

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1299 of 1997

Allahabad this the 17th day of July, 2000

Hon'ble Mr.S.K.I. Naqvi, Member (J)

Jai Ram Kamalvanshi S/o Late Sri Chedi Lal,
R/o Village & P.O. Gauri Bhagwant Pur Gram
Panchayat Gogumau, Block Chaubey Pur District
Kanpur, presently residing at 128/813-D, 'K'
Block Kidwai Nagar, Kanpur.

Applicant

By Advocate Shri A.C. Nigam

Versus

1. Union of India through Secretary, Defence Production, Ministry of Defence, 'South Block' New Delhi.
2. Director General of Quality Assurance, Department of Defence Production, Ministry of Defence, South Block, New Delhi.
3. Directorate of Quality Assurance(Stores), Department of Defence-Production, G. Block, New Delhi.
4. Controller of Quality Assurance(MO Department of Defence, Kanpur.

Respondents

By Advocate Shri Amit Sthalekar

O R D E R

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

Through out his education career

upto M.Sc. and during whole of his service tenure

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upto 1996, the applicant took his correct date of birth as 12.2.1940 and thereby to superannuate accordingly. It was in the year 1996 that the applicant came to know that his wrong date of birth is ~~12.2.1940~~ contained in his service record and his correct date of birth is 09.11.1946 and, therefore, he moved several representations but of no avail. Now therefore, he has come up before the Tribunal seeking relief to the effect that the respondents be directed to correct date of birth of the applicant as 09.11.1946 instead of 12.2.1940 and to quash the order dated 17.7.1997 through which his representation has been rejected.

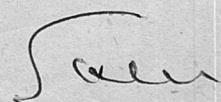
2. 2 As per applicant's case, he belongs to S.C. community and his parents were uneducated one and, as such, at the time of his admission in Primary School, the Primary School Teacher wrongly recorded the date of birth of the applicant as 12.2.1940 instead of 09.11.1946 without consulting the parents of the applicant and, as such, the wrong date of birth of the applicant continued in the High School Certificate as well as in the service record of the applicant. In 1996, the applicant came to know from Roop Patra (k), Kutumbvar register at serial no.3 that his correct date of birth is 09.11.1946 and, therefore, he made several representations but the same were rejected vide impugned order dated 17.7.97(annexure-3). The applicant has also mentioned that in order to prove his correct age, he moved application before

D.M., Kanpur and on his direction, the applicant was medically examined by C.M.O., Kanpur and as per medical examination, he was found aged about 50 years as per report dated 21.7.1997.

3. The respondents have contested the case and filed the counter-reply with specific mention that at the fag end of his service, the date of birth of the applicant cannot be changed which has been entered in the service record on the basis of information furnished by him.

4. Heard, the learned counsel for the rival contesting parties and perused the record.

5. The applicant has claimed the relief on the ground that his date of birth as recorded in Kutumbvar Register, be taken as correct according to which it is 09.11.1946. It has also been emphasised that it is a public document prepared by the public servants in routine discharge of his duties and, therefore, it carries evidential value under Section 35 of the Indian Evidence Act. Keeping in view the submissions, perused the extract copy of the Kutumb Register, which has been annexed as annexure--1 to the O.A. This extract shows that the date of birth of Jai Ram, the first son of Chedan, is 09.11.1946. Before us, the applicant is Jai Ram Kamalvanshi, son of Late Shri Chedi Lal. The applicant has tried to explain this anomalous position in respect of



names by bringing on record an affidavit to show that his father was known as Chedan-alias-Chedi Lal. I doubt if this affidavit could be of any help to the applicant to explain the ambiguity regarding his parentage. Moreover, it has also not been explained as to when these entries were made in the Kutumb Register and what was the source of information as well as the authenticity of the information. Therefore, this document is not sufficient to hold that the correct date of birth of the applicant is 09.11.1946. The other circumstance to support the contention of the applicant is medical opinion but that too is not the conclusive proof to ascertain the date of birth.

6. On the issue of correction of date of birth, there are consistent views of the Hon'ble Apex Court, ^{that the} move for correction of date of birth at the fag end of service shall not be allowed unless there is unimpeachable evidence to establish that there was a bona fide mistake.

7. In Government of A.P. Vs. Hayagrew Sharma 1990 (2)S.C.C.682, it has been held that "Date of birth recorded in service book on the basis of school certificate at the time of entry into service should not be changed on the basis of extracts of entry contained in Birth and Death Register.". Again in Union of India Vs. K.H. Pandija J.T. 1995 (2)S.C.365, the Hon'ble Apex Court handed

down the law that the "Claim for alteration of date of birth after inordinate and unexplained delay of 25 years on the eve of retirement must be scrutinised carefully and interference made sparingly." The same view was endorsed in J.T. 1996 (3) S.C. 6 Vizagapatnam Dock Labour Board Vs. E. Archana & Ors. "Evidence produced subsequently during or after service is of no avail as applicant himself endorsed service record of date of birth", is the law handed down in State of Orissa Vs. R. Patnaik J.T. 1997 (4) S.C. 660.

8. The correction of date of birth was also a concern in Burn Standard Co. Ltd. Vs. Dina bandhu Majumdar & Anr. 1995 (30) A.T.C. 206 (SC), the ratio of which runs as under;

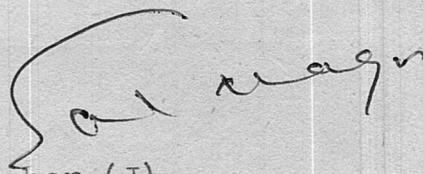
"The extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution is not meant for enabling the employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality ~~who~~ remained in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in Service Record, the very conduct of non-raising of an objection in the matter by the employee should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence,

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undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application."

9. Learned counsel for the applicant relied upon A.I.R. 1991 S.C. 308 Director of Technical Education Vs. Smt.K. Sitadevi. I am afraid this cited case is not of any help to the applicant in the present matter because in Sita Devi's case, the Hon'ble Apex Court upheld the finding of fact by the Courts below in view of overwhelming evidence in that case but in the present case, the evidence on fact is also not worth being relied as discussed above.

10. With the above discussion, I find the relief sought for by the applicant cannot be granted and, therefore, the O.A. is dismissed. No order as to costs.


Member (J)

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