

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 701/1996

Date of Decision: 27/2/97

Bhikhalal Jethalal Rawadke

Petitioner/s

Shri G.K.Masand

Advocate for the
Petitioner/s

V/s:

Union of India & Anr.

Respondent/s

Shri V.S.Masurkar alongwith
Shri S.C.Dhawan

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to X
other Benches of the Tribunal ?

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

abp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULISTAN BLDG.NO.8, PRESCOT RD, 4TH FLR,
MUMBAI - 400 001.

ORIGINAL APPLICATION NO : 701/96

DATED THIS 27th DAY OF February, 1997.

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

Bhikhalal Jethalal Rawadka,
Residing at
19/3, Shantinagar, Sane Guruji Road,
Jacob Circle,
Mumbai - 400 011.

... Applicant.

By Advocate Shri G.K.Masand.

v/s.

1. Union of India through the
General Manager, Central Railway,
Mumbai C.S.T.
2. Railway Board,
Rail Bhavan,
New Delhi.

... Respondents

By Advocates Shri V.S.Masurkar alongwith
Shri S.C.Dhawan.

I O R D E R

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

1. In this OA the applicant who retired as Senior Personnel Officer of the Central Railway, Bombay V.T. has prayed ~~for~~ the ~~relief~~ of directing the respondents to correct the applicant's Date of Birth in the service records to read as 15/11/1939 instead of 15/7/1938 and to allow the applicant to remain in service till 30/11/1997.
2. The O.A. was filed on 17/7/1996 but Interim Relief was not granted and it is not disputed that the applicant stands retired. The question is whether the applicant should be granted the relief of reinstatement till 30/11/1997 by giving a direction to the respondents to amend the recorded date of birth from 15/7/1938 to 15/11/1939.
3. The contention of the applicant is that the Date of Birth as recorded in his service book is based on the SSC Certificate produced at the time of joining Railway service on

25/7/1961, but while he was making preparation for his scheduled retirement in January, 1996, his Mother made him to understand that perhaps he ought to have retired much later and was also informed by his Mother that he was born at J.J.Hospital and he should verify the record of J.J.Hospital and he should find out the correct date of birth. Accordingly, the applicant made an application to the Ward Officer vide Exhibit-A dated 9th March, 1996 to issue birth certificate, in response to which the Municipality issued^{to} him the ~~xxxx~~ ~~xx~~ birth certificate which shows the ~~date~~ to be 15/11/1939 vide Exhibit-C.

4. The applicant, thereafter, made a representation on 11/4/96 stating that he belonged to scheduled Caste^(Hindu Vankar community) and that it was not the custom in this community to keep proper record of date of birth and his mother^{who}/is illiterate was also not aware of the correct date of birth and his father is no more. It was under such ^{that} circumstances/he made an enquiry in the Municipal Corporation and has now obtained the certificate of date of birth being later than the recorded date of birth. According to the applicant, there was a mistake in the recording of the date of birth in the service record due to reasons explained above beyond his control, ~~that~~ there was no delay on his part, as soon as he had knowledge in this regard and under the circumstances he^{had}/requested that his case may be considered sympathetically to change the date of birth. He received a reply on 21/5/96 from CPO stating that-

"It has been decided not to forward the representation to the Railway Board as it is too late to submit such claim, for which target date prescribed by the Railway Board was 31/7/1973 only."

5. ^{receipt of} On this, he made a further detailed representation dated 8/7/96 at Exhibit-G in which, apart from the factual circumstances, he also relied on the case law namely Charles Wilson Vs Union of India - ATR 1987 (1) CAT 103,

Hiralal Vs Union of India - 1987 (4) SLJ (CAT) 924 and decision in Full Bench / Mallela Sreeramamurthy & Ors. Vs Union of India & Ors - 1989(4) SLJ(CAT) 625. but as no reply was received on the representation, he has filed the OA.

6. The respondents have opposed the OA. According to the respondents, the applicant is a Gazetted Group 'B' Government servant. He had full knowledge of his recorded date of birth. He was promoted 5 times and each time a seniority list was published, the date of birth recorded in service record was communicated to him. In the self-assessment form of his Confidential Report he had also been writing the date of birth in his own handwriting. The applicant sought change in the date of birth at the fag end of the service and as such his claim is hopelessly time barred, that the applicant's representation was, infact, forwarded to the Ministry of Railways and a reply was received from the Railway Board annexed at Exhibit R-2 which reads as below:-

"Reference your letter No.9596-S/P dated 25/6/96 on the above subject.

In view of provisions in Rule 225 of Indian Railway Establishment Code and judgement of Hon'ble Supreme Court in AIR 1993 SC 1367 Union of India Vs. Harnam Singh the representation of Shri B.J.Rawadke, SPO/Central Railway for alteration in his recorded date of birth on the eve of retirement has not been accepted. Shri Rawadke may be advised accordingly."

Please acknowledge receipt."

7. Respondents have contended that the case law relied upon by the applicant has been over-ruled by the Supreme Court judgement in Union of India Vs. Harnam Singh 1993 SCC (L&S) 375 and that this Tribunal in OA No.542/95 Gandu Onkar V/s. Union of India has also turned down the request for change in recorded date of birth.

8. They also contended that

"The Supreme Court in *Burn Standard Cp. Ltd. & Ors. Vs. Shri Binabandhu Mazumdar & Anr.* (1995) (3) Scale SC 37) and other similar cases held that application is liable to be dismissed summarily under the Rules if filed after five years of entry into Government service."

9. According to the respondents the Supreme Court has reiterated the position xxxxxx as first laid down in Harnam Singh's case and several subsequent cases including the latest case of Union of India v/s. Ram Suta Sharma 1996(1) SLJ 552 where it summarised the legal ^{position.} The same is reproduced below:-

"1. Leave granted.

2. The controversy raised in this appeal is no longer res integra. In a series of judgements, this Court has held that a court or tribunal at the belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service records. Admittedly, the respondent had joined the service on December 16, 1962. After 25 years, he woke up and claimed that his correct date of birth is January 2, 1939 and not December 16, 1934. The claim was accepted ^{by} the Tribunal and it directed the Government to consider the correction. The direction is per se illegal.

The appeal is accordingly allowed. No costs."

10. Respondents therefore pray that the OA should be dismissed.

11. The Counsel for the applicant has argued that so ^{date-} xxxxxx the question of actual date of birth and recorded/are two different issues and if the Tribunal finds that the ^{patently} recorded date of birth was/wrong then the Tribunal would be ^{within} its rights to direct the Railway Board to launch an investigation. From the reply of the Railway Board, it is clear that they have merely referred to Harnam Singh's judgement and have assumed that after Harnam Singh judgement there can be no case for change in the date of birth. The Applicant

the submits that Railway Board has clearly failed to consider the special circumstances pleaded by the applicant namely that the applicant for the first time came to know about the date of birth recorded being wrong in January, 96 and that was ^{so} in the circumstances explained and considering the community to which he belongs, that was quite understandable and as soon as he came to have the correct knowledge, he has taken the earliest possible steps to ascertain the correct date of birth, that the date of birth recorded in the SSC Certificate is only of secondary significance because the primary record is that of the Municipality which ~~is~~ entrusted with the duty of registering the births and deaths and when he has produced the primary record namely the Municipal ~~xx~~ Birth Certificate then the Railway Board should have seen that the recorded date of birth ^{which} is based on SSC (Secondary School Certificate) is of no value and should have ^{accepted} the entry in the birth certificate.

12. The Counsel for the applicant relied on the Supreme Court decision in Director of Technical Education v/s. Smt. K. Sitadevi, reported at AIR 1991 SC 308.

That was a case in which the Andhra Pradesh Administrative Tribunal had directed the change of date of birth from 19/10/29 to 21/8/33 on the basis of original certificate produced before the Tribunal. The Supreme Court held that in the present case, the Tribunal on the basis of material and placed before it, has come to its own conclusion, therefore the appeal was dismissed. The Supreme Court has also observed that

"What exactly is the date of birth of a person is undoubtedly a question of fact and, therefore, the objection raised by the learned counsel for the respondent has to be accepted."

13. 13 It may first of all be noted that K. Sitadevi case was decided on 8/11/90, that is prior to the decision in

Harnam Singh case which was decided on 9/2/93. All the same, the supreme Court in that case was not inclined to interfere with the decision of the Tribunal as an issue of fact. In this particular case, the matter is somewhat different. Here the matter has been brought before the Tribunal to give a finding of fact and thereafter on that basis and in the light of the rules to issue direction to the Railway Authority to change the date of birth. In my view, therefore, while there can be no two views as to the position stated in the case of K. Sitadevi, it does not help the applicant.

14. Regarding the question of relative validity of SSC Certificate as against the Birth Certificate for entry in the Service Record is concerned, the respondents have contended that this matter was considered by Supreme Court in the case of Government of Andhra Pradesh Vs. M. Hayagreev sarma reported at 1990 SC SLJ 105. That was a case in which the first issue was regarding validity of Rule-5 of Andhra Pradesh Public Employment Rules 1984. We are not concerned with this aspect of the matter. The Learned Counsel for the respondents invites my attention to the following portion of the para-8 ^{of the} judgement which according to him contradicts the claim of the applicant that as between the Municipal Birth Certificate and the School Leaving Certificate, the authorities are bound to make a change in the date of birth when subsequently a copy of birth certificate is produced showing the date of birth. The Hon'ble Supreme Court held in para-8 that the date of birth had been recorded in his service book on the basis of his S.S.L.C. Certificate, at the time of his entry into service, therefore, the entry had become final and he was not entitled to reopen the correctness of that entry on the basis of extract of birth register." I am inclined to accept the contention of the respondents on this point.

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15. The Learned Counsel for the applicant argued that the Harnam Singh's case and other cases had made observations of the tendency of the Government employee to apply for change in the recorded date of birth just on the eve of retirement to have their service extended for some more time. The applicant contends that his application for change in date of birth is not opportunistically motivated. The circumstances in which he came to know about the correct date of birth have been enumerated namely his conversation with his aged Mother who had advised him to approach the Municipal Authority on the basis of which he got an authenticated Birth Certificate which clearly showed that the date of birth recorded on the basis of the Secondary School Certificate in the Service Record was wrong. Therefore, such observations would not apply to this case.

16. Respondents in this connection referred to the case of the Chief Medical Officer Vs. Khadeer Khadri reported at (1995)29 ATC 196. In para-4 of the judgement, the Hon'ble Supreme Court observed that the claim to have discovered a mistake later was only a ruse to get over the bar of limitation to have the date of birth entered in the service record corrected.

17. In my view, even assuming that the stand of the applicant is a bonafide stand and even assuming that he had made all necessary efforts to get at the truth as to his correct date of birth by entering into correspondence with Municipal Authorities, the question as to the bar of limitation is required to be considered. In this connection, the counsel for the applicant argues that on a proper reading of the rules, the bar of limitation would not stand in his way. Assuming that the department is satisfied as to the situation in which wrong date came to be entered, then the President does have powers to direct change in the recorded date of birth. On this point, I refer to Rule 225 of Indian Railway Establishment Manual which reads as follows:-

"225. Date of birth-(1) Every person, on entering railway service, shall declare his date of birth

which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the date of birth shall be entered in the record of service in the railway servant's own handwriting. In the case of illiterate staff, the declared date of birth shall be recorded by a senior railway servant and witnessed by another railway servant.

(2) A person who is not able to declare his age should not be appointed to railway service.

(3) (a) When a person entering service is unable to give his date of birth but gives his age, he should be assumed to have completed the stated age on the date of his attestation. e.g. if a person enters service on 1st January, 1980 and if on that date his age was stated to be 18, his date of birth should be taken as 1st January, 1962.

(b) When the year or year and month of both are known but not the exact date, the 1st July or 16th of that month, respectively, shall be treated as the date of birth.

(4) The date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a Group A & B railway servant, and a General Manager in the case of a Group C & D railway servant to cause the date of birth to be altered.

- (i) where in his opinion it had been falsely stated by the railway servant to obtain an advantage otherwise inadmissible, provided that such alteration shall not result in the railway servant being retained in service longer than if the alteration had not been made, or
- (ii) where, in the case of illiterate staff, the General Manager is satisfied that a clerical error has occurred, or
- (iii) where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended. //

18. The Counsel for the respondents points out that the clause relating to satisfactory explanation is qualified by the clause that such a request incorporating satisfactory explanation should not be entertained after completion of probation or 3 years whichever is earlier. According to him the latest limitation as clarified in the CPO letter is dated 31/7/73 and therefore in terms of applicable rule 225(1), (2), (3)(a) & (b) and 4(i), (ii) and (iii) it is not possible to consider his request for change of date of birth.

19. The Counsel for Applicant at this stage would argue that the Full Bench judgement in Mallela Sreerama Murthy and Anr. Vs. Union of India reported at 1989(4) (CAT) 625 had examined the relevant rules and the corresponding rule and Railway Board Circular dated 4/8/72 laying down 31/7/73 as the final date within which the Railway Employees were to make representation for change in date of birth recorded. According to counsel for applicant, this circular dated 4/8/72 has been struck down by the Full Bench judgement which was decided on 17/8/89.

20. In particular, the Tribunal took a view that while the circular dated 4/8/72 would apply to the Railway Employees who had entered Railway Employment after 4/8/72 it would not apply to pre-4/8/72 entrants and it was on this basis that the Full Bench had granted relief. What the Counsel for applicant states is true but only to the extent that the observation of the Full Bench judgement interpreting the Railway Board instructions have to be read in the light of the later judgement of Harnam Singh. In the case of Harnam Singh, the rule referred to was FR-56(m) Note (5). That amended rule provided for request to be made for correction of date of birth within five years from the date of entry into service. The question decided by the Hon'ble Supreme Court was its implication for the Government employees who entered service before promulgation of the

amendment and the Hon'ble Supreme Court vide para-12 laid down

"It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those Government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority."

21.

The Learned Counsel for the respondents also points out that the very issue namely the implications of Harnam Singh vis-a-vis other earlier cases decided by Tribunal including Mallela Sreerama Murthy Vs. Union of India decided on 17/8/89, was considered by the Tribunal in H.R.Gaikwad Vs. Union of India decided on 30/6/93 reported at 1993(2)ATJ 301, the Hon'ble Tribunal observed as follows:-

" It is this very position which weighed with the different Benches while excluding the employees recruited before 1971 from the operation of bar of limitation under Rule 145(Old) which corresponds to new Rule 225. The very basis of the decision in Hiralal's case has been displaced by the decision of the Supreme Court in Harnam Singh's case which directly dealt with the point which was involved in Heeralal's cases's. The Full Bench itself pointed out that the provisions of F.R.56 were in pari materia with the provisions of Rule 225 which replaced rule 145 and on a parity of reasoning the period of 3 years prescribed under Rule 225(4)(iii) would apply to the Railway Employees who are recruited after 1971. Rule 225 came to be framed under Article 309 of the Constitution and there is no challenge before me to the vires of the rule or that the rule is unconstitutional. In any event, in view of the proposition laid down in Harnam Singh's case, it is difficult to follow the full bench decision which no longer could be regarded as good law and it must be held that Rule 225 prescribes a uniform period of limitation and the applicant should have challenged the correctness of his date of birth within a

period of 3 years at least from the time when Rule 225 was framed such is not the case here."

22. It will be observed that the case of H.R.Gaikwad referred to above was concerned with interpretation of rule 225 of Indian Railway Establishment Manual and therefore the observation made by the bench of this Tribunal is appropriate to facts of the instant case.

23. The Learned Counsel for the respondents also invited my attention to the case of Vishakapatnam Dock Labour Board Vs. E.Atchanna & Ors. reported at 1996(1) SLJ 548, in which the Supreme Court considered the direction by a single Judge to the appellant to refer the employees to medical board for ascertaining their age to be wrong and quashed the same.

24. It therefore, appears to me that although as a matter of fact, the applicant may have a good case, viz. that his correct date of birth is as recorded in Municipal Birth Certificate rather than as recorded in Secondary School Certificate, the date of birth recorded in service record base^{on} the date of birth in SSC Certificate has become final and he cannot cross the bar of limitation which is the ratio of Supreme Court decision in Harnam Singh.

25. Before parting with the case I would also like to refer to the judgement of the Supreme Court in Union of India Vs. Kantilal Hematram Pandya reported at JT 1995(2)S.C.365. That was also a case in which the Tribunal had noticed the binding ratio of Harnam Singh but still proceeded for certain reasons to give a direction to the Railway Administration to entertain the request for correction of Date of Birth. The Supreme Court set aside the order of the Tribunal. The Hon'ble Supreme Court observed as follows in para-6.

"The approach of the Tribunal is patently objectionable and does not commend to us. It attempted to circumvent the law laid down by this Court on untenable reasons by stating that "we are required to consider the case on merits." without in fact so considering. The law laid down by this Court is binding on all Courts and Tribunals. Indeed the law as declared by this Court has to be applied to the facts of a given case and not applied mechanically but we find that in the present case the facts were so eloquent that no scope was available with the Tribunal to get over the opinion expressed by this Court in Harnam Singh's case (supra) and on the facts as established on the record the Tribunal had no option but to refuse relief to the respondents."

These observations of the Supreme Court read with the judgements cited earlier including Ram Suta Sharma lead me to conclude that the OA must fail. OA is accordingly dismissed with no orders as to costs.

abp.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)