

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. 1487/93

Date of decision: 30.07.1993

Shri Moti Lal

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Petitioner

versus

Union of India through
Secretary,
Ministry of Urban Development,
New Delhi.

Respondents

CORAM :-

HON'BLE MR I.K. RASGOTRA, MEMBER (A)

For the Petitioner : Shri B.k. Pal, Counsel

For the Respondents :

JUDGEMENT (Oral)

I have heard the learned counsel for the petitioner. The case of the petitioner in brief is that the petitioner is working as Wireman in the Electrical Division No.I, DAD-1 and Circle .I, PWD, I.P. Bhavan, New Delhi since 19th June, 1961. At the time of entering the service the petitioner had submitted a copy of his horoscope as prepared at the time of his birth, showing, his date of birth as 22.12.1942. The date of birth actually recorded in

the service book is 6.1.1937. The petitioner says that the date of birth recorded in the service book was signed by him in English, although he does not know English language. In 1987 a seniority list is said to have been published by the respondents in which his date of birth was shown as 6.1.1937. After seeing the seniority list, applicant started making representations seeking correction of his date of birth. He obtained a copy of the birth certificate from Sub-Registrar, births & deaths of the Sadar and Paharganj area, M.C.D. Delhi which shows his date of birth as 22.12.1942. The first representation was filed by the petitioner in 6.11.1987 and enclosing a copy of the birth certificate obtained from Delhi Administration. This was followed up by a further representation on 14.7.1988, Another representation was sent on 21.7.1989 and yet another on 13.01.1993. The case of petitioner's date of birth was further discussed vide sr.No.14 of the Minutes of Meeting held on 2.6.92. (Item No.21), in a meeting with the D.G(W)/C.P.W.D. by the Union. The Union was informed "that the case of change of date of birth of Shri Moti Ram could not be considered as it was not applied for within a period of five years from the date of entering in Government service. However, Union wanted the case to be re-examined, this will be done." This minute is incorporated in letter dated 9.11.1992 written by the General Secretary of the Union to Director General (Works) (Page 20 of the paper book).

Thereafter, the respondents issued a letter addressed to the Superintending Engineer, PWD, Elect.

Circle. I Delhi Administration, I.P. Bhavan on 15.2.1993 rejecting the representation of the petitioner. The said letter reads as follows :-

"I am to refer to your letter No.10/16/E-3/PWS/Circle(Elect.)-1/3860 dated 31.12.92 on the above cited subject. In this connection it is stated that the case of Shri Moti Lal Wireman has been re-examined in this Directorate not acceded to as it has not covered under the rules. The person concerned may be informed accordingly.

Personal file and service book of Shri Moti Lal, Wireman are, returned herewith."

Learned counsel for petitioner Shri B.K. Pal in support of the case of the petitioner cited the judgements of the Tribunal in the case of Shri Hira Lal Vs Union of India 1987(1) ATR 414 and 1987(2)ATR 506 Shri R.R. Yadav Vs Union of India & Ors.

In the former case the Tribunal relying on the judgement of the High Court of Himachal Pradesh in Manak Chand Vs State of Madhya Pradesh 1992(1) SLR-402 came to the conclusion that ~~since~~ mere signing of the service record on a number of occasions does not operate as an estoppel ~~against~~ to get an erroneous entry as to the date of birth corrected. In the light of the Note-5 F.R.56. Rule 79(2) of the General Financial Rules cannot stand in the way of the applicant getting the entry in the service record corrected."

(b)

In the latter case cited by the learned counsel for the petitioner the Tribunal held that there is no rule which declares that an entry of date of birth in the service record is conclusive. Accordingly, the Tribunal allowed

change in the date of birth in the service record even after a lapse of 30 years or the date the petitioner in Shri R.R. Yadav (Supra) had joined service. The learned counsel submitted that the petitioner herein too cannot be deprived of seeking a change in the date of birth as the entry made initially was erroneous and an error can be sought to be corrected as soon as the same comes to notice. The learned counsel further relied on the Government of India's instruction No.2 under F.R. 56 in support of his case. (Page 302/303 of judgement compilation corrected up August, 1989).

I have heard the learned counsel and considered the submissions made and gone through the record carefully. Admittedly, the petitioner joined service in the Office of the respondent in 1961. It is also admitted by him that he signed the date of birth in the service book in English language. Date of birth from 1961 to 1987 remained ^{unchallenged} ~~unchanged~~ is also not disputed. It is his case that he became aware of the erroneous entry of date of birth only in 1987 and, therefore, he made representations. In my opinion the case is barred by limitation and latches first, because petitioner made representation in 1987 and after waiting for a reasonable period of time i.e. six months, he should have approached Tribunal. He, however, continued to remain satisfied by making repeated representation which ultimately after re-examination came to be rejected on 15.12.1993. The

learned counsel for the petitioner submits that ^(A) limitation will start from 15.2.1993. I am not persuaded to accept this contention as the cause of action had arisen latest in 1987 and the petitioner should have approached the tribunal some time in the middle of 1987 in accordance with the provisions made in the Administrative Tribunal Act, 1985. Besides the above the Supreme Court in Union of India Vs Harnam Singh JT 1993(3) has held :-

"....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 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 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 incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about 35 years

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from the date of joining service, therefore, precludes him showing that the entry of his date of birth in service record was not correct."

In the facts and circumstances of the case, I am not inclined to admit the case of the petitioner for the change of date of birth. The same is accordingly dismissed.

of the admission stage

I.K. Rasgotra
(I.K. Rasgotra)

Member (A)

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