

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1004/92

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DATE OF DECISION 25-10-93

Shri V.V.Gaitonde Petitioner

Shri A.M.Verrekar Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Sh.M.S.Karnik for Sh.P.M.Pradhan Advocate for the Respondent(s)

COURT:

The Hon'ble ~~Smti~~ Smti. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1004/92

Shri Vithal Venkatesh Gaitonde ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (J) Smt: Lakshmi Swaminathan

Appearance

Shri A.M.Verrekar
Advocate
for the Applicant

Shri M.S.Karnik
for Shri P.M.Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 25-10-1993

(PER: Lakshmi Swaminathan, Member (J))

This is an application filed by Shri V.V.Gaitonde seeking a direction to the respondents to correct his date of birth as given in the service record in accordance with the S.S.C.E. Certificate of the applicant and not to act on the basis of birth certificate of the applicant for the purpose of his superannuation. The applicant joined service as an Operator (Temporary) on 11.6.1962. At the time of joining service he submitted two certificates, namely, (i) his birth certificate in which his date of birth was given as 5.1.1936 ^{and} (ii) S.S.C. Examination certificate in which the date of birth was given as 9.1.1938. The office had recorded his date of birth as 5.1.1936 in the service book as recorded in the birth certificate. The applicant had signed the service book on 21.7.1966. The applicant, vide his representation dated 31.12.1985 had for the first time sought change of his date of birth to 9.1.1938, which he alleged was the correct date of his birth. It was based

on the date given at the time of applicant's admission in the School in 1948 and on the dates of birth of his sister and brothers. The respondents vide their order dated 17.6.1992 had rejected the application for change of date of birth. The applicant has alleged that this order has been passed in violation of principle of natural justice, and contrary to law and was arbitrary.

2. The respondents have in their reply denied that the date of birth as recorded in the service book based on the birth certificate was incorrect. In any case, the applicant cannot raise this matter after an inordinate delay. Further, since the applicant had himself signed the service book on 21.7.1966 regarding the entries in the book, including his date of birth as correct, this application cannot be entertained at this stage. It was also pointed out that though the applicant was asked in 1966 to explain the discrepancy in his date of birth, he did not care to explain the same till his representation for change of the date of birth submitted in 1985, i.e. after 18 years.

3. On the question of correction of date of birth, the Supreme Court has in its decision dated 9.2.1993 in Union of India vs. Harnam Singh, AIR 1993 SC 1367 held as follows :

"A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government

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servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire."

The court also referred to Note 5 as amended by the Govt. of India Notification dated 30.11.1979 in which the Government had required the Government servant to make a request for correction of date of birth within five years of his entry into Government service. The Supreme Court held that :

"While applying the amended rule, two artificial classes of Government Servants between those who joined service before and after cannot be created by ignoring the ground realities and the intention of the rule making authority to discourage stale claims and non-suit such Government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation."

The decision of the Supreme Court in Harnam Singh's case has been followed in a decision of this Tribunal in H.R. Gaikwad vs. Union of India, 1993 (2) Administrative Tribunal's judgements, page 301.

4. In this case, not only the applicant signed the service book in 1966 accepting the date of birth given therein as 5.1.1936, but he had also made his representation for change of date of birth very belatedly in 1985, which was well beyond the limitation period as prescribed in Note 5 (amended) 56(m). Having regard to these facts and the decision of the Supreme Court in Harnam Singh's case, the application has to be regarded as time barred.

5. The application is, therefore, dismissed. There shall be no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 140/93 in
Original Application No. 1004/92

Shri Vithal Venkatesh Gaitonde ... Applicant.
V/s.

Union of India and others. ... Respondents.

CORAM: Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Tribunal's order on Review Petition No. 140/93.

Dated: 18-1-94.

This review petition filed under Section 22(3) of the Administrative Tribunals Act, is in respect of the order passed on 25.10.93 in OA 1004/92 rejecting the applicant's claim for change of date of birth in the service record. The main grounds taken by the applicant in this petition are that the matter could not have been taken up by a Single Member Judge and that the decision is wrong based on re-appraisal of the facts.

2. I have carefully perused the review petition. No new grounds have been raised in the petition which could not have been raised at the time when the applicant was heard in support of the original application. Having regard to the order dated 18.12.91 passed under Rule 18(c) of the Administrative Tribunals Rules and Procedure, 1993, the Single Member has been empowered to exercise the jurisdiction, powers and authority of the Tribunal in respect of the matters dealt with in my judgement dated 25.10.93. I do not therefore, find any sufficient justification to warrant a review of my judgement. The application for review is therefore rejected.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)