

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

DATED : ALLD. ON THIS 4th DAY OF DECEMBER, 1997

CORAM :- HON'BLE MR. D.S. BAWEJA, MEMBER(A)

ORIGINAL APPLICATION NO. 1052 OF 1995

Iqrar Hussain T.No.5845 S/o Ali Ahmad
R/o Moh.Ghatam Tola near Suhahri
Masjid, Shahjahanpur-

..... Applicant

C / A :- Shri K.C.Saxena

Versus

- (1) Union of India through Secretary,
Ministry of Defence, New Delhi.
- (2) A.D.G.O.F., O.E.F.Group, Sarvodaya Nagar,
G.T.Road, Kanpur.
- (3) G.M., O.C.F., Shahjahanpur

..... Respondents

C / R :- Km. S.Srivastava

O R D E R

(By Hon'ble Mr. D.S.Baweja, Member(A))

This application has been filed with a prayer that the respondents be directed to score out the incorrect date of birth recorded in the Service Book by adopting illegal procedure contrary to rules and in its place correct date of birth, 23.02.42, as recorded in the School Leaving Certificate, be substituted.

2. The applicant was recruited and appointed on 31.10.62 as a Tailor in Group 'D' as Industrial Establishment employee in the Ordnance Clothing Factory, Shahjahanpur. The date of birth of the applicant has been recorded as 31.10.36. The applicant claims that his correct date of birth is 23.02.42 as per the School Leaving Certificate. The applicant came to know of the incorrect date of birth recorded in the Service Book only when the computerised pay bills were issued by the Factory during 1994. Applicant immediately made a representation enclosing a copy of the School Leaving Certificate for correction of his date of birth as 23.02.42. However, his

request has been rejected as per the letter dtd.23.12.94 stating that as per FR-56, the request for change in date of birth cannot be entertained beyond five years after joining the service. The applicant made a representation to higher authority also but the same was also rejected by order dtd.18.05.95. Being aggrieved, the present application has been filed on 27.09.94.

3. The defence put forward by the applicant in support of his claim is as under:-

(a) FR-56 as per which the request of the applicant has been rejected does not apply to the applicant's case as this Rule does not apply to civilian employees in the Defence Establishments. FR-3 makes Fundamental Rules inapplicable to the Govt.Servants, whose conditions of service are governed by the Army or Marine regulations.

(b) The date of birth has been wrongly recorded in the Service Book on the basis of assessment of the Medical Officer contrary to the rules without calling for documentary evidence from the applicant in support of date of birth at the time of appointment.

(c) During the entire period of service, the applicant was never shown the Service Book. As per the extant rules, the Service Book is required to be verified in association with the employee after every five years and obtain signature of the employee as a token of the same. This was, however, not done in the case of the applicant.

4. The respondents have contested the applicant through counter reply filed by Shri V.K.Tripathi, Works Manager(Admn.), Ordnance Clothing Factory, Shahjahanpur. The respondents contended that at the time of appointment of the applicant as Tailor in Group 'D' on 31.10.62, the applicant neither disclosed his date of birth nor produced any documentary evidence in support of his date of birth. In view of this, age of 26 years assessed by the Medical Officer on 31.10.62 was taken into consideration fixing the date of birth as 31.10.36. This date of birth has been recorded in the Service Book in the column of date of birth as per Article 51 of C.S.R. The applicant has put his signature below the entry as a token of acceptance of the recorded date of birth. The applicant has also signed at the bottom of the main page of the Service Book and put his finger impressions as a token of acceptance of the entries made. The respondents further submit that the applicant had submitted his application for admission to General Provident Fund on 18.03.72 in which he has indicated his date of birth as 31.10.36. The respondents also contend that the applicant is not

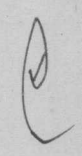
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illiterate as he has signed the Service Book in English in long hand writing. In view of these facts, the respondents contend that the applicant was aware of his date of birth recorded in the Service Book. He made a representation for change in date of birth only on 05.12.94 after completing more than 32 years of service. In terms of provision in Note 6(a) of FR-56, request for change in date of birth can be made within a period of 5 years from the date of entry into the service. Since the request for change in date of birth was not as per the extant rules, the same has been rejected by the competent authority. The respondents have also controverted the contention of the applicant that he came to know about his recorded date of birth only in 1994 from the computerised pay bills stating that the computerised pay bills were started to be issued to the staff from 1988 onwards. In view of these facts, the respondents contend that the application is devoid of merits and deserves to be quashed. The respondents have also pleaded that the present application is barred by limitation in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India & Others V/s Harnam Singh AIR 1993 S.C.1367.

5. The applicant has filed rejoinder affidavit controverting the pleadings of the respondents in the counter affidavit and maintaining his stand in the original application. The applicant has also objected that counter reply has not been filed by the authorised person.

6. As per order dtd.29.09.97, last opportunity was allowed to the applicant for final hearing as on the several earlier dates, the learned counsel for the applicant had not been present. When the case was listed on the next date on 20.11.97, the learned counsel for the applicant again was not present. There was also no request for adjournment. In view of the order dtd.29.09.97, I proceeded to hear the matter in the absence of the learned counsel for the applicant. Heard arguments on the learned counsel for the respondents. Accordingly, the present application is being considered on merit, taking into account the pleadings of the applicant on record and the arguments made by the learned counsel for the respondents during hearing.

7. The learned counsel for the applicant has also cited the support of judgment of Hon'ble Supreme Court in the case of Union of India & Others V/s. C.Ramaswamy, 1997 S.C.C.(L and S) 1158.



8. With regard to the objection raised by the applicant that the counter reply filed by Shri V.K.Tripathi, Works Manager(Admn) is not filed by the authorised officer, I have carefully considered the averments made by the applicant in support thereof. The main contention of the applicant is that the date of birth of Shri Tripathi is subsequent to the date of birth of the applicant and, therefore, he cannot be acquainted with the facts of the case relating to date of birth of the applicant. This contention is illogical. The officer, who files the affidavit on behalf of the respondents, has to be acquainted with the facts of the case from the record ^{and} ~~but~~ not through his personal knowledge. In the Government Service, the incumbent of the post ^{keeps} ~~is~~ changing on account of transfer and it is not that the incumbent, who was posted at the time when the applicant was appointed, can be only acquainted with the facts of the case. In view of these observations, I failed to see any merit in the objection raised by the applicant.

9. Before going into the merits of issue, I will first consider the question of limitation raised by the respondents. From the facts as emerge from the rival pleadings, it is noted that the applicant joined service on 31.10.62 and he made the representation for correcting his date of birth only on 05.12.94 enclosing a copy of the School Leaving Certificate which has been issued on 12.11.94. The applicant has taken a plea that he was not aware of the incorrect date of birth recorded in the Service Book till he came to know of the same in 1994 from the computerised pay bills issued to him. Considering the facts brought out by the respondents, this submission of the applicant does not sustain. On persual of the first page of the Service Book brought on record at CA-1, it is noted that the applicant has signed in English below the entry for date of birth. The applicant has not denied the signing in the Service Book for the entry of date of birth. The applicant in the rejoinder reply has only stated that he has studied upto V class ~~only~~ and could not know what he was signing for. He also further contends that merely putting signature does not result in estoppel from raising the issue of incorrect date of birth recorded in the Service Book. The arguments advanced by the applicant do not carry any weight as the purpose of getting the signature of the employee in the Service Book is to make him aware of the accepted date of birth at the time of appointment. The document at CA-2 also confirms that the applicant was knowing his date of birth recorded in the Service Book. Further, the applicant has submitted that he came to know of his date of birth wrongly recorded in the Service Book only in 1994 when he received the computerised pay bills. Respondents have contested this claim stating that the computerised pay bills were started to be issued from 1988 onwards. The applicant in the rejoinder reply

has more or less accepted this contention with the submission that he was more interested in the pay-packet and not in reading the date of birth recorded in the pay bill. ~~That~~ His contention that he came to know incorrect date of birth entry in 1994 is without merit and the applicant is seeking premium on his negligence. Thus, I have no hesitation to conclude that the applicant was fully knowing of his date of birth recorded in the Service Book at the time of entry and he made representation for change in date of birth after more than 32 years of service at the fag end of service. The claim made is ^{stale} false and belated. In this connection, I refer to the judgment in the case of Union of India & Others v/s Harnam Singh relied upon by the respondents to support their plea of limitations. It will be relevant to reproduce the extracts from para 6 of this judgment as under:-

" It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Govt. Servant can be entertained. A Govt. Servant, who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those, who sleep over their rights and allow the period of limitation to expire."

10. In the subsequent judgment of the Apex Court in the case of Burn Standard Co. Ltd. & others v/s. Dina Bandhu Majumdar and another AIR 1995 S.C. 1499, their Lordships have held that ordinarily writ petition for correction of date of birth at the fag end of the service should not be entertained. An extract from para 10 from this judgment is reproduced below:-

" - - The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. - - "

11. The judgment in the case of Union of India and others v/s C. Ramaswamy and others cited by the respondents and detailed in para 7 above has been gone into. It is noted that their Lordships have held that principle of estoppel will operate when a relief is sought for alteration in the date of birth than what is originally recorded because the candidate concerned represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into service possibly ⁱⁿ any preference to other candidates, then the relief for change of

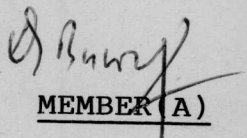
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date of birth, if claimed subsequently, can be legitimately denied. Petitioner in this case was a direct recruit to Indian Police Service. The present application is distinguishable on the facts as the applicant has made a request for change of date of birth at the fag end of service. However, what is held in this judgment, supports the view taken in the above referred judgment of Union of India & Others v/s. Harnam Singh that the date of birth which is accepted at the time of appointment cannot be sought to be changed subsequently.

12. Keeping in view the facts of the case as detailed above and what is held in the various judgments of the Hon'ble Supreme Court cited above, I subscribe to the submissions of the respondents and hold that the application is barred by limitation.

13. Since it has been held above that the application is barred by limitation, other contentions raised by the applicant do not merit consideration.

14. In view of the above, the application fails as being barred by limitation and is accordingly dismissed. No order as to costs.


MEMBER (A)

/rsd/