

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 21st day of JANUARY 2002.

Original Application no. 800 of 1993.

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

Mohd. Shafiq Ansari,  
S/o Sri Wazir Ali, L.D.C. P.C.,  
1257, Resident of Mohalla Nisarzai,  
Shahajahanpur.

... Applicant

By Adv : Sri KC Saxena  
Sri RK Gupta

V E R S U S

1. Union of India through Secretary,  
Ministry of Defence,  
NEW DELHI.
2. The A.D.G.O.F., O.E.F.,  
Kanpur.
3. The General Manager,  
O.C.F., Shahajahanpur.

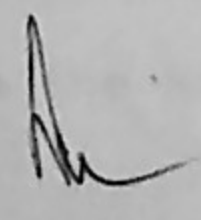
... Respondents

By Adv : Sri A. Sthalekar

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member-A.

In this O.A. the applicant Mohd Shafiq Ansari, has prayed that his date of birth be corrected as 9.9.1944 instead of 1.4.1939 as has been done in number of cases by the Tribunal when approached.



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2. The facts in brief are that the applicant joined Ordnance Clothing Factory (OCF), Shahajahanpur on 1.4.1963 as labour. He was sent for medical examination before his appointment and the medical officer estimated his age as 24 years. As per applicant he was directed to put his signature on a number of <sup>documents</sup> and he signed them in routine manner in good faith. He represented on 12.10.1978 for correction in date of birth which was rejected by General Manager, OCF vide order dated 12.4.1980 (Ann A-4). He again represented on 14.12.1992 for change of date of birth as was done in many cases but this was rejected by the impugned order dated 12.3.1993 (Ann I). Aggrieved by this order of General Manager, OCF, Shahajahanpur dated 12.3.1993, the applicant has filed this O.A.

3. Heard Shri KC Saxena, learned counsel for the applicant and Shri A. Sthalekar, learned counsel for the respondents. and perused records.

4. Shri KC Saxena, learned counsel for the applicant submitted that the respondents had the knowledge that the applicant was a matriculate as his name <sup>had</sup> been sponsored by the Employment Exchange and while forwarding the name of the applicant the Employment Exchange sent a copy of the High School certificate on which the date of birth is recorded as 9.9.1944. Since no educational qualification was prescribed for the post of a labour the applicant did not deposit High School certificate containing date of birth at the time of recruitment. Medical examination for the job of a labour's post is done only for physical fitness and therefore, assessment of age by the medical officer is redundant as it is not based on any scientific data. Besides once the High School certificate (supplied by

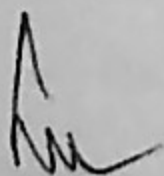
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Employment Exchange) was available with the respondents, the applicant's correct date of birth should have been recorded in the service documents. The learned counsel for the applicant has relied upon the decision of the Hon'ble Supreme Court in Union of India Vs. C Ramaswamy, AIR 1997 SC 2055<sup>in which it has been held</sup> that the officer, direct recruit, belonging to All India Service appointed prior to amendment of Rule 16 A in 1972 is entitled to seek change in date of birth only in case of bonafide mistake in recording date of birth at time of employment after coming into force of 1978 rule. Shri Saxena, argued that in the present case also the mistake is bona fide and, therefore, the claim of the applicant for change of date of birth on the basis of documentary evidence is legally justified. 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 where in it has been held that 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, learned counsel for the applicant further submitted that this Tribunal has ordered correction of date of birth in number of cases and General Manager, OCF, (respdt 3) has corrected the date of birth in many cases in similar circumstances, the case of the applicant merits 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 cited the decision of this Tribunal dated 11.7.2001 in Uttam Chand Vs. Union of India & Ors in OA no. 1899 of 1993 in which the Tribunal has held :-



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"It is true that the applicant's initial representation was rejected in 1985 then he made another representation which was rejected in 1993. There is delay in approaching the Tribunal but under section 21 in special cases, Tribunal has been given power to condone the delay. Considering the peculiar circumstances of the case, we are of the opinion that the delay, if any in filing O.A. may be condoned in the interest of justice, and the same is hereby condoned."

6. The claim of the applicant has been contested by the respondents by filing counter affidavit. Sri Amit Sthalekar the 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 entry into service in view of the law laid down by Hon'ble Supreme Court in AIR 1993 SC 1367, U.O.I. Vs. Harnam Singh. Shri Amit Sthalekar, in support of his contention also relied upon the similar decisions of Hon'ble Supreme Court in JT 1994 (3) SC 514, The National Airport Authority Vs. MA Wahab and AIR 1995 SC 850 Chief Medical Officer Vs Khadeer Khadri, Learned counsel for the respondents also submitted that this Tribunal has also held similar view in its order dated 24.2.1995 in OA no. 664 of 1993 and order dated 22.2.2001 in OA no. 799 of 1993.

7. Shri Sthalekar further submitted that at the time of preparation of Service Book the applicant had signed against the column for date of birth and also at the bottom putting his fingers impression ~~in token of acceptance and correctness~~ in token of acceptance and correctness of the date of birth (Ann CA 1 & 2). In support of his argument he further submitted that the applicant, in the Application...5/-



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for admission to the General Provident Fund (in short GPF), has himself written his date of birth as 1.4.1939 in the date of birth column and put his signatures on application form on 3.4.1981 (Ann CA-3).

8. Shri Sthalekar, learned counsel for the respondents finally submitted that the applicant was appointed as a taibr 'D' and not a labour. The applicant is literate and has signed all the documents during service in English and, therefore, the plea of the applicant, that he just signed the documents put before him <sup>at</sup> the time of initial appointment on 3.4.1963 without checking the correctness of his date of birth cannot be relied upon.

9. We have carefully considered the submissions of the learned counsels for parties and have closely examined the records. The learned counsel for the applicant during the course of argument laid great emphasis on plea that the respondents had the copy of the matriculation certificate of the applicant as it had been supplied by the Employment Exchange and, therefore, it was incumbent upon the respondents to have corrected the same in service records when it was represented by the applicant in 1978. He also contended that the applicant signed the documents in a routine manner when these were put before him for signatures at the time of initial engagement. This argument is not acceptable to us because the applicant is literate and no literate person puts his signatures on any document without reading it. Not only this at the time of medical examination the applicant stated his age to be 22 years while the medical officer on the basis of appearance assessed applicant's age as 24 years. There

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was no <sup>u</sup>compulsion on the applicant at the time of medical examination to state his age as 22 years before the medical officer, while he was fully aware that the date of birth recorded in the matriculation certificate is 9.9.1944 and accordingly he was only 19 years old. We do not doubt the genuineness of the matriculation certificate of the applicant but this does not help the applicant much as everywhere in the service documents the applicant has accepted 1.4.1939 as his date of birth and has signed in token of his acceptance as is evident from annexure CA-1. The facts and circumstances in case of U.O.I. Vs. Ramaswamy (supra) are easily distinguishable and do not help the applicant. There is no bonafide mistake by the respondents in this regard.

10. We would also like to observe here that the applicant represented for the amendment in date of birth for the first time in October 1978 i.e. after 15 years of joining the service and his request was rejected by the respondents through letter dated 12.4.1980 (Ann. CA-4). The applicant did not take any action for another 12 years and woke up only in December 1992 to reagitate <sup>u</sup>the matter. The cause of action arose in April 1980 and the applicant is not able to satisfy us for this inordinate delay of 12 years. Obviously the applicant was satisfied by the decision of the respondents dated 12.4.1980. During this period the applicant got another opportunity in 1979 with issuance of Department of Personnel and Administrative Reforms Notification number 19017/79/Estt A dated 30.11.1979. The said note 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

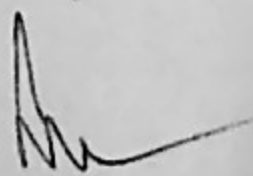


appropriate authority on production, as far as possible, of confirmatory evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject 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 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."

Therefore, on receipt of letter dated 12.4.1980 (Ann CA-4) rejecting the request of the applicant for amendment in his date of birth, the applicant could have again pursued the issue which he did not do. In 1981 the applicant signed the GPF application wherein he has mentioned his date of birth as 1.4.1939. This goes to show that the applicant had accepted his date of birth as recorded in the service documents.

11. Shri Amit Sthalekar, learned counsel for the respondents argued that the application requires to be dismissed on the ground of limitation. In support of his argument he has cited



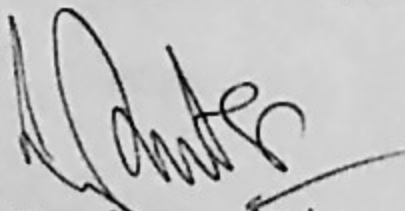
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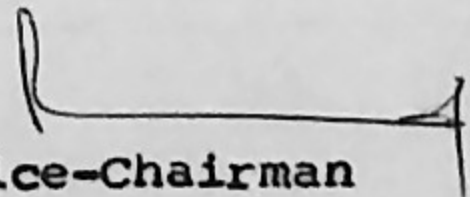


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the decisions of this Tribunal in number of cases and also the decisions of Superior Courts. He also submitted that subsequent representation by the applicant will not extend the period of limitation. Sri K.C. Saxena, learned counsel for the applicant argued that the Superior Courts as well as this Tribunal in number of cases have either condoned such delays or have held those cases not barred by limitation. However, we do not agree with the submission of learned counsel for the applicant. The applicant joined OCF Shahjahanpur on 1.4.1963 and the date of birth as per opinion of the medical officer was entered as 1.4.1939 in service records. He represented for the first time on 12.10.1978 and his representation was rejected by respondent no. 3 on 12.4.1980. The cause of action arose on 12.4.1980. The applicant did not take any action. He also signed the application for G.P.F. on 3.4.1981 in which the date of birth has been shown as 1.4.1939 and therefore subsequent representation on 14.12.1992 would not extend the <sup>the period</sup> ~~time~~ of limitation. The decisions of Hon'ble Supreme Court in Harnam Singh's case (Supra), The National Air Port Authority Vs. MA Wahab (Supra) and Khadeer Khadriz case are squarely applicable in this case. Therefore, the application is liable to be dismissed on the ground of limitation also though we have examined the claim on merits.

12. In the facts and circumstances we have no doubt that the claim of the applicant is time barred and without any substance. In view of the foregoing, the OA <sup>is</sup> dismissed. There shall be no order as to costs.

  
Member (A)

  
Vice-Chairman

/pc/