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Reserved  
~~OPEN COURT~~

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 17th day of January 2002.

Original Application no. 1588 of 1993.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman  
Hon'ble Maj Gen K.K. Srivastava, Administrative Member

Ram Lall,  
S/o Sobaran,  
Peon Ticket No. 531/N Bill Section,  
R/o village Jamor Tahsil and Distt.  
Shahjahanpur.

... Applicant

By Adv : Shri K.C. Saxena  
Shri R.K. Gupta

V E R S U S

1. Union of India through Secretary,  
Ministry of Defence,,  
New Delhi.
2. The General Manager,  
Ordnance Clothing Factory,  
Shahjahanpur.
3. The Addl. D.G.O.F. Group Head Qrs,  
G.T. Road, Kanpur.

By Adv : Shri A. Sthalekar

... Respondents

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ORDER

Hon'ble Maj Gen KK Srivastava, AM

In this OA filed under section 19 of the AT Act, 1985, the applicant Shri Ram Lall has prayed that the date of birth of the applicant as recorded in the service book as 18.6.1934 by the office clerk be ordered to be corrected to be as 4.7.1939 with consequential reliefs.

2. The facts in brief as per the applicant are that he was registered in the Employment Exchange Shahajahanpur and his date of birth at the time of registration in the Employment Exchange was recorded as 4.7.1939 which is his correct date of birth. On demand of <sup>✓</sup> Ordnance Clothing Factory (OCF), Shah-jahanpur for recruitment for the post of Ward Orderly in OCF, Hospital Employment Exchange forwarded the names of 9 persons including that of the applicant with his bio-data for interview at OCF, Shahajahanpur. On the basis of interview out of these 9 candidates one Shri Kedar Nath was appointed as Ward Orderly, and remaining 8 were given option to join as labourer. The applicant accepted the offer and was sent to Medical Officer of OCF, for physical fitness. The Medical Officer <sup>✓</sup> on 18.6.1963 <sup>assessed</sup> the age of the applicant as 29 years/on the basis of which the office entered 18.6.1934 as the date of birth of the applicant. Since no age or qualification is prescribed under recruitment rules of labourer neither the OCF demanded any evidence of proof of age nor the applicant furnished any evidence from his side. He joined as labourer on 21.6.1963 and worked till February 1974. He was promoted as peon in OCF, Hospital. In 1987, he came to know for the first time that an incorrect date of birth has been recorded by the respondents in service book, when he <sup>✓</sup> got the computer <sup>generated</sup> salary slip. The applicant sent a representation in this



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regard to General Manager, OCF with a request that his date of birth may be amended accordingly. He gave few reminders but no decision was communicated in respect of his representations. When he found that a few <sup>✓ employees ✓</sup> placed in similar circumstances approached the court and got their date of birth corrected he procured copies of scholars register from the school last attended and also the Transfer Certificate from Primary Schools containing the correct date of birth. He applicant again represented to General Manager, OCF on 26.2.1992 with a request to order for the necessary amendment in the date of birth. The General Manager, OCF, rejected the request of the applicant. The applicant appealed to Additional Director General, Ordnance Factory, Kanpur on 14.5.1993 followed by reminders dated 7.6.1993 and 27.8.1993, but no decision has been conveyed <sup>✓ by ✓</sup> respondent no..3.

3. Heard Shri K.C. Saxena, learned counsel for the applicant and Shri Amit Sthalekar, learned counsel for the respondents and perused records.

4. Shri KC Saxena, learned counsel for the applicant submitted that since the Employment Exchange had given the date of birth of the applicant in his bio-data while forwarding the name of the applicant to OCF, Shahajahanpur for the post of Ward Orderly the respondents should have correctly noted the date of birth of the applicant as 4.7.1939 <sup>✓ in his service book. ✓</sup> instead 18.6.1934. The applicant was not demanded any evidence about the date of birth by the respondents. When the applicant represented on 26.2.1992 for correction of date of birth enclosing the copies of scholar register from the school last attended and the transfer certificate containing the correct date of birth it was incumbent upon the respondents

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to have amended the date of birth accordingly. Shri Saxena, further submitted that the medical examination for the labourers job is conducted to test the physical fitness of the applicant and not for estimation of age which is incidental. The Medical Officer did not estimate the age of the applicant on any scientific basis. The correct course for the respondents should have been to ask the applicant about his date of birth and evidence thereof and then completed the service documents. The learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in Union of India Vs. C. Rama Swamy AIR 1997 SC 2055 in which it has been held that one is entitled to change in the date of birth in case of bona fide mistakes. The mistake is bona fide in view of the school certificate produced by the applicant as documentary evidence. Shri Saxena also placed reliance on the decision of this Tribunal Calcutta Bench in Kapil Deo Sharma Vs. Union of India & Ors (1993) 24 ATC 655 in which it has been held <sup>that</sup> in case of date of birth contained in the school certificate delay of 16 long years in producing the school certificate is inconsequential.

5. Shri Saxena, submitted that this Tribunal has ordered correction of date of birth in number of cases and also the General Manager, OCF (respdt no. 3) has corrected the date of birth in many cases in similar circumstances. The case of the applicant deserves favourable consideration and the applicant should be granted relief as claimed for. The delay, if any, in claiming the relief should be condoned. In support of his argument the learned counsel has relied upon the decision of this Tribunal dated 11.7.2001 in Uttam Chand Vs. Union of India & Ors in OA 1899 of 1993.

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of 1993 in which the Tribunal has condoned the delay in the interest of justice.

6. The claim of the applicant has been contested by the respondents by filing counter affidavit. Shri Amit Sthalekar, learned counsel for the respondents argued that the application is barred by limitation because if the applicant was aggrieved by the entries regarding date of birth in his service record, he should have sought correction of the same within a period of 5 years from the date of appointment as required under the rules. The applicant has raised the issue for the first time only on 26.2.1993 after having put in more than 29 years of service. The learned counsel has relied upon the decisions of Hon'ble Supreme Court in Union of India Vs. Harnam Singh AIR 1993 SC 1367, and in National Airport Authority Vs. M.A. Wahab JT 1994 (3) SC 514 & Chief Medical Officer Vs. Khadeer Khadri AIR 1995 SC 850. The learned counsel also submitted that this Tribunal has held similar view in its order dated 24.2.1995 in OA no. 664 of 1993 and order dated 22.2.2001 in OA 799 of 1993.

7. Sri Sthalekar submitted that at the time of preparation of service book the applicant did not submit any documentary evidence and his age was assessed 29 years on 18.6.1963 by the medical officer on the statement given by the applicant himself before the Medical Officer. At the time of preparation of service book the applicant had signed against the column for the date of birth and also at the bottom putting his fingers impressions in token of acceptance and correctness of his date of birth (Ann CA-1). The applicant in the application for General Provident Fund (GPF) has also accepted his date of birth as 18.6.1934 by putting his signatures. (Ann CA-2).

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8. Shri Sthalekar finally submitted that in view of the fact that the applicant has signed the relevant documents accepting his date of birth as 18.6.1934, the applicant has no case. He has represented only at the fag end of his service career i.e. just a little more than 2 years before the date of his superannuation the OA has no merit and deserves to be dismissed.

9. We have carefully considered the submissions of the learned counsel for the parties and have closely examined the records. The learned counsel for the applicant during the course of argument stressed upon the point that the respondents were supplied with the bio-data by the Employment Exchange containing the applicant's correct date of birth hence it was the duty of the respondents to have recorded the correct date of birth in the service records. He also contended that since the applicant is not very literate he signed the documents which were put before him for signatures at the time of initial engagement. We do not find force in this contention of the learned counsel for the applicant. At the time of medical examination the applicant himself stated his age to be 29 years when asked for and, therefore, since the medical officer was satisfied with the statement of the applicant he had no reason not to accept the same. The position remained the same for 29 years and we do not find any irregularity<sup>u</sup> or illegality on the part of the respondents in rejecting the request for amendment in date of birth made by the applicant at the fag end of his service career. The facts and circumstances in case of U.O.I. Vs Rama Swamy (Supra) are easily distinguishable and do not help the applicant.



10. In order to assist whether the plea that the date of birth was not properly recorded at the time of entering the service has any force or not, <sup>we</sup> we would like to go through the Ministry of Defence decision no. 2 below rule 51 of CSR. The same is reproduced below:-

"(2) Procedure for recording date of birth and age in the service records of Civilian employees in Defence Services. (1) (i) Every person on entering service shall declare his date of birth which shall not differ from any declaration expressed or implied or any public purpose entering service in Defence services in civilian capacity.

(ii) In the case of literate staff, the date of birth shall be invariably supported by documentary evidence and be entered in the record of service in the Employee's own handwriting. If an employee is a matriculate or possesses a higher qualification, the date of birth as recorded in his matriculation/School certificate shall be accepted as the date of his birth.

(iii) In the case of illiterate staff, they will be required to produce some documentary evidence, if available, e.g. horoscope or an extract from the Municipal Birth Register in support of the date of birth which shall be recorded by a responsible Gazetted Officer and witnessed

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by another responsible employee of the Installation not below the rank of Supervisor or of equivalent grade. In case no such proof is available the procedure as laid down in para 2 below will be followed.

2.(a) When the year and the month of birth are known but not the exact date, the 16th of that month shall be treated as the date of birth.

(b) When a person entering service is unable to give his date of birth but gives his age, he should be <sup>assumed</sup> ~~assumed~~ to have completed the stated age on the date of attestation e.g if a person enters service of 1st January, 1950 and if on that date his age is stated to be 18, his date of birth should be taken as 1st January, 1932.

(c) When the authorities have any doubt about the correctness of the age stated or evidence produced by the person concerned in support of the age, medical opinion to assess his age may also be obtained and suitable date of birth entered in his service record (after taking into account the date stated/evidence produced by the individual) in the manner prescribed at (b) above.

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11. From the above it would appear that any person whether literate or ill-<sup>✓</sup>terate<sup>✓</sup> at <sup>the time of</sup> entering service is required to declare his date of birth. Even an illeterate staff has to produce some documentary evidence in support of his date of birth which has not been done by the applicant in this case. He stated before the Medical Officer his age to be 29 years at the time of medical examination and the Medical Officer is also assessed the same. We are of the view that the administration correctly relied on assessment of the Medical Officer regarding his age and recorded his date of birth accordingly. No wrong has been committed and recording of the date of birth on the basis of such assessment cannot be held as inconsistent with the instructions contained in the Govt. of India instruction no. 2 below rule 51 of CSR.

12. Hon'ble Supreme Court in Harnam's Singh case (supra) has observed that even if there is no period of limitation prescribed for seeking correction of date of birth, the Govt. servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general <sup>principle</sup> of refusing relief on the grounds of laches or stale claims is generally applied to the Courts and Tribunals. The principle laid down by the Hon'ble Supreme Court has general applicability. In the present case the applicant has represented for the change in date of birth after a long and unexplained delay, the respondents are right in rejecting such representation.

13. In the present case the applicant entered in service on 21.6.1963 and it was for the first time on 26.2.1992 i.e.

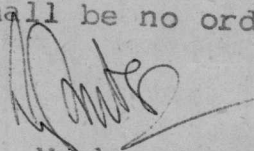
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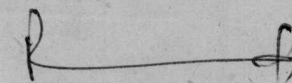
after a lapse of about 29 years when he represented for the correction in his recorded date of birth. This was less than 3 years before the applicant was to superannuate. The ratio of the decision of Harnam Singh's case (supra) would be **squarely** applicable to him and the respondents had rightly rejected his representation.

14. We do not accept the contention of the learned counsel for the applicant that he was earlier not aware of the incorrect recording of the date of birth and he came to know of it only in 1987. The learned counsel for the applicant could not convince us regarding the unexplained delay of 29 years and we have no ground to grant the relief to the applicant.

15. In view of the aforesaid observations we find that the OA is devoid of merit and the same is, therefore, dismissed.

16. There shall be no order as to costs.

  
Member-A

  
Vice-Chairman

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