

3

12
2

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Dated: 23.12.94

Original Application No: 1932 of 1993

Jagdish Narain, S/O Shri Ram Narain
R/O House No. 127/235, Johi Garha, Kanpur

..... Applicant.

By Advocate Shri K.K.Tripathi

Versus

The Union of India & Ors.

..... Respondents.

By Advocate Km. S.Srivastava

O R D E R

Hon'ble Mr. T.L.Verma, Member-J

The subject matter of challenge in this O.A. is order dated 25.11.1993 (Annexure A-1) whereby respondent No. 2 has rejected the representation dated 10.2.1993 filed by the applicant for correction of his date of birth in his service record.

2. The applicant entered the Government service in Government H & S Factory, Kanpur as Tailor on 11.12.1962. *At the time of entry into Government Service, his* A service book was prepared in which his date of birth was recorded as 8.12.1934. He was transferred on the same trade/grade to Ordnance parachute Factory, Kanpur on 11.6.1971 against & Ticket No. 6759/L. It is stated that in January, 1983, the applicant on receipt of the pay slip learnt that his date of birth has been wrongly recorded as 8.12.1934 on the basis of the opinion of the Doctor.

SL

::2::

14

A2
3

His date of birth in fact, was disclosed by him at the time of appointment, ~~is~~ 7.5.1938. It is stated that the applicant had filed the ^{School leaving} ~~transfer~~ certificate issued by Junior Basic Vidlaya Juhi Kala at the time of his appointment and that the duplicate copy there of has been filed which is Annexure A-2. On learning that wrong date of birth has been recorded ^{applicant} the ~~filed~~ a representation on 25.5.1983 for correction of his date of birth in his service record as 7.5.1938 in place of 8.12.1934 vide Annexure A-3. The above representation was followed by representation dated 8.10.1992 (Annexure A.4). A reminder to the above representations was sent on 24.1.1993 (Annexure A-5). Thereafter, a notice under Section 80 CPC was sent on 8.7.1993 and 25.9.1993, requesting the respondents to correct the date of birth, ~~of the applicant under~~ ^{the} ~~un~~registered cover (Annexure A-6 & A-7). The respondents have rejected his representations by order dated 25.11.1993 without assigning any reason.

Sh

This application has been filed for quashing the order dated 25.11.1993 passed by respondent No. 2 and for issuing a direction to the respondents to ~~xxxxxx~~ correct the service record ^{by} showing his date of birth as 7.5.1938 in his service record and give him all consequential benefits arising there from. The order rejecting the representation of the applicant, it is stated, is arbitrary and against all norms because the date of birth has been recorded not on the basis of the documentary evidence supplied by the applicant ~~but~~ but on the vague and general opinion of the Doctory.

(5)

As
4

:::3:::

3. The respondents have resisted the claim of the applicant. It has been averred in the Written Statement filed on behalf of the respondents that the applicant did not produce any documentary evidence in support of his educational qualification and date of birth at the time of his appointment, ~~and accordingly,~~ ^{therefore} ~~his~~ ^{JK} date of birth was recorded on the basis of medical examination ^{by} Factory Medical Officer held on 8.10.1962 vide Annexure CA-2. It has further been averred in the written reply that the application of the petitioner for correcting the date of his birth is highly belated and as such cannot be entertained.

4. I have heard the learned counsel for the applicant and perused the record. From the material on record, it appears that the department has adopted a method of issuing computerised pay slips to the employees of the factory since 1989, in which date of birth of the employee is mentioned. Annexure A-10 is the pay slip issued to the applicant in which date of birth of the applicant has been shown as 8.12.1934. No representation appears to have been filed prior to 10.2.1993 for the correction of the date of birth by the applicant. According to the instructions issued by the Government of India, the applications for correction ^{of} ~~under~~ the date of birth has to be made within 5 years from the date of entry in service. The Supreme Court, however, has in Union of India Vs. Harnam Singh reported in (1993) 24 ATC, 1992 has held that;

If at the time, the instructions were issued,

(6)

Mr
Y

::4::

the Government servant was already in service for a long time in his case, applications for correcting date of birth may be filed not later than 5 years after the coming into force of the amendment in 1979.

above

In ~~that~~ view of the matter, the applicant ought to have filed a representation for correcting his date of birth in his service record before 1985. According to the respondents, the only application that has been received in their office from the applicant for making correction in date of birth of the applicant is dated 10.2.1993. This application, I agree with the learned counsel for the respondent, is belated and should ~~be~~ not be taken into account.

4. On merit also, ~~xxx~~ I find that the case of the applicant ~~has~~ no legs to stand. The respondents have filed photo copy of the first page of the service book of the applicant in which his date of birth has been recorded as 8.12.1934 (Annexure CA-1). This page of the service book bears signature of the applicant. The record card which was given to the applicant has also been filed and marked as Annexure CA-2. ^{In} the record card also, it appears that the date of birth of the applicant has been recorded as 7.12.1934. The petitioner was also issued an Identity Card bearing number B-526070 dated 12.3.1979. This Identity Card was issued to enable ~~to~~ the applicant to have ~~ingress and egress to~~ ^{the factory}. In the said Identity Card also, the date of birth of the applicant has been shown as 8.12.1934. The photo copy of the identity card has been annexed as Annexure CA-3. It has also been

JK

Sh
2

::5::

pointed out above that the department has been issuing computerised pay slips to his employees since 1989 in which date of birth of the employees is recorded. The applicant was, thus, ~~was~~ in the know of the fact that his date of birth has been recorded as 8.12.1934 in his service record right from the date of his appointment.

5. The Supreme Court in a Secretary & Commissioner Home Department Vs. R.Kirubakaran, reported in S.L.R. Vol 91, 1993 (5) SLR has observed that;

This court has repeatedly pointed out that correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect. While disposing of any such application the Court or the Tribunal, has first to examine whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the Court or Tribunal has to examine, why such application was not made within a reasonable time after joining the service.

Sh

6. Coming to the question whether the material produced by the applicant in support of his claim that his date of birth has wrongly been recorded as 8.12.1934 in place of 7.5.1938. The only document filed is School Leaving Certificate purported to have been issued Junior Basic Vidyalaya Juhi Kala No. 133 Kanpur (Annexure CA-4). This certificate is shown to have been issued on 19.2.1975. This document, in my opinion cannot be treated as conclusive evidence of the age of the applicant so as to unsettle the settled position

::6::

in so far as the seniority and the age retirement of the applicant vis-a-vis others employed in the said factory is concerned.

7. On a consideration of the facts and circumstances discussed above, I am satisfied that this application has been filed by the applicant at the fag end of his career and the same is highly belated and cannot be entertained. I further find and hold that the material produced by the applicant in support of his claim is not such as would inspire confidence.

8. For the reasons stated above, I find no merit in this application and the same is dismissed. There will be no order as to costs.

F. H. Vinn

Member-J

/jw/