

(10)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 929/1993

New Delhi, this 5th day of July, 1995

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

Shri P.L. Sethi
s/o late Shri Narain Dass Sethi
G-32, Preet Vihar, Delhi-110092 .. Applicant

versus

Union of India, through

1. Secretary
Ministry of Defence, South Block
New Delhi
2. Joint Secretary(A)
Ministry of Defence, C-11, Hutmants, DHQPO
New Delhi-110011 .. Respondents

By Shri M.S.Ramalingam, Sr. Admn. Officer,
Ministry of Defence

ORDER(oral)

The applicant, who has since retired from service as Civilian Staff Officer on the basis of the recorded date of birth of 30.3.30 had earlier filed OA 1903/87 under Section 19 of AT Act, 1985, aggrieved by the order dated 23.9.87 whereby his representation for correction in date of birth from 30.3.30 to 1.2.32 had been rejected. The applicant joined the service with the respondents as a Typist on 10.7.48. The applicant belongs to a place in Peshawar, which is now in Pakistan. Before partition, the applicant is stated to have passed the middle school examination as well as matriculation examination conducted in March, 1945 and March, 1947, respectively.

2. The contention put by the applicant, who has appeared in person, is that the date of birth he gave at the time of entry into government service, i.e. 30.3.90 was forced on

(2)

13

him by his parents. When the applicant had already completed 10 years of service, the respondents again asked him to give documentary evidence regarding his date of birth and after corresponding with the University of Punjab, Chandigarh, he obtained certificate of matriculation examination in which the date of birth was recorded as 30.3.30. The applicant's contention while filing the application aforesaid in 1987 was to the extent that after the death of his mother sometime in May, 1984, he came across a middle school certificate issued by the Registrar, Departmental Examination, Education Department, NWFP, Peshwar, in which the date of birth was shown as 1.2.32. Thereafter in 1985, he submitted a representation on the basis of the aforesaid middle school certificate. The Tribunal after considering all the facts, made an observation regarding the genuineness of the middle school examination certificate, which had been issued on a form appeared to have been printed on 30.10.45, where the year of passing the examination was not printed but was simply typed as "July, 194". It makes an understanding that in the year 1900, after the digit 4, the year of 5, 6, 7, 8 etc. can be added later on to make the certificate complete. The Tribunal did not accept the genuineness of the certificate and rejected the application. However, it was also observed that the respondents were free to make an enquiry on the basis of the middle school certificate and if the certificate is found to be genuine, the case of the applicant be reviewed. The respondents thereafter entered into the enquiry as directed by the Tribunal, but they were very slow in concluding such an enquiry. The applicant also filed a contempt petition and SLP in the Hon'ble Supreme Court for a direction. The Hon'ble Supreme Court passed an

order on 16.11.90 directing the respondents to complete the enquiry in accordance with the order of the Tribunal and pass a final order. Thereafter, the applicant also filed another OA 1768/92, which was decided by a Single Bench of the Tribunal on 16.9.92 again giving a direction to the respondents that the representation about the correctness in date of birth certificate may be disposed of on the basis of the verified certificate of middle school examination as well as matriculation examination issued by the University of Punjab and if the applicant is still aggrieved, he can assail the order so passed, as a result of which the applicant has filed the present OA in September, 1993, impugning the order dated 25.2.93, whereby the respondents in the light of the direction issued by the Tribunal by its judgement dated 28.3.87 as well as the subsequent OA by the judgement dated 16.9.92, observed that "Since genuineness of the middle school examination certificate could not be proved beyond doubt despite protracted correspondence, case for change in date of your birth has been reviewed very carefully and your request for change in your date of birth has not been acceded to".

3. The respondents contested this OA by filing their reply and the applicant has filed his rejoinder.

4. The applicant has been heard at length yesterday and today and the departmental file containing the records and processing of the correctness of the date of birth has also been summoned and relevant portion of the same has also been perused by the applicant.

(4)

5. The case of the applicant is that since the certificate of the middle school as well as matriculation examination has been duly verified through the Indian Emissary by the Consultate General of Pakistan showing the date of birth which was erroneously given as 30.3.30 be corrected as 1.2.32, the respondents can not take any other stand in view of the directions given by the Tribunal in its judgement dated 16.9.92.

(5)

6. Basically change in date of birth earlier to the decision of Harnam Singh Vs. UOI 1993-SCC-162 has been considered by the Tribunal. However, there is no limitation provided for making objection for correction of date of birth. In view of this, the decision by the Tribunal dated 20.3.88 was also to the effect that limitation is not material in passing order by the Administration for correction of date of birth. Reliance has been placed in certain other date of birth cases decided by the Tribunal. In fact, on the basis of those cases only, the case of Harnam Singh was also decided by the Tribunal and the Union of India went in an appeal in the Hon'ble Supreme Court. The Hon'ble Supreme Court has considered it at length as to whether amendment which has been incorporated in FR 56 in sub-clause 6 in the year 1979 will have retrospective effect or not? The Hon'ble Supreme Court has held that if that amendment has been incorporated, the Rule of 5 years would also be applicable in cases of those who entered into service even prior to the amendment in 1979. The Hon'ble Supreme Court has considered this aspect with reference to those who had entered service earlier who had no knowledge of this Rule. The applicant made his representation in November, 1985 for correction in date of birth. When heard yesterday, the

applicant who is also a registered advocate, has referred to the decision of the Hon'ble Supreme Court referred to above in Harnam Singh case and the proceedings were taken today again. The contention of the applicant is that the earlier. However, if there is delay in decision by the administration, the law laid down by the Hon'ble Supreme Court, which is binding in nature, canot be overlooked. To this effect, the contention of the applicant can not be accepted and observation made in the decisions given by this Tribunal on 20.3.88 rejecting the plea of limitation of the respondents stands overruled by the decision of the Supreme Court in Harnam Singh case. The applicant joined the service in 1948 and it was only in the year 1985 he moved an application for correction in date of birth. Here, it may be recalled that in 1958 the applicant was directed to file documentary evidence about the date of birth and he filed matriculation certificate of the Punjab University, Chandigarh in 1959 showing his date of birth as 30.3.30. After again more than 15 years, the applicant in 1985 moved another representation that his date of birth should be corrected because after the death of his mother in 1984 he came across a middle school certificate issued by an institute of NWFP, Peshawar. This contention of the applicant, when he already stands superannuated by the recorded date of birth at the age of 58 years in 1988, can not be accepted. The applicant referred to the fact that while rejecting the application by the order dated 20.3.88, the respondents were directed to hold an enquiry and the Hon'ble Supreme Court in the subsequent decision on an SLP filed by the applicant, the respondents were directed to conclude the enquiry by the order dated 16.11.90. Further we can not overrule the limitation bar provided by the recent decision of the Hon'ble

17

Supreme Court in the case of Barnam Singh which has a binding effect. The application for correctness in date of birth has not been moved in time but moved in 1987 which was about one year prior to this retirement by the recorded date of birth can not be said to be legally and tenable.

7. The applicant has further been heard on merit also. Therefore, it is necessary to discuss the points raised by the applicant. The contention of the applicant is that by a number of correspondence between the Ministry of Defence, Ministry of External Affairs and the Head of Mission in Pakistan about the certificate of middle school examination as well as matriculation examination was got verified. In fact, while disposing of the subsequent OA by order dated 16.9.92, the observation has been that the representation of the applicant be disposed of on the basis of the verified certificate. That direction does not mean that the respondents can not apply their mind whether the date of birth should be corrected or not. If the date of birth of the applicant stands verified as 1.2.32, it will not by itself lead to the correction of the date of birth because the applicant would not have been major when he entered into service in July, 1948 as a typist when he was as per the date of birth as alleged he would have been minor in age. The contention of the applicant is that at that time there was no age restriction. The departmental representative could not place any documents to show that 18 years at that time was the age for entering into government service. He only referred to rules of 1956 which provide that the minimum age at time of entry into service should be 18 years. The applicant fervently argued that while giving judicial direction striking down the order of not correcting the date

of birth as prayed for by him, judicial view has to be confined itself to factum of the matter. It is a legal issue that a minor can not enter into service. It is because of the fact that a minor can not enter into a contract. A contract can be entered between two parties, who are major and of sound mind. If he is a minor, he can not enter into a contract. He should be represented by a major as per the decision of the Hon'ble Supreme Court reported in 1971-SLR-page 14 - State of Assam Vs. Raksha Prasad. The contention of the applicant is that at that time when he entered into service it was a disturbed area and a large number of persons with lesser age than 18 years were inducted into service. No judicial notice can be taken of this point. The applicant therefore at the time of entering into service must have given his age rightly or wrongly as 30.3.30 so that in July, 1948 when he entered into service he was well over 18 years of age. The applicant has stated that being a disturbed area at the time of partition, the applicant was not in a stable state of mind at that time. These points are personal to the applicant, which can not be considered while taking a judicial view of the matter. The applicant has passed middle school examination in 1945, knowing well that his date of birth as recorded is 30.3.30 and two years after that he passed matriculation examination in March, 47, in which his date of birth is recorded as alleged by him as 1.2.32. When one year after he made entry into service in 1948, he can not state the date as arbitrary, which is recorded in the service book as 30.3.30. The applicant concealed the fact knowingly or unknowingly in order to bring majority for joining the service. Again it is averred in the judgement of 29.3.88 of the earlier OA of the applicant that he gave the date of birth as 30.3.30 as conveyed to him by

his father. The date of birth of the person under consideration was well known to his parents than the person himself. Again when the respondents asked the applicant to give documents regarding his date of birth in 1959, he filed matriculation certificate of Punjab University, showing the date of birth as 30.3.30. The applicant here after filing his application took the step rightly or wrongly that on the death of his mother he came across a certificate where his date of birth is recorded as 32. This statement can not be accepted. A person who makes a statement in his own interest has to be duly corroborated by a testimony. The applicant can not take the respondents by surprise for his own fault.

8. It appears that the certificate of 1959, which the applicant filed corroborating his recorded date of birth as 30.3.30 was again got revised by the applicant from the Punjab University. The respondents are not bound by it but they are only bound by the unilaterally accepted position by the Punjab University.

9. In the circumstances, even if the certificate of middle school or high school which is said to have been verified by authorised persons or stood verified in the manner as stated by the applicant, no value can be attached because of the own act of acquiesce or estoppel of the applicant. Estoppel shuts the mouth of the person to alter the stand earlier taken and take a new stand than taken earlier though the respondents have acted to the benefit of the person by giving him service at a time when he has not reached majority. We get support from CSS/FRs where the

(9)

service rendered by a person earlier to attaining the age of majority i.e. 18 years can not be counted as a qualifying service for pension.

20

10. On merits, therefore, even if it is taken for granted that the certificate of middle school examination as well as matriculation have been verified, the respondents are still free by applying their own intelligence and wisdom to declare them as not genuine by virtue of the conduct of the applicant at the time of entry to the service and also during the course of active service.

11. In view of the above and in the conspectus of the facts and circumstances as seen from the file and more so the other documents referred to by the applicant from the departmental file, I come to the conclusion that the impugned order does not call for any interference. The application is, therefore dismissed, leaving the parties to bear their own costs.

Sharma

(J.P. Sharma)
Member (J)
5.7.1995

/tvg/