

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 546/93

Transfer Application No.

Date of decision 30.6.1993

Shri H.R.Gaikwad.

Petitioner

Shri V.S.Masurkar.

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri S.C.Dhawan

Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri

1. Whether the Reporters of local papers may be allowed to see the Judgement ? *yes*
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*


(M.S.DESHPANDE)
VICE-CHAIRMAN.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

Original Application No.546/93.

Shri H.R.Gaikwad. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

Appearances:-

Applicant by Shri V.S.Masurkar.
Respondents by Shri S.C.Dhawan.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 30.6.1993

By this application the applicant challenges the Order dt. 14.5.1993, 20.4.1993 and 16.4.1992 by which his request for altering his date of birth from 1.7.1935 to 1.6.1938 had been turned down by the Respondents.

2. The applicant joined as a Casual Labourer (Mason) with the Central Railway on 19.3.1957 and was confirmed on 1.8.1960. The particulars regarding his date of birth were wrongly recorded as 1.7.1935 by the Time Keeper. The applicant applied for a change in this date by representations made on 16.3.1971 and 31.12.1973, but they went unanswered. The applicant was promoted to Group 'C' post as SOM Gr.I on 15.11.1986 and thereafter he wrote on 4.12.1986 to the D.R.M. (Personnel), Engineering Department, Bombay V.T. for a change in the date of birth from 1.7.1935 to 1.6.1938. Since there was no reply to this, the applicant wrote again to the Respondent on 16.10.1991 and was called for an interview on 13.7.1992. The request of the applicant was however, rejected and he has therefore, approached this Tribunal for setting aside the orders rejecting his prayer and asking for the change in the

date of birth as was sought by him.

3. The Respondents contested the application by urging that the application was highly belated, that it was barred by time and even on merits the applicant was not justified in asking for the change in the date of birth on the basis of the school leaving certificate.

4. With regard to the two applications dt. 16.3.1971 and 31.12.1973 (Annexures A-4 and A-5) the Respondents contention was that these applications were not received and ~~that~~ the fact that these applications were fabricated will be apparent from the position that they were addressed to the Chief I.O.W., Byculla, Bombay and that at that time there were only I.O.Ws and no Chief I.O.W. and there was a change from the year 1975 to 1973 by overwriting '3' over '5' in the date mentioned at the right hand top corner of the application (Annexure- A-5). The reasons advanced by the Respondents for not accepting the applicant's contention therefore, appear to be reasonable and it is difficult to proceed on the basis that in the year 1971 and 1973 the applicant had made applications to the authorities for changing his date of birth. In the application dt. 25.11.1986 it was mentioned that the applicant had handed over earlier the documents relating to his date of birth and no action had been taken and that since the date of his birth was recorded in the school leaving certificate as 1.6.1938, in the service record the date of birth should be changed by substituting it for 1.7.1935. It is noteworthy that in this application there are no reference to the applications made in the year 1971 and 1972.

5. The applicant has produced at (Annexure A-6) a copy of the letter sent by the Chief Works Inspector in which there is a mention regarding the applicant's grievance and the production of the xerox copy of the

school leaving certificate which gave the date of birth as 1.6.1938. There can be therefore no doubt about the fact that the applicant had made a request in the year 1986 for a change ^{in the} date of birth armed with the school leaving certificate. In para 4.9 of the application the applicant has mentioned that the Respondents had directed Shri Tendulkar, Personal Inspector to go to the school of the applicant and to verify the veracity of the school leaving certificate as well as the date of birth in the school record and in the detailed report which he had given, the Personnel Inspector had stated that the date of birth as recorded in the school register was 1.6.1938. There is no denial of this position in the reply filed by the respondents. When the matter was being argued, I asked the learned counsel for the Respondents to ascertain from the service record whether Shri Tendulkar had been deputed for ascertaining the date of birth and what ^{report} he had made. The learned counsel for the respondents very fairly showed me the file containing the Report of the Personnel Inspector, Shri Tendulkar which bore the date of birth as 1.6.1938. There can, therefore be no doubt about the position that the applicant had a genuine grievance regarding his date of birth and his contention was supported by the entry in the school register. The Respondents reply dt. 16.4.1992 was to the effect that the applicant's request for alteration in the date of birth could not be considered as he did not apply within the stipulated period and that the copies of the applications purported to have been given in 1971 and 1973 were doubtful. By the letter dt. 13.10.1992 the particulars and certain points were sought for from the applicant and to that a reply was sent by the applicant giving his own clarification. Item 3 of that letter was to the

effect that the original attestation form does not tally with the zerox copy of attestation form received under your letter quoted above. There is also smudging in the figure '8' of his date of birth i.e. 01.06.1938. It must be noted that since all the doubts which Respondents could have had had been removed by deputing Shri Tendulkar. Merely, because this xerox copy of the attestation form was smudged, the applicant's request for change in the date of birth could not have been turned down and there was an omission to refer to a very material aspect of the applicant's case and the tell-tale position that the school register had vindicated the applicant's stand. The decision taken by the Respondents on merits therefore, suffered from non-application of mind to a very material aspect of the applicant's case and the Respondents decision therefore, cannot be supported.

6. The learned counsel for the Respondents however, urged that Clause 4 of Rule 225 of the Indian Railway Establishment Code Vol.I the date of birth as recorded in accordance with these rules shall be held to be binding and no alteration of such date shall ordinarily be permitted subsequently. It shall, however, be open to the President in the case of a Group 'A' & 'B' railway servant, and a General Manager in the case of Group 'C' and 'D' railway servant to cause the date of birth to be altered (iii) where a satisfactory explanation (which should not be entertained after completion of the probation period, or three years service, whichever is earlier) of the circumstances in which the wrong date came to be entered is furnished by the railway servant concerned, together with the statement of any previous attempts made to have the record amended. The submission was that since the Railway Establishment Code repealed of the previous instructions and followed the instructions that came into force in the

year 1971 prescribed the period of 3 years limitation which barred the applicant's claim, it could not have been entertained by the authorities.

7. On behalf of the applicant reliance was placed on a Full Bench decision of this Tribunal in the case of Mallela Sreerama Murthy and Anr. V/s. Union of India & Ors. (1989(4) CAT 625). There, after considering the Railway Board's letter dt. 3.12.1971 and the instructions dt. 4.1.1972 the Full Bench observed that the Board's Circular dated 4.8.1972 does not have statutory force of law and that being an executive order, it is in conflict with the rule made under Article 309 of the Constitution in consonance with the practise obtaining both in Government and the Railways and blessed by the higher courts in this country, and that the representations of the two applicants before the Full Bench who had been appointed prior to the coming into force of those instructions will have to be considered by the Railway authorities on merits, because Rule 145 in terms did not prescribe any period of limitation and that it was sought to be introduced only by the executive order dt. 4.8.1972. The position of new rule 225 also came to be considered and obviously if one were to go by the Full Bench decision, the three years period of limitation prescribed by Rule 225(4)(iii) would not be applicable to the person appointed prior to 1971 and the applicant would squarely be covered by this decision and to his case the barof limitation would not apply.

8. The learned counsel for the Respondents, however, urged that the proposition laid down by the Full Bench would be no longer a good law in view of the decision of the Supreme Court in Union of India V/s. Harnam Singh (Civil Appeal No.502/1993) decided on 9.2.1993. The Respondent there had joined Government service in a Class IV

post as a Peon on 27.2.1956 and he made an application for the first time in September, 1991 for a change in the date of birth and the Supreme Court held that in the facts and circumstances of that case it was not satisfied that the Tribunal was justified in issuing a direction in the manner in which it had been done, as the application was hopelessly belated and did not merit any consideration and it had not been made even within the period of 5 years from the date of coming into force of the Note-5 to F.R. 56(m) in 1979 and that the Tribunal fell in to an error in issuing a direction to correct this date of birth and the impugned order of the Tribunal cannot be sustained. It must be noted that the decision was on the interpretation of Note 5 to the F.R. Rule 56 which was inserted by the Notification dated 30th September, 1979 and Clause (a) provided that a request for an alteration in the date of birth should be made within five years of the entry into government service. Upon the applicant's fulfilling the other conditions mentioned therein this Tribunal had taken the view that Clause (a) to Note 5 did not apply to those who had joined service before 1979. After referring to the facts of that case the Supreme Court laid down that it is the duty of the Courts and Tribunals to promote the intention by an intelligible and harmonious interpretation of the rule rather than choke its operation and 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 servant who had joined the service prior to 1979 but restrict it to the five years period for those who enter service after 1979. However, the Court observed that 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 ~~of date of birth before 1979~~ within five years of his entry into ~~the~~ 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 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 and this view will be in consonance with the intention of the rule making authority. In para 4 of the Full Bench decision(supra) one of the Members [Shri D.Surya Rao, Member (J)] compared the provisions of Note-5 to F.R. 56 with Rule 225(4)(Old 145(3) of the Railway Establishment Code and pointed out that the two provisions were in pari materia. This was because the Principal Bench in Hiralal v/s. Union of India(ATR 1987(1) CAT 414) held as follows:

"that S.O. 3977 in the Gazette of India dated 15th December, 1979, takes effect from that date. It lays down that a request for the correction of the date of birth in the service record shall be made within five years of entry into Government service. But obviously the five years period of limitation prescribed for the first time under the said S.O. 3997 cannot apply to these Govt. servants who were in service by that day for more than 5 years. In issuing the said S.O. it could never have been the intention of the Government that there should be two classes of Government employees - those employees who had entered Govt. service prior to 15.12.1974 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within

.....8.

5 years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is, therefore, reasonable to infer that that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979."

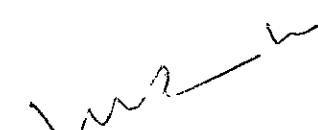
It is this very position which weighed with the different Benches while excluding ~~the employees~~ ^{recruited} before 1971 from the operation of bar of limitation under Rule 145 (Old) which corresponds to new Rule 225. The very basis of the decision in Hirralal's case has been displaced by the decision of the Supreme Court in Harnam Singh's case * which directly dealt with the point which was involved in Hirralal's case. The Full Bench itself pointed out that the provisions of F.R. 56 were ⁱⁿ ~~part~~ materia with the provisions of Rule 225 which replaced Rule 145, and on a parity of reasoning the period of 3 years prescribed under Rule 225(4) (iii) would apply to the Railway Employees who are recruited ~~before~~ ^{or} after 1971. Rule 225 came to be framed under Article 309 of the Constitution and there is no challenge before me to the vires of the rule or that the rule is unconstitutional. In any event, in view of the proposition ~~as~~ laid down in Harnam Singh's case, it is difficult to follow the full bench decision which no longer could be regarded as ~~a~~ good law and it must be held that Rule 225 prescribes ^a uniform period of limitation and the applicant should have challenged the correctness of his date of birth within a period of 3 years at least from the time when Rule 225 was framed. Such is not the case here.

9. Though I should have held on merits that the applicant's contention was factually correct, in view

.....9.

of the bar of limitation which must apply to the applicant's case also, in view of the decision of the Supreme Court, the application shall have to be regarded as time barred.

10. The application is therefore, dismissed.


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

Review Petition No. 59 of 1993

In O.A.No. 546/93/5404

H.R.Gaikwad Applicant.

v/s.

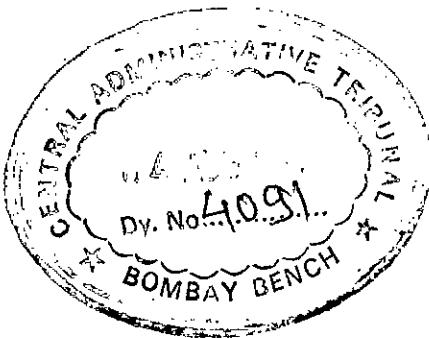
Union of India & others

Review Petition under section 22(3)
(f) of Administrative Tribunal Act
1995

1. The applicant state's that his application was finally dismissed by the Hon'ble Tribunal on 30th June, 1993. Here to Annex & marked exhibit 'A' is the copy of the Judgement 30th June, 1993.

2. Applicant state's that he received the copy of the Judgement through his counsel on 12th July, 1993 & the Review Petition is filed today. The applicant state's that the Review Petition is within the limitation prescribed in Rule 17(1) of the CAT (Procedure) Rule, 1987.

3. The applicant state's that he is in a possession of two documents which will



certainly change the Judgement of these Hon'ble Tribunal dated 12th July, 1993.

a) The applicant has personally met the "time keeper" Shri. Vinayak Gopal Kadam who has admitted that the representation made for the change of date of birth made by the applicant was received by him on 16th March, 1971 & he sent the above representation for the further action. He said, "time keeper", also admitted that the applicant representation 31/12/73 was also received by him & he sent the said representation for further competent authority & that he admits the signature on the bottom of the representation is his signature. The applicant state's that he is ready to give evidence in this Hon'ble Tribunal if this Hon'ble Tribunal deems & fit and proper in the instant case.

Annex. A-2
Here to annex & marked annexure 'A₂' is the solemn affidavit of Shri. Vinayak Gopal Kadam dated 17/7/93.

b) The applicant states that the Divisional Railway Manager (W) vide his certificate No. BB/W/1800/WS/92 dated 21st July, 1993 has stated that Shri. Vinayak Gopal Kadam the than time keeper was

.. 3 ..

working in his I.O.W., Byculla Office from September, 1970 to April, 1984 . Therefore, the affidavit given by the said Shri.

Vinayak Gopal Kadam supporting the case of the applicant will change the Judgement in the instant case. Here to annex & marked annexure "R₂" is the copy of the said certificate of 19th July, 1993.

Annexure A-3

c) The applicant states that the police verification dated 6/1/1962 in terms mentions the date of birth of applicant as 1/6/1938 & the said record is available with the respondent in the Service Record (SR) of the applicant.

4. The applicant states he is an Scheduled Caste person & also economically poor person & he has three children in the School/College's & therefore financially it is not possible for him to approach Hon'ble Supreme Court. In the light of the annexure of the Review Petition this Hon'ble Tribunal be pleased to exercise its review jurisdiction in the interest of justice.

a) The petitioner, therefore, prays

.. 4 ..

that this Hon'ble Tribunal be pleased to review its Judgement dated 31st June, 1993 & the matter be heard afresh.

b) Cost of the review petition.

c) Any other & further relief.

In the facts & circumstances of the present case.

Bombay.

H.R.Gaikwad

Date : 4-8-93.

("Applicant")

VERIFICATION

I Shri. H.R.Gaikwad, residing at Block No. A110/220, Kurla Camp, Ulhasnagar No. 4, Dist. Thane. , do hereby state on solemn affirmation that whatever is stated in Review Petition is true to my personnal knowledge & I have suppressed nothing.

Bombay.

H.R.Gaikwad

Date : 4-8-93.

(Applicant)