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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1475 of 1992

Vishwa Nath

..... Petitioner

Versus

Commandant Central Ordnance Depot,
Cheoki, Allahabad & Ors

..... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the petitioner sought a direction to the respondents to accept the correct date of birth of the petitioner as 23.5.1943 in his service record and accordingly to alter the existing entry of date of birth by substituting in its place the correct date of birth.

2. The petitioner joined the Central Government service in Central Ordnance Depot, Cheoki, Allahabad as a Mazdoor on 23.5.63 and is continuing to serve now on the promoted post of Carpenter Adjoiner (CA). By an application dated 30.10.87 addressed to Commandant, C.O.D Cheoki, Allahabad, U.P. (Annexure A-1 to the petition) for correction of date of birth in his service record. The petitioner stated that he had detected in his service record that his date of birth is entered incorrectly and that his actual date of birth as per school record is 23.5.43, while in the

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service documents it is noted as 23.5.1938. He enclosed a photostat copy of the school transfer certificate showing his date of birth as 23.5.43. In the said application the petitioner also stated that he never noticed the incorrectness because of the fact that the date of birth as reflected in his monthly pay-slip which he had been getting from the Finance Section is 23.5.43 only. A few photostat copies of the monthly ^{pay} slip were also enclosed with the said application. By a letter dated 29.3.89 (Annexure A-7 to the petition), addressed to the Director General of Ordnance Services (OS-8C), Army Head Quarter, New Delhi ^{the} application of the petitioner for correction of the date of birth was forwarded to the Army Head quarter, New Delhi and it was stated in the ~~said~~ ^{forwarding} letter that the case of the petitioner is ^{an} deserving and worth to be reconsidered. It appears that after considering the petitioner's case the Army Head Quarter did not accept the petitioner's prayer for correction of the date of birth and dropped the case. The petitioner thereafter sent another application dated 12.3.92 to the Commandant Central Ordnance Depot, Cheoki (Annexure A-11 to the petition) but the petitioner's prayer for altering the date of birth in his service record has not been accepted. The petitioner has, therefore filed this petition stating therein the above-mentioned facts and praying for a direction to the respondents to accept the correct date of birth as 23.5.43 and alteration of date of birth accordingly.

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3. The learned counsel for the petitioner has submitted that the date of birth recorded at the time of his entry in service as 23.5.38 was on the basis of Medical Officer's

examination report which he rendered in a most formal manner having seen the petitioner ~~vistally~~. It has been submitted that the petitioner had made available at the time of entry in service his educational certificate which mentioned the date of his birth as 23.5.43. The learned counsel for the petitioner has also urged that the pay-slips issued to him showed his date of birth as 23.5.1943 which indicated that the respondents had on their records educational certificate of the petitioner on the basis of which his date of birth was being shown in the pay-slips as 23.5.43. In the background of these facts it has been submitted that the respondents could have brought the wrong entry of date of birth in conformity with the date of birth given in the educational certificate which is submitted with the respondents.

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4. In the Counter-affidavit filed by the respondents, it has been stated that the petitioner neither produced any age-proof certificate to the Department nor to the Medical Board and hence ~~his~~ ^{age} had to be ascertained by means of Medical examination. As regards the pay-slips, copies whereof have been filed by the petitioner, the learned counsel for the respondents has pointed out that these pay-slips are of recent years ^{which are} ~~do not pertain to the years after~~ ^{in proximity to the} ~~date of~~ ^{date of} ~~joining~~ the service and as such the mention of the date of birth as 23.5.43 found in the recent pay-slips cannot give rise to the inference that the entry is based on any document originally filed with the respondents at the time of petitioner's entry in service. It has also been submitted that the date of birth entry shown in the recent pay-slips appears to have been recorded on the basis of the petitioner's contention after he had moved an application for

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correction of his date of birth.

5. The learned counsel for the respondents have submitted that the Government of India, Ministry of Home affairs, issued a Notification No. 19017/79-Estt dated 13.11.79 (filed as Annexure OA-2 with the Counter affidavit) which limits the exercise of the right ^{as per law} of the Govt. servant to seek alteration of the date of birth only within the specified period of five years. The relevant provision in the Notification reads as under:-

"Note 5.- 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

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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".

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6. As regards applicability of the aforesaid provision to the instant case of the petitioner who entered into service on 23.5.63 i.e. much before the coming into force of the said provision, the learned counsel for the respondents has submitted that the said Notification is applicable to the case of the petitioner, on a harmonious interpretation of the ^{as contained in the} Rules ~~containing~~ Note-5 abovementioned and in support of his submission placed reliance on a Supreme Court decision in 'Union of India Vs. Harnam Singh, 1993 24, Administrative Tribunals Cases 92 and the relevant observation in the case of Harnam Singh's case (Supra) are as follows:

"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 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, 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 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

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Authority (Underlining is mine)

7. In view of the aforesaid observations of the Supreme Court in ' Harnam Singh's case (Supra) this petition cannot be allowed, since the petitioner sought the correction of the date of birth for the first time in 1987 i.e. more than five years after coming into force of the Notification dated 30.11.79 (Annexure CA-2), when his application could not have been considered by the authorities.

8. Accordingly, this petition is dismissed with no order as to costs.

R.K. Varma
Vice Chairman

Dated: 30th August, 1993

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