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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2169/93

New Delhi this 31st day of January 1994

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

Shri Chandrama Singh,
S/o late Shri Devi Muni Singh
r/o care of Ram Kishan Singh and
Balram Singh, Village Karhara,
Mohan Nagar, Ghaziabad.

... Applicant

(By Advocate Shri B.K. Pai).

Versus

1. The Director General (Works),
C.P.W.D.,
Nirman Bhawan,
New Delhi-110 011.
2. The Superintending Engineer,
Delhi Central Electricals,
C.P.W.D., Circle VIII,
I.P. Bhawan,
New Delhi.
3. The Chief Engineer (Electricals)-I,
Vidhut Bhawan,
C.P.W.D.,
Opp. Campa Cola Factory,
Connaught Circus,
New Delhi-110 001.
4. The Executive Engineer,
Hindon Central Electrical Division,
C.P.W.D.,
Hindon Airport,
Ghaziabad, U.P.
5. The Executive Engineer (Hqrs.),
Delhi Central Electrical Circle-V,
C.P.W.D.,
R.K. Puram,
New Delhi.

... Respondents

(By Advocate Shri M.L. Verma)

ORDER (ORAL)

HON'BLE MR. J.P. SHARMA, MEMBER (J)

The applicant entered in the service as a casual worker sometime in February 1969 and employed as Muster roll employee in the C.P.W.D.. He was working at that time with the Union of India in Nepal on certain project.

The case of the applicant is that he had already passed

(b)

Higher Secondary School and a certificate was issued to him in November, 1963 wherein his Date of Birth is recorded as January 20, 1944. He came to Kanpur in May 1986 where the applicant was asked to fill up his nomination form regarding Provident Fund. The applicant learnt that his service record has an entry of the Date of Birth as 5.1.1939 while his actual Date of Birth is 20.1.1944. The applicant came on transfer to Hindon, Central Division, PWD in February 1987. The case of the applicant is that at that time of joining initially the government service neither he was asked nor he furnished any details regarding his Date of Birth and he was informed for the first time at Kanpur in July 1986. When the applicant learnt about the wrong entry of his Date of Birth then he made representation in July 1986. The correct Date of Birth shown in the nomination form is ⁷ January 1944. He was informed while he was posted at Hindon that the earlier Date of Birth recorded in his service record is 5.1.1939. He, therefore, made representations one after the other from 1.7.1987 and finally by the impugned order dated 21.4.1993 Annexure P-18, the ~~request~~ was rejected.

2. The applicant has prayed for the grant of the relief that the impugned order be set aside and the Date of Birth be corrected to 20.1.1944 and that the respondents be directed not to retire the applicant on the basis of the Date of Birth i.e. 5.1.1939.

3. A notice was issued to the respondents who contested the application by filing the reply. It is stated that the application is barred by doctrine of estoppel. It is also stated that the applicant was earlier working in the East West Highway Project in Nepal and his Date of Birth was rightly recorded as 5.1.1939. It has been accepted by him and signed by

him on 2.9.1970 in the service book and a photocopy of the same has been annexed with the counter as Annexure 'A'. The applicant is an educated person and also had sufficient working knowledge of English language. The ignorance averred in the application is a pre-text prolonging his length of service by antedating his date of Birth to the year 1944.

4. The applicant also filed the rejoinder rebutting certain averments made in the counter.

5. I heard the learned counsel for the parties at length and perused the record. The learned counsel of the applicant has cited certain law on the precedent AIR from the Journal/1976 SC P 1455 and P. 1766. For the Former he highlighted note 8 and in the latter page 1766 Para 7.

6. It is established law that the law declared by the Superior Court and atleast by the Apex Court as a binding force provided it gives reasons for its decision and that ratio if arises in any subsequent proceeding pending before the subordinate courts, such courts or tribunals are bound to follow the same reasoning while in a similar matter arriving at a particular conclusion. The respondents have rejected the claim of the applicant after roving enquiry even knowing well that there is a certificate of the Bihar Vidhya Priksha Simiti on the ground that under FR 56 Note 6 substituted on 30.11.1979 the desired Date of Birth's correction cannot be made. Note 6 is reproduced below:

"Note 6.-The date on which a Government servant attains the age of fifty-eight 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."

7. A similar case ^{came} before the Tribunal of one Harnam Singh and in that a plea was taken that amendment to FR 56 by an addition of Note 6 has taken place in 1979 and as such those who entered into service prior to that date cannot be deprived on the ground of limitation taking November 1979 as cut off date to get an alleged wrong entry corrected regarding Date of Birth. The Union of India went in Appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the appeal and the case is reported in 1993 Vol.24 ATC P 92 Union of India Vs. Harnam Singh. It is held that request for correction of Date of Birth is required to be made by the Government servant within five years after entering into service and his date of Birth may be corrected if it is established that the genuine bonafide mistake

has occurred while recording his Date of Birth at the time of entering into Government service Para 9.

The Central Administrative Tribunal in the instant case was of the opinion that the bar of five years can only apply to such Government servants who have joined the government service after 1979 when the amendment came into force and the said period of limitation could not apply to Government Servants who were in service for more than five years prior to 1979.

8. The learned counsel for the applicant has highlighted Para 12 to distinguish the Judgement for application in his case. Para 12 is quoted below:

"The approach of the Tribunal does not commend to us as it tends to create an indivious discrimination, unsustainable in law, by creating two artificial classes of Government servants between those who joined service before and after 1979. It is a too simplistic way of looking at the issue, ignoring the ground realities and the intention of the rule-making authority to discourage stale claims and non-suit such Government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. To say that the respondents, even though he signed the service-book at a number of places at different times and saw the seniority lists, may not have still come to know as to what his recorded date of birth was, is to ignore the normal human conduct and put premium on negligence. The observations of CAT quoted above are neither logical nor sound. 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 authority to give unlimited time to seek correction of date of birth, after 1979, to those Government servants 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, but the case of Government servant 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 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."

9. Having given a careful consideration when there is a direct decision on the point and the respondents have taken the point that the correction of date of birth cannot be done in view of the provisions laid down in Note 6 of FR 56, this Tribunal cannot interfere.

10. The learned counsel has also emphasised that earlier to 1986 the applicant was unaware of the date of birth recorded in the service record and it was only in 1987 when he received a reply in pursuance of his filling of GPF nomination form, for the first time he learnt about the wrong entry of his date of birth. This contention if taken for granted will lead to anomalous propositions. If a person has not come at the right time he may always take the stand of being unaware that what his date of birth has been recorded in the service record. In the present case the respondents have rebutted

this contention by filling a photocopy of the service sheet Annexure 'A' signed by the applicant in English showing his date of birth as 5.1.1939.

10. The contention of the learned counsel, therefore that the authority does not apply cannot be accepted.

11. The present order, therefore, passed by the respondents does not call for any interference and the O.A. is dismissed as devoid of merit leaving the parties to bear their own costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

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