

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.787 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

RAM SIROMAN TEWARI

VS.

UNION OF INDIA AND ORS.

For the applicant : Mr. B.C. Sinha, counsel

For the respondents : Mr. S.K. Dutta, counsel

Heard on : 25.5.99

Order on : 25.5.99

O R D E R

This application has been filed by one, Ram Siroman Tewari, Machinist H/S.II, Rifle Factory, Ichhapore, Dist.24 Pgs., West Bengal for correction of date of birth of the applicant for the purpose of retirement benefits under the service rules. According to the applicant, his actual date of birth as per his School Leaving Certificate is 25.3.1937 but at the time of appointment as a casual Chowkidar in the Station Workshop, EME, Tirumalgheri, Secunderabad, on 1.4.1954, his date of birth was wrongly recorded as 5.7.1934 instead of 25.3.1937. It is stated by the applicant that he read upto Class-I standard only in Hindi medium school and he had no knowledge of English at the time of his appointment. It is also stated by the applicant that he could not continue his studies due to acute financial difficulties and since his father who was a Chowkidar at the Station Workshop, EME, Tirumalgheri, Secunderabad had to take premature retirement, on account of his shattering health, he was given compassionate appointment in his father's place.

2. Ld. counsel Mr. B.C. Sinha appearing on behalf of the applicant, submits that the applicant was regularised in service in 1966 after frequent transfers from one place to another and was finally promoted as a Machinist in the Ichhapore Rifle

Factory. Thereafter, the applicant made representation to the authorities for correction of his date of birth on 19.3.83 and on 26.5.83 which were disposed of by the authority on 23.9.88 and on 11.10.83 respectively on the ground that such change is not permissible under the rules. The said order of rejection is marked as Annexure-A/4 to this application. It is submitted by the ld. counsel for the applicant that the authority who rejected the prayer of the applicant has no jurisdiction to dispose of the representation of the applicant and thereby the entire action of the respondents is highly arbitrary, illegal and the applicant is entitled to get appropriate relief in this matter. He further submits that a direction may be issued upon the respondents to change the date of birth of the applicant as per his School Leaving Certificate(Annexure-A/3 to the application). Therefore, the applicant filed this O.A. on 3.7.96 alongwith an M.A. for condonation of delay^{bearing} No.M.A.351/1997(filed on 28.8.97).

3. Respondents filed written reply denying the claim of the applicant stating inter alia that this application is hopelessly barred by limitation. It is stated by the respondents that the applicant put his signature on the first page of his Service Book at the time of his appointment accepting the date of birth recorded therein and i.e. 5.7.1934. The applicant also declared on 21.6.58 that his date of birth as recorded in the Office records is correct (Annexure R-I and R-II). It is also stated by the respondents that the date of birth of the applicant is recored as July, 1934 of the applicant in the Police Verification Report/marked as Annexure R-4 to the reply and the applicant also signed in the statement of service in respect of temporary Civilian Personnel wherein it was mentioned that his date of birth is 5.7.34(Annexure R-3 to the reply). According to the respondents, the applicant joined the Rifle Factory, Ichhapore as Machinist 'C' on 21.1.66 having been permanently transferred from his earlier establishment i.e. 510 Central E.M.E. Workshop, Meerut Cantonment after a period of

about 12 years from the date of his joining the Government service on 1.4.1954. Thereby the representation of the applicant regarding correction of his date of birth was rightly refused by the respdts. So, the application is devoid of any merit and is liable to be dismissed.

4. Ld. counsel Mr. B.C. Sinha appearing on behalf of the applicant submits that the respondents refused the prayer of the applicant without any substantive document regarding his date of birth and since the applicant has no knowledge of English, he failed to understand the contents written in the service book. Thereby the date of birth as recorded in the Service Book which was signed by the applicant should not be taken into consideration. Ld. counsel for the applicant further submits that in view of the School Leaving Certificate (Annexure A/3 to the app.) of the applicant the application should be allowed with a direction upon the respondents to make correction of the date of birth of the applicant as prayed for.

5. Ld. counsel Mr. S.K. Dutta appearing on behalf of the respondents submits that if the date of birth as claimed by the applicant is accepted, it will appear that the applicant's age was only 17 years and 7 days at the time of his appointment and he was under age at the time of getting a Government service which is not permissible under the rules. Ld. counsel for the respondents further submits that the applicant accepted his date of birth as written in the service book by putting his signature therein and making declaration that his date of birth as written in the Service Book is correct. Thereby, this application should not be accepted after so many years of service. Mr. Dutta, ld. counsel for the applicant also submits that the M.A. 351/1997 filed by the applicant for condonation of delay has been dismissed for default by this Tribunal on 11.2.99. The application is hopelessly barred since the applicant did not approach to the Tribunal or any other court after refusal of the first representation by order dated 11.10.83 (Annexure A-I to the app.). Therefore, the application is liable to be

dismissed on the ground of limitation alone. Mr. Dutta, ld. counsel for the respondents produced the original Service Book of the applicant in support of his statements.

6. I have considered the submissions made by the ld. counsel for both the parties and have gone through the records. It is found that the applicant made several representations to the authorities and all his representations were rejected by the respondents and the applicant approached the Tribunal in 1996 though all his representations were turned down in 1983 and subsequently on 1988. The question of limitation is a vital factor under the Administrative Tribunals Act. In the instant case the applicant did not approach the Tribunal immediately after the rejection of his representations. The Hon'ble Apex Court has well settled the matter in a case of R. Samanta vs. Union of India and Ors. where it is held that :-

"Delay itself deprives a person of this remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well."

In the instant case, since the application for condonation of delay has been dismissed by this Tribunal, thereby, question of limitation has become vital factor for entertainment of application in view of the judgment passed by the Hon'ble Apex Court as mentioned above. It is found that the respondents answered all the representations of the applicant with reasons and I find no ambiguity in the letter dated 11.10.1983. The reasons assigned by the respondents in the said letter dated 11.10.1983 cannot be said to be arbitrary and contrary to the provisions of the law and I do not find any justification to interfere in the order dated 11.10.83 in the light of the decisions of the Hon'ble Apex Court in various judgments where the Hon'ble Apex Court categorically reiterated that belated application for correction of date of birth should not be accepted by the Tribunal under ordinary circumstances. In this case, the applicant failed to ^{Substantiate} produce any ^{grounds} document to interfere with the order of the authority regarding