union of Ind7a vis. Harnam Singh reported in Judgment Today 1993 (3) SC 711. The provision of Note 6 to FR 56 reads as follows:

"Note 5 - The date on which a Government servant attains the age of fifty eight

Contd., 3.

le

4

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 -

- 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."

4. According to the above amendment, it is obvious that the request for correction of date of birth is required to be made by the Government servant within five years of his entry into Government service and his date of birth may be corrected if it is established that a genuine bona fide mistake had occurred while recording his date of birth at the time of his entry into Government service. The CAT in the instant case was of the opinion that the bar of five years could only apply

le

to such Government servants who joined service after 1979, when the amendment came into force and that the said period of limitation would not apply to Government servants who were in service for more than five years prior to 1979.

The Hon'ble Supreme Court observed as follows:

"Of Course, Note 5 to FR 56(m) was incorporated only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into service but what is necessary to be examined is the intention of the rule making authority in providing the period of limitation for seeking the correction of the date of birth of the Government servant viz to discourage stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry. It is the duty of the courts and tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It could not be the intention of the rule making authority to give unlimited time to seek correction of date, after 1979, to those government servant 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 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

Contd..5.

le

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."

5. There is another decision of the Hon'ble Supreme Court where the matter of correction of date of birth was considered. The Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran reported in 1993(5) SC 404. In this case the decision of the Union of India Vs. Harnam Singh (Supra) was referred to alongwith others decision of Executive Engineer Vs. Rangadhar Malik reported in 1993 Supp.(1) SCC 763. Another reference by the Hon'ble Supreme Court in this judgement is Government of Andhra Pradesh Vs. M. Hayagreev Sarma, (1990) 2 SCC 682. The public servant in this case has claimed correction of date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the birth and deaths register ignoring the rules framed by the State Government referred to above. The Court said :

"The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled to alteration of his date of birth."

6. Another important factor is that an applicant for correction of date of birth has challenged reaction and in

le

7

that connection the Hon'ble Supreme Court at P 407 of the report has observed as follows:

"An application for correction of the date of birth should not be dealt with by the Tribunal or the High court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of material which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of material which make such claim only plausible. Before any such direction is issued the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases, it is a part of the strategy on the part of such public servants to approach the Court

Contd..7.

↓
e

or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless Prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed underserved benefit of the extended service and merely caused injustice to his immediate juniors."

7. The grounds taken for challenge by the applicant is that Note 6 FR 56 restricts the authority of the Tribunal to pass just order in a case of correction of date of birth. It is not so. FR 56 (Note 6) lays down a service rule by law the departmental authorities can make suitable amendments in the recorded date of birth in a particular period, if the recorded date of birth is alleged to be wrongly recorded. In fact no leave can be given till superannuating to an employee to choose of his own liking for correction of his date of birth at any time as that will effect the right claims of others in the matter of higher promotion. The observation of the Hon'ble Supreme Court in the case of R. Kirubakaran (Supra) are relevant in this regard. This rule is not discriminatory nor arbitrarily. This gives a particular period in which a person can move to the department for certain correction in the recorded date of birth. Thus, we do not find that the Rule Note 6 FR 56 is arbitrary or ultra vires in the Constitution. The note has a nexus with the object sought to be achieved and to settle the matter as early as possible


le

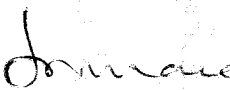
9

- 8 -

regarding the alleged incorrect date of birth of a person within five years of his entering into the service.

8. On merits, the applicant has no case. All along in school days, college days, and when he entered in service the date of birth of the applicant is shown as 10.3.1939. He entered the Government service in 1959 at the age of about 20 years 9 months. After serving for 23 years in the year 1992 he contacted someone in his native place and he learns about his correct date of birth. Nobody remembers even the date of birth of his own progeny after the long interval unless there is occasional celebration of birth date. The cock and bull story put up by the applicant is totally unconvincing. The date of birth shown in the matriculation certificate has not been corrected at any time. In Government service, the date of birth recorded in the Matriculation Certificate is taken as a correct date of birth ^{not the entry of} ~~and~~ ^{and} birth and death register, cannot be falsified unless substantiated by more convincing evidences. The application, therefore, devoid of merit and is dismissed.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (K)

Mittal