

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 579/96

Date of Decision 9-1-97

B.D.Gidwani

Petitioner

Shri S.P.Saxena

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri R.R.Shetty (for Shri R.K.Shetty)

Advocate for the Respondents.

Coram:

The Hon'ble Mr. M.R.Kolhatkar, Member(A).

The Hon'ble Mr. -

1. To be referred to the Reporter or not? ☒
2. Whether it needs to be circulated to other ☒
Benches of the Tribunal?

M.R. Kolhatkar
—(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

Original Application No.579/96.

Proounced, this the 9th day of January 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

B.D.Gidwani,
10/15, Netaji Nagar,
Wanori,
Pune - 411 001. ... Applicant.
(By Shri S.P.Saxena, Advocate)
V/s.

1. The Union of India,
through the Secretary,
Ministry of Defence,
South Block, DHQ, PO,
New Delhi - 110 001.
2. Engineer-in-Chief's Br(EIC2))
Army Head Quarters,
DHQ, P.O.
New Delhi - 110 011.
3. Chief Engineer,
Southern Command,
Pune - 411 001. ... Respondents.
(By Shri R.R.Shetty for Shri R.K.
Shetty, counsel).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

The applicant is working as an U.D.C. in the office of the Respondent No.3. The date of birth recorded in his Service Book is 7.5.1941. The same is in accordance with the date of birth recorded in the S.S.C. certificate. The applicant prays for change of the date of birth to 1.12.1943 which date of birth, according to the applicant, is the correct date of birth about which he came to know only after old family record

...2.

containing the horoscope came to his notice. The applicant states that his ^{is} a family of partition refugees and when they migrated from Pakistan they were initially staying in a refugee camp at Kalyan and the applicant has enclosed Registration Certificate of the year 1954 and the Ration Card of the year 1953 to show that the date of birth as recorded is not plausible. He also contends that if he superannuates as per the date as recorded he would superannuate earlier than his elder brother ^{which would be evidently anomalous} The applicant had made a representation for change of date of birth but the same was rejected by the letter dt. 6.10.1994 (at Ex. A-1). The applicant, therefore, prays for the relief of declaration that his date of birth is 1.12.1943 and to direct the respondents to correct the entries as per the above date in the records.

2. The Respondents have opposed the O.A. Firstly, it is contended that the O.A. is barred by ^{the} time because, although reply rejecting the request for change of date of birth was sent on 6.10.1994 the applicant has challenged the same by an O.A. filed on 23.1.1996 i.e. more than one year from the date of receipt of the reply. As the delay is marginal I am not inclined to dismiss the O.A. on that ground alone. It is next contended that there are inconsistencies in the record relating to Registration Certificate of the refugee camp filed by the applicant, certain entries appear to have been inserted in the

...3.

Registration Certificate afterwards by some one other than the issuing authority. The age recorded in the Ration Card as 7 years in 1953 also seems to be quite lower considering the age claimed by the applicant. Moreover, the date of birth was recorded on the basis of S.S.C. certificate and the same has become final. The applicant has relied on the horoscope but the horoscope cannot be regarded as an authentic record. The horoscope filed by the applicant does not ^{incidentally} show the place of birth. It is stated that the comparison of the date of birth with ^{that of elder} his brother is irrelevant. Most importantly, it is contended that the request of the applicant for correction of date of birth was rightly rejected because the same was not made in accordance with the Rules. According to the rules the application for change of birth is to be made within 5 years of entry in service or within 5 years of Notification dt.30.11.79 appended under Note VI of F.R. 56, this position was confirmed by the well known Supreme Court Judgment in Union of India V/s. Harnam Singh and therefore, the O.A. is liable to be dismissed.

3. The counsel for the applicant urges that it is because of special circumstances of the case viz. the applicant's family being a refugee family from all family belongings including old Pakistan which entailed destruction of record which led ~~to~~ the mother of the applicant giving a random date for the purpose of various records including S.S.C. certificate ^{and this extraordinary circumstance} needs to be given a special weight before deciding the case.

4. I have considered the matter. It may be that the date of birth as recorded in the service record is not the chronological date of birth. However, there can be a divergence between chronological date of birth and the date of birth as recorded in the Service Book which though artificial has to be treated as final subject to rules for amendment. The date of birth as recorded has implications for the career not only of the official in question, but also for the career of co-workers of the applicant. Therefore, applications for change in date of birth are not to be entertained lightly. In *Burn Standard Co. Ltd. & Ors. V/s. Dinabandhu Majumdar & Anr.* (AIR 1995 SC 1499) which is a case subsequent to the case of *Harnam Singh*, it has been pointed out that the employer would be entitled to view a change not merely from the angle of there being a genuine mistake, but also from the point of view of its impact on the service in the establishment. Therefore, the change in date of birth cannot be allowed except in the manner permitted by the service conditions or the relevant Rules. It is not the contention of the applicant that the refusal of the Respondents to allow the change of date of birth is in violation of any service conditions or the relevant Rules. I am therefore, of the view that the communication of the Respondents refusing change of date of birth of the applicant is perfectly valid and needs no interference. The O.A. has no merit and is therefore dismissed with no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

B.