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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH.

Original Application No.214/93.

Shri Hirji Punja.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents

Coram: Hon'ble Smt. Lakshmi Swaminathan, Member(A).

Appearances:-

Applicant by Shri S.Pillai.
Respondents by Subodh Joshi.

Oral Judgment:-

¶Per Smt. Lakshmi Swaminathan, Member(A)¶ Dt. 26.11.1993.

This application has been filed under section 19 of the Administrative Tribunals Act. The applicant being aggrieved by the inaction of the respondents on his request for change of date of birth applied, as he states, ~~as~~ early as in 1987, has sought reliefs from this Tribunal to direct the respondents to change the date of birth as recorded in the Service Register from 3.3.1935 to 3.3.1936.

2. The learned counsel for the applicant has stated that he ~~is not~~ pressing the claim for change of date of birth as allegedly recorded in the School Leaving Certificate i.e. 22.10.1939 as he is not in a position to produce the necessary records or evidence/documents as directed in the Tribunal's Order dt. 7.10.1993.

3. The learned counsel for the applicant has relied on the letter dt. 27.6.1989 issued ~~from the~~ office of the D.R.M.(P), Bombay V.T. In this letter it is stated that if the School Leaving Certificate

forwarded by the applicant is taken to be correct, it would mean that he was engaged on 20.10.1953 when he was below 14 years of age. Further, the letter mentions that as per the Medical Certificate which was issued by Assistant Surgeon dt. 16.3.1956 his age was shown as 20 years, which according to them appears to be correct having regard to the entry made in the Service Register at the time of appointment i.e. 3.3.1935. The learned Counsel, therefore, submits that based on 16.3.1956 taking his age to be 20 years at that time, his date of birth should be corrected to 3.3.1936 with the consequential change of date of his superannuation to 1994 instead of 1993.

4. The Respondents have in their reply submitted that even if the date of birth is taken to have been erroneously recorded as 3.3.1935 at the time of his appointment on 20.10.1953 the same cannot be corrected at this late stage i.e. after 34 years of his employment and on this ground alone they have urged that the application may be dismissed. They have relied upon the case of Harnam Singh V/s. Union of India (A.I.R. 1993(2) ATC page 92) and H.R.Gaikwad V/s. UOI (1993(2) ATJ 201).

5. The learned counsel for the applicant has, however, submitted that having regard to the provisions of Note 6 clause (b) under F.R. 56 and Para 225, sub-para (4) clause (ii) of the Indian Railway Establishment Code the applicant being an illiterate staff, the General Manager, Railways can correct the clerical error at any time.

6. The learned counsel for the applicant has admitted that he became aware that the date of birth recorded in his Service Record was erroneous in or about 1987. He states that he has made certain representations about it to the respondents vide letter dt. 4.7.1987.

for correcting his date of birth to 22.10.1939 which had not been accepted by the authorities vide their letter dated 27.6.1989. However, it appears that only after intimating the letter dt. 19.2.1993 was issued by the respondents/ his date of superannuation as 31.3.1993 he has taken the step of filing this application on 4.3.1993 before this Tribunal. As mentioned above, the applicant now wants only the change of his date of birth as recorded in the Service Register from 3.3.1935 to 3.3.1936 and not 22.10.1939 as he earlier claimed. Even this claim is an after thought and much belated and cannot be accepted now.

7. The Supreme Court has in the recent decision in Union of India v/s. Harnam Singh (A.I.R. 1993 SC 1367) held that no doubt a government servant who has declared his age at the initial stage of employment is not precluded from making a request later on for correcting his age, if he is in possession of irrefutable proof relating to his date of birth different from the one earlier recorded. The Court further held that "even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do without any unreasonable delay and "the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the Courts and Tribunals. "

8. The above Judgment of the Supreme Court has been followed by this Tribunal in Gaikwad v/s. UOI (1993 (2) ATJ p. 301).

9. Therefore, having regard to the facts and circumstances of the case and the observations of the Supreme Court in the aforesaid Judgment it must be held that the applicant has not taken any necessary steps

for correction of his date of birth without any unreasonable delay. The application for correction of date of birth entered in the service register in 1953, for the first time in 1987, is hopelessly time barred and does not merit any consideration. The application suffers from laches and delay. Regarding the representation made by the applicant in 1987 also, in view of the provisions of section 21 of the Administrative Tribunals Act, 1985, this application is also hopelessly time barred.

10. The application is therefore, dismissed with no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER(J).

B.