

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 602/93

Transfer Application No: --

DATE OF DECISION: 11-8-94

Mr. S. N. Dambal

Petitioner

Mr. R. R. Dalvi

Advocate for the Petitioners

Versus

U.O.I. & Ors.

Respondent

Mr. A. I. Bhatkar

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri --

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar
(M.R. KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.602/93

Mr. S. N. Dambal

.. Applicant

-versus-

Union of India & Ors. .. Respondents

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

Appearances:

1. Mr.R.R.Dalvi
Counsel for the
Applicant.
2. Mr.A.I.Bhatkar
Counsel for the
Respondents.

JUDGMENT:

(Per M.R.Kolhatkar, Member(A))

Date: 11-8-94

This original application under section 19 of the Administrative Tribunals Act, 1985 impugns the reply dt. 22-1-1993 at Annexure A-1 to the application rejecting the request of the applicant to change the date of birth from 1-7-1935 which date was admittedly recorded on the basis of Secondary School Certificate examination to 1-7-1935 on the basis of certificate of birth issued by Chief Registrar of Births and Deaths, Govt. of Karnataka, which itself was based on birth register of Dharwad Municipality. The applicant contends that when he had ~~filed~~ an application for the post of Shift Assistant(Trainee) in All India Radio he had given the date of birth as recorded in the SSC certificate ~~as it was~~ given ~~directed~~ to be so in the application form. He was apparently aware of his correct date of birth till 1955 but had lost the

extract in August, 1957 when he applied for the post of Shift Assistant. Thereafter he lost track of the matter till he visited his native place sometime in 1991 when he came to know regarding the correct date of birth and thereafter made efforts for obtaining the duplicate certificate and filed the representation on 6-3-92 which has been rejected by the department. The applicant relies on the case of Director of Technical Education v. K. Sitadevi (1992) 19 ATC 287. This is a decided on 8-11-90. In this case the Hon'ble Supreme Court gave the benefit of a decree issued to the University for correction of date of birth based on municipal certificate, and noted that the Tribunal apart from the decree, arrived at a finding of the fact on the basis of additional materials placed before it. Therefore the Hon'ble Supreme Court granted the relief of correction of date of birth and determination of date of superannuation based thereon. The Hon'ble Supreme Court observed that the date of birth is undoubtedly a question of fact and so all kinds of evidence and factors can be looked into for its determination. The applicant also relies on the judgment of CAT ~~Hyderabad~~ in the case of M. Murtaza Ali v. Secretary, Central Board of Excise & Customs, New Delhi and Others (1988) 8 ATC 632 decided on 1-7-88 by single member bench consisting of the then Hon'ble Chairman Shri K. Madhava Reddy. In that case the Tribunal held that the delay in obtaining the extract from the birth register did not affect its 6

authenticity and the claim to alteration of the date of birth could not be ignored merely on the ground that the date claimed would render him below age by a few months on the date of entry in service.

2. The respondents have resisted the claim of the applicant and ~~had~~ ^{have} contended that the application for change of date of birth has been made just two years prior to the date of superannuation, that the applicant is a well educated person and it cannot be believed that although he knew about his correct date of birth being different from the recorded date from the Secondary School Certificate he did not know ~~the~~ implications of giving one date of birth rather than the other. It is also contended that the application is belated inasmuch as at the time of service verification for purpose of pension in March, 89 he did not bother to make a representation. A reference is also made to the DOP notification dt. 30-11-79 which prescribes conditions subject to which the claims for change of date of birth are to be entertained, which conditions are not fulfilled. The cases quoted by the applicant have no applicability to the facts of the present case, avers the respondent.

3. In his rejoinder, the applicant has stated that the date of birth mentioned in the school leaving certificate is based on assumption inasmuch as it is 1st July and lacks any authenticity. Prior to 1991, it is

contended that the applicant never came to know that his date of birth was wrongly recorded. The applicant also relies (1991)16 ATC 801,^{CAT} Madras Bench decision which states that "Inconsistency between school leaving certificate and birth certificate - more credence is to be given to birth certificate"

4. At the argument stage the respondents have relied on the case of Union of India v. Harnam Singh, 1993(2)ATJ 628, decided by the Hon'ble Supreme Court on 9-2-93. It was also pointed out that in O.A. 907/93 decided on 17-2-94 the request for correction of date of birth was rejected in view of the ratio of this very bench of the case of Harnam Singh.

5. There is no doubt that after the case of Harnam Singh the cases quoted by the applicant ~~had~~ to be reconsidered. In particular it is clear that the case of Murtuza Ali can no longer be considered as good law. So far as the case of Sitadevi is concerned that case was decided prior to Harnam Singh and in any case the issue of Personnel Department memo dated 30-11-79 did not fall for decision. It was a case of State Government employee of Andhra Pradesh, and its ratio has to be confined to the facts of that particular case. The applicant has conceded that he was aware of his correct date of birth being different than the one recorded in the school leaving certificate. It is too much to believe that he was not aware of the exact

date and month and it was only when he visited his native place in 1991 that he came to know about the correct date. It has to be held that the applicant deliberately remained silent. We are, therefore, required to consider whether he can get the benefit of Personnel Department memo dated 30-11-79 keeping in view the ratio of Harnam Singh. Evidently the applicant has not been made within five years of the memorandum as laid down by the Harnam Singh; the applicant having entered the service prior to the date of memorandum. We have seen that there was no bonafide mistake but on the other hand the applicant had full knowledge of the real date of birth being different. Whether the alteration would have made him ineligible for government service on the date on which he actually entered the service is not very clear from the records but we need not pursue that angle.

6. In the light of our discussion above the O.A. has no merit and it is accordingly dismissed. There will be no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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