

8

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.2642/1993

New Delhi, This the 24th Day of July 1994

Hon'ble Shri P.T.Thiruvengadam, Member (A)

Shri Raghwanish Kumar
Trained Graduate Teacher (Hindi)
Govt, Boys, Sr. Sec School
Harinagar, Ashram, New Delhi.

...Applicant

C/o Shri B S Mainee
Advocate
240 Jagriti Enclave
Delhi 110 092.

By Shri B S Mainee, Advocate

Vs

Union of India, Through:

1. The Lt Governor
National Capital Territory
Old Secretariat, Delhi.
2. The Director of Education
Delhi Administration
Old Secretariat
Delhi.
3. The Dy Director of Education
District South, Defence Colony
New Delhi.
4. The Registrar,
Punjab University
Chandigarh.

..Respondents

By Shri B S Gupta, Advocate with
Shri S K Gupta, Advocate

ORDER

Hon'ble Shri P.T.Thiruvengadam, Member (A)

1. The applicant was appointed as Asst Teacher on 15.7.1961. Based on the matriculation certificate issued by the Punjab University his date of birth was recorded as 8.7.1934. It is the case of the applicant that the said date of birth was not the actual date of birth and has been recorded in the school after the applicant migrated from Pakistan. It was in the year 1975 the applicant came to know from his mother that the applicant's actual date of birth is only 1.1.1936. Thereafter the applicant wrote to the

X
9

Municipal authorities in Pakistan and in June 1984 he was able to obtain information from the Municipal authorities that his correct date of birth was only 1.1.1936. In the meantime the Punjab University issued a notice in Hindustan Times on 10.1.87 notifying ^{that} applications for correction of date of birth in matriculation certificate issued by the Punjab University prior to 1969 would not be entertained after 31st December 1987. The applicant immediately reacted and after a marathan effort with the University got fresh matriculation certificate issued on 22.2.92 wherein the applicant's date of birth was shown as 1.1.1936. In April 1992, the applicant represented to the respondents for alteration in his date of birth from 8.7.34 to 1.1.1936. His request ~~not having been~~ entertained by the respondents, this DA has been filed for a direction for alteration in the date of birth as above.

2. The learned counsel for the applicant traced the various steps taken by the applicant in getting his matriculation certificate altered with regard to the date of birth. The applicant had to approach the Registrar of birth and death, the School where he studied in Pakistan, Indian High Commission at Pakistan, Ministry of External Affairs, etc. All these entailed a lot of efforts and ~~delay~~ and hence the applicant could not approach the respondents till April 1992. It is the applicant's case that he has a fundamental right to serve upto the age of superannuation and this right cannot be abridged only because the applicant has submitted the application for change in date of birth only in the year 1992. On merits he has a strong case. A number of orders by this Tribunal as well as Punjab and Haryana High Court wherein such relief based on merits ~~was~~ granted, have been relied upon.

3. On the other hand, the learned counsel for the respondents mainly relied on FR 56 which limits the

8/10

period by which such applications for change in date of birth can be entertained irrespective of the merits of the case. It is pointed out that alteration in date of birth cannot be made after 5 years from the date of entry in service. Even as per orders of the Hon'ble Supreme Court in the case of Union of India Vs Harnam Singh reported in JT 1993(3) SC 711, for those who were in service in 1979, at best the representations for change in date of birth could be considered for a period of 5 years from 1979 when instructions were issued restricting the period to 5 years. The respondents have argued that the first application for change in date of birth was made on 24.4.92 and that even as per the applicant's version he came to know of the right date of birth in 1975. Yet no representation was made to the department in 1975 or even in 1984 after the applicant secured the information from the Municipal authorities of Pakistan. The applicant never took the department into confidence before corresponding with the University authorities. The case of the applicant is hopelessly barred by limitation as envisaged in FR 56. At this stage the learned counsel for the applicant stated that Tribunals are not debarred from considering the individual cases on merits at any time and this has been the practice so far.

4. Having heard both the counsels, I note that the primary issue to be considered is whether the representation for change in date of birth filed at the fag end of one's service should be entertained even though the rules stipulate a time limit of 5 years from the date of entry in service. In a recent case decided by the Hon'ble Supreme Court on 3.1.94 arising out of SLP(C) No.14868 of 1993 and reported in 1994(2) ATC 110 it has been held that Rule 65 of the Orissa Financial Rules providing for a five year limit after entry in Govt of India service for the purpose

of application for effecting change in date of birth as a mandatory rule and the claim for alteration if made late shall be summarily rejected without further enquiry. In that case, the applicant had entered service in the year 1970 and sought alteration only in the year 1989 and in support of his application for effecting change in date of birth he had produced a school certificate where his date of birth had been shown differently from the date entered originally in his service register. The Hon'ble Supreme Court has observed that the applicant in that case must have had the knowledge of school certificate but failed to produce it when he entered in service. Though the circumstances in this OA are slightly different in the sense that the matriculation certificate itself got altered at a later date yet the observation of the Hon'ble Supreme Court that rule 65 is mandatory and the claim for alteration shall be summarily rejected without any further enquiry where the applicant had taken no action within 5 years of joining service goes against the applicant in this OA.

5. Note 6 under FR 56 which is of relevance to this OA clearly brings out that alteration of date of birth of Govt servant can be made if a request in this regard is made within 5 years of entry in Government service. The Hon'ble Supreme Court had allowed a period of 5 years to be counted from the date of coming into force of the note in 1979 for those who were already in service at that point of time. In the face of such a mandatory provision there is no scope for entertaining the application for change in date of birth submitted beyond the stipulated time limit.

6. I have also seen the orders of the Hon'ble Supreme Court in the Secy & Commissioner, Home Dept and others Vs R Kirubakaran in civil appeal No.5076

of 1993 decided on 21.9.93 and reported in JT 1993(5) SC 504. It has been observed there that while disposing of any application for change in date of birth the court or the Tribunal has to examine whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or administrative order prescribing any period, then the court or Tribunal has to examine, why such application was not made within the reasonable time after joining the service. It has been observed in para 5 as under:

"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 of 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 materials 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 materials 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."

7. Keeping in mind the orders of the Hon'ble Supreme Court quoted in the two recent cases above I have to hold that the application for change in date of birth having been filed almost at the fag end of the service of the applicant cannot be entertained since the time limit specified in FR 56 has been badly violated.

8. Under the circumstances, the OA is dismissed.
No costs.

P.D. *Thiruvengadam*
29/7/84
(P.T. THIRUVENGADAM)
Member(A)

LCP