

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 894/96

Transfer Application No.

Date of Decision 16-12-96

P.P.Bhadre

Petitioner/s

Shri D.V.Chitnis

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 894/96

this the 16th day of December 1996.

CORAM : Hon'ble Shri P.P.Srivastava, Member (A)

Pandurang Patilba Bhadre
Gardener, National Defence Academy,
Khadakwasla, Pune - 411 023.

By Advocate Shri D.V.Chitnis ... Applicant

v/s.

1. Union of India
2. Directorate General of Military Training, G.S.Bharuch (M.T.-7) Army Head Quarters, New Delhi.
3. Colonel I.C.Defence Administration, having its office at National Defence Academy, Pune, Khadakwasla, Pune.

By Advocate Shri R.K.Shetty ... Respondents
C.G.S.C.

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant has given the date of birth at the time of employment in 1961 as 26.11.1933. Later on, somewhere in 1983 the applicant claimed that his date of birth is 5.12.1936. This is borne out by the affidavit submitted by the respondents wherein Para 5 the respondents have mentioned that :-

"It is stated that as pointed out, only in 1983, the Petitioner gave a different and subsequent date of birth as 5.12.1936."



The applicant submitted the School Leaving Certificate also and the Birth Certificate which is duly certified by the Zilla Parishad.

2. The respondents are not questioning the authenticity of the certificates. In fact there is a letter on record at Exhibit-'B' dated 18.11.1983 wherein Colonel A.K.Bansal, Colonel IC Administration for Commandant had written to General Staff Branch (MT 7) Army Headquarters, DHQ PO New Delhi. In this letter, it has been mentioned that :-

"Shri Pandurang S/o Patilba has submitted an application, a copy of which is also educational certificate along with this application which indicates that he had passed VII standard and also his date of birth being 05th December, 1936. This certificate was got verified through Zilla Parishad, Ahmadnagar, who have confirmed its Genuineness."

3. However, the respondents have submitted that the application for change of date of birth is barred by law of limitation specially in view of the Hon'ble Supreme Court's decision in Union of India vs. Harnam Singh, (1993) 24 ATC 92. The Learned Counsel for the respondents has argued that since the applicant has joined the service in 1961, he could have sought change in date of birth upto the year 1966. Since he has raised the claim



for changing the date of birth only in 1983, the claim is barred by limitation. This argument of Learned Counsel for the respondents is not tenable as the rule concerning of five years time limit was incorporated in 1979. This issue has been elaborately discussed by the Hon'ble Supreme Supreme in the judgement of Harnam Singh quoted above, wherein in Para 12 the Hon'ble Supreme Court has laid down the position of the Rule FR 56(m) Note 5, which reads as under :-

" Of course, Note 5 to FR 56(m) was incorporated only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into service but what is necessary to be examined is the intention of the rule-making authority in providing the period of limitation for seeking the correction of the date of birth of the Government servant viz. to discourage stale claims and belated applications for alteration of date of birth recorded in the service-book at the time of initial entry. It is the duty of the courts and tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those Government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years



of his entry into service, but the case of Government servant who applied for correction of date of birth only after 1979 stands on a different footing. 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."

Since the applicant has applied for change in date of birth in 1983, his claim would be within the time limit in view of the above position brought out by the Hon'ble Supreme Court in Harnam Singh's case.

4. As I have already held that the respondents have not disputed the genuineness of the certificate, the claim of the applicant succeeds. The O.A. is allowed. The applicant's date of birth should be treated as 5.12.1936. There will be no order as to the costs.



(P.P. SRIVASTAVA)
MEMBER (A)

mrj.