

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 129/2001

Date of Decision : 5th September 2001.

B.G.Kalamkar

Applicant

Shri J.M. Tanpure

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.K.Shetty

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ? No
- (iii) Library yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.129/2001

Dated this the 5th day of September 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Baba Ganpat Kalamkar,
T.No.N-4, SMW (HS),
High Explosives Factory,
Khadki, Pune.

...Applicant

By Advocate Shri J.M.Tanpure

vs.

Union of India through
The General Manager,
High Explosives Factory,
Khadki, Pune.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to the respondents to record the correct date of birth of the applicant, i.e. 1.6.1947 as per School Leaving Certificate in the applicant's Service record, with a declaration that the applicant on attaining the age of superannuation on 1.6.2007 shall superannuate accordingly in the month of May/June, 2007.

Sign -

..2/-

2. The applicant was appointed as a Mazdoor by the Respondent No. 1 on 14.9.1972. His date of birth was recorded as 14.9.1942 based on physical appearance and not based on documents. Few months back applicant came to know that he is going to superannuate on 30.9.2002. He submitted an application dated 6.1.2000 requesting the respondents to record his actual date of birth as 1.6.1947 along with the School certificate and Affidavit of his father. The request of the applicant was rejected vide order dated 22.1.2001 (Exhibit-'A1'). Hence, this OA. for the above said reliefs.

3. The claim of the applicant is resisted by the respondents alleging the fact that applicant had joined the service on 14.9.1972, for the first time he made the representation disputing the date of birth on 6.1.2000. The application is malafide and is calculated unjustifiably and unreasonably to continue in service prolonging period by 4 years 8 months and 17 days. Application for change of date of birth ought to be made within 5 years of initial entry in service. The dispute is raised on the eve of superannuation. Regarding correct date of birth, the burden lies on the employee and he has to establish it by producing acceptable evidence. The documents Exhibits 'A3', 'A4', 'A5' and 'A6', Affidavit of the applicant, his father and School Leaving Certificate, are fictitious and unreliable one. Hence, prayed for dismissal of the OA. along with cost.

P. S. N.

4. Perusal of the pleadings of the parties clearly establishes that the applicant was appointed as Mazdoor by Respondent No. 1 on 14.9.1972 and his date of birth was recorded as 14.9.1942 based on medical report. The applicant for the first time submitted application for change of date of birth on 6.1.2000 that too after knowing that he is to superannuate on 30.9.2002.

5. The applicant claims that his father mentioned his name as "Gajaram Ganapati Kalamkar" while admitting him in school and he is known by the same name also. His father Shri Ganapati Gajaram Kalamkar affirms the said statement, explains that his father's name was Gajaram Kauji Kalamkar, after his death his name Gajaram is renamed to his son Gajaram Ganapati Kalamkar based on the custom prevalent at that time. He also states that while admitting his son in the school, he told his name as Gajaram Ganapati Kalamkar and Babaji Ganapati Kalamkar and Gajaram Ganapati Kalamkar are the two names of his son.

6. Suffice to state that the applicant has taken care of his date of birth in service record after a period of more than 27 years. Perusal of para 1 of the OA. makes it clear that he came to know of his superannuation few months back and therefore he submitted his application dated 6.1.2000. It can be safely said that it is a dispute raised on the eve of superannuation. 1994 ILLJ 673, Secretary & Commissioner, Home Deptt. & Ors. vs. R.

Sign -

..4/-

Kirubakaran, the Apex Court has held that Courts/Tribunals must be slow in granting interim relief. The learned counsel for the applicant relied on para 7 of the said authority which is as under :-

" As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without expalining as to why this question was not raised earlier."

The learned counsel on the said basis argued that only the direction is that the Tribunal or Courts should be more cautious but there is no bar to examine the correctness of the date of birth. On perusal of the authority, I am of the considered opinion that for change of date of birth, the period prescribed is 5 years after entry in the service which is as per F.R.49(b).

7. The learned counsel for the respondents relied on Union of India vs. Harnam Singh reported in 1994 ILLJ 318 which lays down the proposition that delay and laches in seeking alteration, alteration sought 35 years after joining service - inordinate delay - change cannot be allowed. It is true that the case of Harnam Singh was decided on 9.2.1993 and case of R.Kirubakaran (1994 ILLJ 673) was decided on 21.9.1993, both the judgements are by Division Bench (consisting of two Judges) and in the subsequent judgement, i.e. R.Kirubakaran case, case of Harnam

P. J. M. /

Singh was also referred. In case of R.Kirubakaran, the point for decision was limited one, whether in such situation interim relief should be granted or not. It does not give a right to the applicant when the said point was not in dispute before the Apex Court that after inordinate delay change can be allowed. Hence, the said reference does not give a right to the applicant that his case deserves to be examined.

8. The learned counsel for the applicant relied on 1995 LAB. I.C. 2405, M.Appa Rao vs. Visakhapatnam Dock Labour Board, decided by Hon'ble High Court of Andhra Pradesh particularly para 17 which is as under :-

" The Supreme Court also held in the decisions cited supra that stale claims and belated applications for alteration of the dates of birth recorded in the service books at the time of initial entr made after unexplained and inordinate delay on the eve of retirement need to be scrutinised carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual."

On the basis of said authority, the learned counsel further stressed that the approach has to be cautious and the matter can be inquired into.

9. The learned counsel for the applicant also relied on 1999 LAB.I.C. 1283, Board of Trustees of the Port of Bombay vs. Transport and Dock Workers' Union & Anr., decided by Hon'ble High Court of Bombay which lays down the proposition that merely on

P. V. M. -

the ground that if the correct date of birth is admitted, the applicant was appointed below 18 years of age, the claim of the applicant cannot be brushed aside. The perusal of the authority makes it clear that there was an agreement between the parties that the date of birth can be got corrected six months prior to the date of retirement. As such, Rule 49 was not applicable.

10. The learned counsel for the respondents relied on AIR 1997 SC 2452, State of Orissa & Ors. vs. Ramanath Patnaik, which lays down the proposition that Government servant not making any attempt to have service record corrected when entry was made and while in service, date cannot be corrected.

11. The perusal of the above authorities and the provisions of change of date of birth makes it clear that the applicant should seek change of date of birth within 5 years from the date of entry in service and thereafter a cautious approach must be adopted to change the date of birth. On examination of the case, I find that the applicant has not submitted any such irrebuttable documentary proof in support of his claim of change of date of birth except his own affidavit and affidavit of his father that he is known by name Gajaram Ganapati Kalamkar and Baba Ganpat Kalamkar also. The applicant and his father both are interested person in securing the change of date of birth. In a judicial review when the respondents have examined the case, rejected the prayer of the applicant, the process adopted by the respondents

[Signature]

..7/-

arriving to the said conclusion is warranted by law cannot be interferred into particularly when the applicant has to travel a long distance, failed in the same that these two names are of one and the same person by irresistable conclusions and the age recorded while admitting the applicant in school is based on some correct datas.

12. In the result, I do not find any merit in OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.Jain
(S.L.JAIN)

MEMBER (J)

mrj.