

19
A.F.L
(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated: Allahabad, the 22 day of Feb, 2001

Coram: Hon'ble Mr. Justice R. R. K. Trivedi, VC

ORIGINAL APPLICATION NO. 799 OF 1993

Om Prakash Vaish,

s/o Sri Jagannath Prasad Vaish,

U.D.C. P.C. No. 953 O.C.F. Shahjahanpur,

r/o Moh. Tarun Gasipura Shahjahanpur.

..... Applicant

(By Advocate Sri K.C. Saxena)

Versus

1. Union of India, through Secretary,

Ministry of Defence, New Delhi.

2. The A.D.G.O.F., O.C.F., Kanpur.

3. The General Manager O.C.F.,

Shahjahanpur.

..... Respondents

(By Advocate Sri Amit Sthalekar)

O_R_D_E_R (Reserved)

(By Hon'ble Mr. Justice R.R.K. Trivedi, VC)

By this application, under Section 19 of the Administrative (Tribunals) Act, 1985, the applicant has prayed for a direction to the respondents to correct his date of birth in Service Book and mention the same as 1.6.1945 in place of 11th May, 1938.

2. The facts, in short, giving rise to this application are that the applicant joined as labourer in the establishment of Ordnance Cloth Factory (called O.C.F), Shahjahanpur on 4th May, 1963. His name was

Contd..2

sponsored by the Employment Exchange, Shahjahanpur on demand made by O.C.F. After medical examination, applicant started work from 14th May, 1963. In 1966, applicant made an application (Annexure No.2 to the OA) and he submitted that his date of birth in Service record may be mentioned as shown in High School Certificate. This application, however, was rejected by the competent authority and rejection was communicated to the applicant on 8.1.1979. The letter dated 8th January, 1979 is being reproduced below:-

No. E-2/895 A/DB
Establishment-2 Dt. 8.1.79

To,

Shri Om Prakash Vaish, LDC
LB/Time Office.

Through: The Divisional Officer.

Subject: Amendment of recorded date of birth.

You had not disclosed the fact of your being educated and also concealed the actual date of birth at the time of your appointment. This had given you advantage in securing employment in the form of higher age. However, your representation for amendment to your date of birth was forwarded to Addl.DGOF/OEF, who has ruled that your date of birth as already recorded, should not be changed.

Your high school Examination certificate is returned herewith.

Encl: 1

Sd/-
(Miss. RA Aziz)
Asstt. Manager/ Admin.
for General Manager."

After the aforesaid order dated 8th January, 1979, applicant kept mum. However, on 22nd February, 1993, he again moved an application for correction of his date of birth in service records. This application

Contd..3

has been rejected by order dated 12th March, 1993, aggrieved by which the present O.A. has been filed. The order is being reproduced below:-

" In this connection, it is stated that your request for amendment in recorded date of birth has already been examined and regretted by OEF Hqrs. Kanpur and the decision arrived has also already been communicated to you, vide this office letter of even no. dated 8.1.79. It is mentioned for your information that as per F.R. 56, the request of change in recorded date of birth may only be considered within first five years of joining the service.

Therefore, application in this regard shall not be entertained in future."

It may be noticed here that the orders dated 8th January, 1979 and 12th March, 1993 have not been challenged by the applicant. He has only prayed for a direction. From a perusal of the letter dated 12th March, 1993, it is also clear that it has been rejected mainly on the ground that his request for amendment in recorded date of birth has already been considered and rejected, though additional ground has also been mentioned that such application could be considered within first 5 years of joining the service. Counter Affidavit has been filed by the respondents and maintainability of the OA has been challenged on the ground of limitation. ^{raised} ~~by the respondents~~. Considering the preliminary objection of limitation raised by the Respondents, I heard learned counsel for parties on the question whether the O.A. filed is within limitation, as prescribed under Section 21 of Administrative (Tribunals) Act, 1985 (hereinafter referred to as 'Act'). The arguments were heard and judgment was reserved on 11th January, 2001. The learned

counsel for the applicant was given two weeks' time to file his written note together with photocopies of the judgments relied on during the arguments. On 30th January, 2001, the learned counsel for the applicant made an application and prayed for 2 weeks' further time to file written note and photocopies of the judgments. He also prayed that arguments may be heard again. Written note and photocopies of the judgments have been filed on 7.2.2001. However, I do not think it necessary to fix the case for further hearing as the O.A. was heard for a long time and the learned counsel for the applicant had made elaborate submissions on each point.

3. It has been submitted by the learned counsel for the applicant that it is true that the representation of the applicant was rejected on 8th January, 1979, but the second representations made on 14.12.1992 and 22nd February, 1993 were based on new grounds. It is submitted that the provision of Fundamental Rule 56 were amended vide Gazette Notification of 15.12.1979, fixing 5 years limit for correction. So, the first representation could not be rejected on 8th January, 1979 on this ground of the provision. The second representation has been rejected on new ground on the basis of the Fundamental Rule 56, which gave rise to a new cause of action and the application is well within time. The learned counsel for the applicant has cited a number of authorities in support of his submissions, which are being mentioned below:-

(i) S. Raghuraman Vs. Union of India and others
(1989) 11 A.T.C. 495,

(ii) Shankar Prasad Vs. Union of India & others
(1987) 3 A.T.C. 303,

(iii) C.K. Gajanan Vs. Union of India & others
(1991) 15 A.T.C. 586,

(iv) Jagmohan Vs. Union of India, Ministry of Defence and others.
(1989) 11 A.T.C. 616,

(v) G.P. Nagar Vs. Union of India and others
(1993) 24 A.T.C. 517,

(vi) Byomkesh Moitri Vs. Union of India & others
(1987) 2 A.T.C. 871,

(vii) Khagendra Nath Das Vs. Union of India and others.
(1987) 4 A.T.C. 455,

(viii) M. Murtaza Ali Vs. Secretary, Central Board of Excise & Customs, New Delhi and others.
(1988) 8 A.T.C. 632,

(ix) Naren Chandra Chakravorty Vs. Union of India and others.
(1993) 23 A.T.C. 554,

(x) Vijai Kumar Srivastava and others
versus Union of India and others
(1988) 6 A.T.C. 469,

(xi) C.R. Rangadhamaiyah and others
Vs. Chairman, Railway Board, New Delhi and others.
(1994) 27 A.T.C. 129 Full Bench,

(xii) Kapil Deo Sharma Vs. Union of India & others
(1993) 24 A.T.C. 655.

Sri Amit Sthalekar, learned counsel appearing for the respondents, on the other hand, submitted that the first representation for correction of date of birth was made by the applicant on 25.7.1966. A copy of the letter has been filed as Annexure No. A-2 to the O.A. This application was rejected on 8th January, 1979. The applicant did not take any action against the same.



He filed fresh applications on 14.12.1992 and 22nd February 1993 for the same grievance, which were rejected, vide letter dated 12th March, 1993. The learned counsel has submitted that the cause of action arose to the applicant on 8th January, 1979. The limitation started running from the aforesaid date and it could not be extended merely because the applicant filed fresh applications after more than 13 years, which were rejected on the basis of the earlier order of rejection. The learned counsel has submitted that in the present case the provision contained in Fundamental Rule and its subsequent amendment does not help the applicant in any way on the question of limitation. It has been submitted that the application is highly time barred and is liable to be rejected on this ground. The learned counsel has placed reliance in the case of State of Orissa Vs. Sri Pyarimohan Samantaray and others, AIR 1976 Supreme Court, 2617 and Administrator of Union Territory of Daman and Diu and others Vs. R.D. Valand, 1995 Supp (4) Supreme Court Cases 593.

4. I have carefully considered submissions of learned counsel for the parties. However, I am of the opinion that the present O.A. filed by the applicant on 18th May, 1993 is grossly time-barred and is liable to be rejected. Hon'ble Supreme Court in the case State of Orissa Vs. P. Samantaray and others, (Supra) held in Para-6 as under:-

" It would thus appear that there is justification for the argument of the Solicitor General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some 11 years to go by before filing the

25

writ petition. There is no satisfactory explanation of the inordinate delay for as has been held by this Court in Rabindra Nath Bose V. Union of India, (1970) 2 SCR 697 = (AIR 1970 SC 470) the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances."

The legal position as expressed by the Hon'ble Supreme Court in the aforesaid judgment is squarely applicable in the facts of the present case. The first representation of the applicant was rejected on 8th January, 1979. Thereafter, he kept quiet for a long time for more than 13 years, then he again filed two representations, which have been rejected, mainly on the basis of the earlier order dated 8th January, 1979. It is not open to the applicant to say that fresh cause of action has arisen to him in 1993, when his subsequent representations were rejected on 12th March, 1993. Hon'ble Supreme Court in subsequent case - Administrator of Union Territory of Daman and Diu and others Vs. R.D. Valland reiterated the same view and set aside the judgment of the Tribunal with the following observation in para-4:-

" We are of the view that the Tribunal was not justified in interfering with the ~~State~~ claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter for four years the respondent did not approach any Court

Contd..8

P P

and finally he filed the present application before the Tribunal in March, 1990. In the facts and circumstances of his case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

From the legal position explained above, the application of the applicant is clearly time-barred. I have considered the judgments relied on by the learned counsel for the applicant, mentioned above. However, judgments are clearly distinguishable on facts and do not help the applicant in the present case. In the order dated 8th January, 1979, there is an observation that the applicant concealed the actual date of birth at the time of his appointment, which gave him advantage in securing employment in the form of higher age. The factual position is that on his own showing the applicant joined on 14.5.1963. On the basis of date of birth 1.6.45, he had not completed the age of 18 yrs. and as he was below 18 years, he could not have been taken in employment. It appears that to avoid this, he succumbed to the opinion given by the Medical Officer, on which basis the date of birth 11.5.1938 was recorded in recorded in Service-Book. For the reasons stated above, the O.A. is highly time-barred and has been filed after the prescribed period of limitation, u/s 21 of the Act. Application is rejected as time-barred. There shall, however, be no order as to costs.

(R.R.K. TRIVEDI)
VICE- CHAIRMAN