

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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C.A. NO. 1252/92

29.05.1992

Shri Harnam Singh

...Applicant

vs.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...Shri B.S. Mainee

For the Respondents

...Shri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant working as Assistant in AE One Section Department of Education has filed this application aggrieved by the order dt. 22.4.1992 rejecting the representation of the applicant for alteration of date of birth from the recorded date of birth 20.5.1934 to the alleged date of birth 7.4.1938.

2. In this application, the applicant has claimed the relief that the impugned order be set aside and the respondents be directed to allow the applicant to continue in his service till date of superannuation, i.e., 30.4.1996 in a cordance with the correct date of birth as recorded in

the matriculation certificate. The brief facts of the case are that the applicant earlier joined on the Class-IV post in the Ministry of Finance (Defence) as Peon on 22.2.1956. At that time, the date of birth in the records was entered as 20.5.1934, while the actual date of birth of the applicant is 7.4.1938. In that very year, the applicant has taken the matriculation examination from Punjab University. The result of the same was declared in May, 1956, i.e., about 2 months later than his joining the Class-IV post of Peon in the Ministry of Finance (Defence). The applicant got himself, after passing the matriculation examination, registered with the Employment Exchange and the applicant was sponsored for the post of a Clerk and was selected and appointed as LDC in the Ministry of Home Affairs in May, 1957. His Roll No. in the matriculation examination was 21653-1956. However, the date of birth of the applicant was not altered on the basis of this matriculation certificate which the applicant has filed as proof of qualification for the post of Clerk, i.e., LDC. The date of birth continued to be recorded as 20.5.1934 which was earlier recorded when the applicant joined Class-IV post on 22.3.1956 and at that time no proof of date of birth was taken from the applicant, who signed the same on the direction of the clerk. The applicant for the first time learnt about the wrong entry of the date

of birth when he was asked to fill up the pension papers informing him that he has to retire on 31.5.1992 and that his date of birth in the service record is 20.5.1934. The applicant immediately made a representation (Annexure A3), but the same was rejected by the OM dt.4.12.1991 without giving any reason(Annexure A5). The applicant submitted another representation on 3.1.1992 in which he requested again to consider his case for the correction of date of birth. The said representation was also replied by the OM dt.29.1.1992 and the request of the applicant was turned down. The applicant submitted another representation on 26.3.1992 stating that he has submitted the matriculation certificate with the respondents on 4.9.1957 and thereafter the applicant had never been afforded any opportunity to inspect the service records so far as the entry of date of birth is concerned. The applicant also annexed the copy of one Darshan Singh in which case, the department has been directed by the Principal Bench of the Central Administrative Tribunal to correct the date of birth of said Darshan Singh made in the matriculation certificate. This representation has also been rejected by the impugned order dt.22.4.1992, which is reproduced below :-

"Subject : Request for alteration in the date of birth of Sh.Harnam Singh, Asstt. in the Service Book.

With reference to his representation dated 26th March, 1992 regarding alteration in his date of birth, Sh.Harnam Singh, Asstt. is informed that his representation has been considered once again and it has

not been found possible to accede to his request for changing his date of birth from 20.5.1934 to 7.4.1938. As regards his contention that he had submitted a copy of matriculation certificate in 1956, Sh.Harnam Singh has already been informed vide OM dated 29.1.92 about DOP&T's ruling that furnishing a copy of matriculation certificate does not automatically imply change in date of birth unless the Govt. Servant specifically applies for it within the prescribed time limit and the appointing authority accepts his request.

2. In so far as CAT's judgement in the case of Sh.Darshan Singh, a copy of which has been enclosed by Sh.Harnam Singh with his representation, it may be stated that in the said judgement the CAT's order is based on the fact that Sh.Darshan Singh had not been shown his service book even once during his entire service. Sh.Harnam Singh had seen his Service Book several times, latest being in 1976, and he had signed the Service Book in verification of the correctness of the entries made therein and he had never pointed out the 'incorrectness' in his date of birth. The CAT's judgement enclosed by Sh.Harnam Singh with his representation is thus distinguishable from the case of Sh.Harnam Singh. Apart from this, Sh.Harnam Singh has not furnished any new grounds for reconsideration of his case.

3. Sh.Harnam Singh is also informed that further representation on the subject will be considered unless he furnishes any new facts/information."

3. The respondents contested the application and stated that the application is barred under FR 26 Note 5 and GFRs 963 Rule 79. It is further stated that the applicant is estopped to change the same under Section 115 of the Evidence Act and if his date of birth is accepted, it would have rendered the applicant below the age at the time of appointment. It is further stated that the application is also barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985. The applicant joined the Ministry of Finance (Defence) as a Peon on 22.2.1956. The entry in

his Service Book regarding the date of birth when he joined on the Class-IV post was made on the basis and proof furnished by the applicant. The pretext taken of signing on dotted line is not acceptable as the applicant is literate. The submission of matriculation certificate does not bring automatic change in the date of birth. The applicant has to apply for the same. The applicant knew about the entry of date of birth as 20.5.1934 as the same was shown in the various seniority lists of LDC and UDC circulated from time to time. The applicant has only requested for the alteration in the date of birth in September, 1991 which is not within 5 years of the joining Government service in 1956. At the time when the applicant joined Class-IV post, he was about 17 years, 10 months and 16 days old and thus was ineligible for Government service being minor. The applicant has also seen and signed the Service Book from time to time till 1976. Thus according to the respondents, the applicant has no case.

4. I have heard the learned counsel of the parties at length and have gone through the record of the case. The learned counsel for the respondents has referred to the service sheet where the applicant has shown as matric fail and there is signature in column 9 of the applicant in English.

The learned counsel for the respondents has also placed the other departmental records of the applicant and also the Service Book. On the Service Book, there are signature of the applicant on various pages except the first page. The three seniority lists have also been filed and in the first seniority list on page-15 at Sl.No.185, in the second on page-10 at Sl.No.85 and in the third one on page-17 at Sl.No.196 against the name of the applicant in the relevant column, the date of birth is recorded as 20.5.34. These documents were also shown to the learned counsel for the applicant. The first contention of the learned counsel for the respondents is that the application is barred by time. However, this cannot be accepted as the correct position of law as of today. It has been held in various judgements that the applicant has every right to come for the correction of his recorded date of birth on furnishing the best proof regarding the correct age. In the case of Hira Lal, reported in ATR 1987 (1) 141, it has been held that the applicant has a fundamental right to serve the Government upto the age of superannuation and that too in accordance with the actual date of birth and so can move the Government for the correction of his date of birth. The learned counsel for the respondents pointed out that Hira Lal was illiterate, but the applicant is literate. It is also held that the prayer for correction of date of birth will not be barred by the principles of estoppel on the ground

that the applicant had earlier given another date of birth and now he is resiling from the stand and praying for alteration of the same. It has also been held so by the Principal Bench of the Central Administrative Tribunal in Gyan Chand Sharma vs. UOI, ATR 1988 (2) 332.

5. The learned counsel for the applicant, on the basis of the authority of Himachal Pradesh High Court in the case of Manak Chand vs. State of Himachal Pradesh, 1976(1) SLR 402 argued that the Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. The reliance has also been placed by the learned counsel on the case of S.S.Sandhu vs. UOI, 1983(1) SLJ 475 where the date of birth recorded in the matriculation certificate is the authentic proof of date of birth and the onus to disprove the same lies on those to disbelieve the correctness and genuineness of the certificate. The learned counsel for the applicant has also referred to the decision in the case of Ram Viriksh Gupta vs. UOI, reported in 1990(2) ATJ 66 where for correction of date of birth, mere requirement is filing of school leaving certificate and no formal application is mandatory. The value of the matriculation certificate has also been upheld in the case of Gosta Beha Banik, 1987 (2) ATR p-528.

6. The respondents have raised objection in the impugned order that mere filing of the matriculation certificate in 1956 does not automatically imply that the date of birth already recorded be altered on the basis of matriculation certificate. The contention of the learned counsel for the respondents may have been considered if the applicant had continued in the same employment from the inception of the service in Class-III post. But here the case is that the applicant joined Class-IV post as a Peon in 1956 and then on the basis of the qualification of having passed matriculation, he was appointed to the post of LDC in the Ministry of Home Affairs. The respondents themselves have seen the matriculation certificate. So if there was some difference in the date of birth recorded with the Ministry of Finance (Defence) while the applicant was working as a Peon and that which he has given at the time of his selection as a Clerk, then the applicant should have asked to explain this discrepancy.

It is a fact that if a person wants to get some relief, then he has to pray for it. But the applicant has not raised the issue at the relevant time of his posting as LDC. But for the first time, he has raised the issue of alteration of date of birth in September, 1991. It is held that there is no limitation for the correction of date of birth as also held by the Hon'ble Supreme Court in AIR 1977 SC 1980 and in the case of Darshan Singh Vs. W.I (OA 208/89) decided by the

Principal Bench on 9.8.1990. Thus only the basis of coming very late for alteration of date of birth would not oust the claim of the applicant. It is trite that at any time during the service, it is open to an employee to make a request for the alteration of the recorded date of birth and that if the request is supported by cogent evidence to establish that the recorded date is wrong, correction has to be made. The second plea taken by the respondents in rejecting the representation by the impugned order that the judgement of Darshan Singh does not apply because Darshan Singh was not shown the Service Book even once during his entire service. However, still the fact remains on the point of delay in approaching the respondents for correction of date of birth. A perusal of the service record does show that the pages which the applicant has signed is not the first page where the date of birth is recorded, but subsequent pages where other service particulars like pay fixation etc. are mentioned. As regards the entry of date of birth in the seniority list, that may be within the knowledge of the applicant, but seeing to the nature of the job on which the applicant is engaged, being ministerial, it is not expected that the seniority would have mattered much as the promotion is made only on the basis of seniority-cum-fitness in due course. Moreover, there is no authenticity regarding the date of birth recorded in the seniority list and more emphasis is attached to

the position of the person in the list vis-a-vis other similarly placed persons in the cadre. Even in the impugned order, the respondents have left the matter open to the applicant that if he wants, he can furnish new facts and information regarding the correction of date of birth. This itself shows that even holding that the applicant had come very late, yet the matter was not closed by the impugned order giving the applicant liberty to make, if he so wishes, other representations on new facts and information. Thus the impugned order does not say at all that the matriculation certificate is forged or has been obtained subsequently. The authenticity of this certificate is established by the very document (Annexure R1) annexed to the counter where the Roll No. 21653 and the year 1956 is mentioned where the educational qualifications have been written as matric. Earlier in this column No. 4 regarding educational qualifications, there was a hand written entry that the applicant is matric fail.

7. The respondents have also taken another objection that the applicant has already taken the benefit of giving date of birth as 20.5.1934 in getting an appointment as a minor as he got appointment in February, 1956 when he was about one and a half months short of 18 years, which is the minimum

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age for entry in Government service. The respondents were free to proceed against the applicant for such a wrong information, but this will not deprive the applicant to place his case for correction of date of birth because the date of birth was recorded when the applicant was a Peon in Class-IV in the Ministry of Finance (Defence) on 22.3.1956, while the applicant joined as a Clerk, i.e., LDC in May, 1957 in the Ministry of Home Affairs. The learned counsel for the applicant has referred to the authority of Sumer Singh, reported in 1990 CSJ vol.3 CAT 44 wherein a similar case of Police Constable, there was a correction of date of birth even though by such a correction at the time of initial appointment, he was less than 18 years of age. The finding in that case was given on the basis that in the Police Force, other persons of tender age below 18 were also employed as a recruit, so that analogy will not apply to the present case. The learned counsel for the respondents has referred to the Rajinder's case, reported in ATJ 1939(2) 41 and ATR 1989(1) 558. However, the ratio of these cases cannot be applied to the present case as the applicants of those cases continued in the same service, while in the present case, the applicant has shifted from a Class-IV post to Class-III post almost within one year and he joined the clerical cadre. The learned counsel for the respondents also

argued that the applicant is now stopped and cannot represent that his age is not what was earlier written while he got employment in February, 1956 and in this connection he has placed reliance on the authority of Ghasita Lal vs. UCI, 1986(6) ATC 224. The principles of estoppel cannot be applied in a case where the applicant has a right arising from statute itself. Every person has a fundamental right to serve till he attains the age of superannuation on the basis of his date of birth. If the opinions are defeated between the employee and the employer about the date of superannuation, then the employee has a vested right to lead evidence to the effect that his date of superannuation would be when he attains a particular age prescribed under law; in the present case 58 years. So in such a situation, the principles of estoppel will not be put into effect to the detriment of the applicant. Moreover, the respondents in their counter have not stated that what proof of age the applicant had given when he was employed in February, 1956 on the Class-IV post. It was for the respondents to be satisfied about the age when the applicant entered. If the applicant looked minor, then the respondents should have got him medically examined to find out his actual age. The age recorded in the matriculation certificate is based on a statement of fact given in the institution when admission is

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made and because of that statement, the age is shown in the said certificate. Any representation made by such a person against the records would not be taken to be a correct statement of facts. It is because of this that the matriculation certificate is always taken authentic for recording date of birth ~~for~~ a person in Government service.

8. Thus taking all these facts into account, I find that the present application is to succeed and the respondents are directed to correct the date of birth of the applicant in the service record as 7.4.19~~88~~ and not to retire the applicant before 30.4.1996 when he will attain the age of superannuation. Respondents to comply with the above directions immediately. Costs easy.

J. P. Sharma
(J.P. SHARMA) 29.4.96
MEMBER (J)