

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Original Application No. 1011/93.

S.R. Karale.

.... Applicant.

v/s.

Union of India & Ors.

.... Respondents.

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

Appearances :-

Applicant by Sh. B. Ranganathan,
Respondents by Sh. R.K. Shetty.

JUDGMENT :

[Per Shri M.R. Kolhatkar, Member(A)] Dt. 16.8.1994.

In this case under Section 19 of the Administrative Tribunals Act, 1985 the relief claimed by the applicant is to change the date of birth as entered in the Service Record from 30th January, 1937 (recorded date of birth) to 5th May, 1942 and to quash and set aside the order dt. 31st October, 1991 at (Annexure 'A-1') rejecting the representation of the applicant for changing of DOB. It is contended by the applicant that he is almost illiterate having studied upto 3rd Standard, that he was never asked by the Respondents to produce any particular proof of date of birth, but the date was recorded on the basis of the report of the Medical Officer. The date appears to have been recorded on the basis of guess work because the applicant entered service on 30.1.1962 and his date of birth has been mentioned exactly 25 years less i.e. 30.1.1937. According to the applicant a Medical Certificate is not conclusive as to the date of birth. It is only conclusive as to physical fitness. The age can be established only by means of "Ossification Certificate" which was not given. The applicant relies for change of date of birth on

the School Leaving Certificate [redacted] which was received by him on 19.1.1991 (vide Annexure 'A-2'). He also points out that the authenticity of this School Leaving Certificate has been certified by the Education Officer (Primary) Zilla Parishad, Ahmednagar (vide Annexure 'A-4').

2. The Respondents contend that the applicant was aware of his date of birth as entered in the Service Book. In this connection they have produced certificate of verification as to the date of birth dt. 1.10.1974 at (Ex. 'R-3'). They have also produced Service Card at (Ex. 'R-4'). They have pointed out that the application is barred by limitation and is squarely covered by the Supreme Court Judgment in Union of India V/s. Harnam Singh (vide 1993 SCC (L&S) 375) in which it is laid down that those already in service prior to 1979 are obliged to seek alteration within a maximum period of 5 years from the date of coming into force of amended Note 5 to F.R. 56 regarding change of date of birth. In this connection the Respondents have also referred to the Ministry of Personnel's letter dt. 19.5.1993 (Ex. 'R-1'). According to Article 51 of CSR Volume 1 a change of date of birth is possible if the case is projected within 5 years and then it is clearly established that a bona fide clerical mistake has occurred or detected justifying the alteration.

3. With reference to the documents cited by the Respondents, the applicant states that the verification certificate of 1974 is in English. The applicant who is semi-literate was never explained the contents of that verification certificate and his signature has been obtained by mis-leading him. According to

him so far as the question of delay is concerned, the same is only technical and it is open to the Court to condone the same.

4. We have considered the matter carefully. It is true that the basis for entering the applicant's date of birth as 30.1.1937 is not clear from (Ex. 'R-2'). According to C.S.R. 51 a person whose age exceeds 25 years may not ordinarily be admitted into the pensionable service of the State without sanction of the department and it could well be the case that the date of birth of the applicant was entered by deducting 25 from the date on which he was recruited. There does not also appear to be any doubt of authenticity of the School Leaving Certificate produced by the applicant. The fact, however, remains that the applicant slept over his rights for so long. It is not clear as to why the applicant did not make any effort to obtain the School Leaving Certificate earlier than he did. The ratio of Harmam Singh's case which is binding on us is that the Tribunal may go into the question of any bona fide mistake only after the bar of 5 years is crossed. In this particular case the bar operates from 30.11.1984 when the period of 5 years from the date of amendment to Note 5 of F.R. 56 was over. Under the circumstances, we cannot give any relief to the applicant which must fail. We, therefore, dispose of this OA by passing the following order:

O R D E R

The OA is dismissed. No order as to costs.

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