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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.187/91

Date of decision: 29.07.1993.

Shri N. Lakshmanan

...Petitioner

Versus

Union of India through the
Secretary, Ministry of Energy,
Sharam Shakti Bhawan, Rafi Marg,
New Delhi & Another

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri S.N. Gupta, proxy
Counsel for Shri P.T.S.
Murthy, Counsel.

For the respondents

Shri P.H. Ramchandani,
Senior Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

This case had come up for final hearing on 7.7.1993 when Shri S.N. Gupta, proxy counsel for Shri P.T.S. Murthy, counsel for the petitioner had prayed that the case be adjourned, as Shri P.T.S. Murthy, learned counsel for the petitioner would be returning from Madras only on 27.7.1993. The case was accordingly ordered to be listed not before 29.7.1993. When the matter came up today Shri S.N. Gupta, proxy counsel for Shri P.T.S. Murthy submitted that the case be further adjourned as Shri Murthy has not come back from Madras and would be coming back only next week. Since we had already adjourned the case to accommodate the prayer of the learned counsel for the petitioner, we are not inclined to defer the disposal of this case any further, as this is one of the 10 cases listed peremptorily for final hearing. We, therefore, proceed to dispose of the case with



the assistance of the learned Senior Counsel for the respondents Shri P.H. Ramchandani.

2. The case of the petitioner is that he belongs to the Central Secretariat Stenographer Service (CSSS) which he joined on 29.7.1958. By successive promotions he ultimately reached the grade of Private Secretary (Rs.3000-4500) on regular basis w.e.f. 11.5.1989. His date of birth as recorded in the service book on the basis of his date of birth recorded in the secondary school leaving certificate is 7.1.1933. These facts are not in dispute. The petitioner, however, on 29.6.1988 made a representation to the Secretary, Department of Power, Ministry of Energy where he was last employed before his retirement on superannuation that his actual date of birth is 13.4.1934. To substantiate this he filed a photostat copy of the certificate issued by the Department of Revenue Government of Tamil Nadu which indicates that a male child was born to the mother of the petitioner on 13.4.1934. This certificate is based on the information extracted from the original record of birth from the register of births maintained under the Registration of Births and Deaths Act, 1969. A further affidavit has been filed by the mother of the petitioner, according to which the male child who was born on 13.4.1934 is said to be the petitioner. The petitioner retired from service on attaining the age of superannuation in accordance with the original date of birth recorded in the service book on 31.1.1991.

3. The stand of the respondents is that the cause of action in this case arose on 29.7.1958. The petitioner was required to represent for the change in the date of birth within 5 years of joining

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service as per Ministry of Home Affairs, Department of Personnel and Administrative Reforms notification No.19017/7/79-Ests(A) dated 30.11.1979. A copy of the said notification has been placed at Annexure-I annexed to the counter-affidavit. The petitioner on the other hand represented for the change in date of birth only in the year 1988, i.e., much after 5 years after the instructions of 30.11.1979 were issued. The said representation is stated to have been made beyond any reasonable period. Further, his representation was turned down by a detailed speaking memo No.25/33/86-Admn.II dated 16.1.1989, a copy of which has been enclosed at Annexure-VII alongwith his O.A. The present application has been filed by the petitioner only on 16.1.1991, i.e., after about two years after his representation was rejected. The respondents, therefore, submit that the petition is time barred under Section 21 of the Administrative Tribunals Act, 1985. On merits it is contended that according to Note-6 under Rule 56 of F.R. 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/ forms the basis of the service record. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except in the following circumstances:-

- (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
- [Signature]*

(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.

The case of the petitioner is not covered by any of the above conditions. His representation dated 29.6.1988 for change of date of birth from 7.1.1933 to 13.4.1934 ^{was} nevertheless examined but the change prayed for was not found to be acceptable in view of the circumstances which has been adverted to earlier. The petitioner is now seeking to get the date of birth changed on the basis of a certificate which does not clearly indicate if he was the child who was born on 13.4.1934. The date of birth 13.4.1934 is sought to be related to the petitioner by an affidavit filed by his mother.

4. We have perused the records of the case and heard the learned counsel for the respondents. The petitioner, as stated earlier, joined service in 1958. ^{first} The ~~the~~ ever representation seeking change of date of birth was made by him only in 1988. The date of birth was recorded in his service book on the basis of the secondary school leaving certificate which was produced by the petitioner himself when he was selected to join the CSSS. In the course of long service a Government servant gets several occasion when his date of birth recorded by him comes to his specific notice. If any mistake had taken place it

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was incumbent on the Government servant to represent with a view to remedy the mistake at the earliest possible. He cannot wait for decades before he makes a representation. In a case recently decided by the Hon'ble Supreme Court between Union of India v. Harnam Singh reported in JT 1993 (3) SC 711 their Lordships have observed that:-


"...the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the


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incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty five years from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was not correct."

5. The case before us is on all fours with the case decided by the Supreme Court in Harnam Singh's (supra) case. The petitioner had not challenged the date of birth as recorded in 1958 till 1988. Inordinate and unexplained delay or laches deprived him of his right to seek remedy. The evidence produced by him to seek the change in the date of birth is also not convincing when weighed against the secondary school leaving certificate produced by him which is the basis of the date of birth recorded in the service book at the time of entry in service.

6. In the facts and circumstances mentioned above the application does not merit our interference. The same is accordingly dismissed No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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