

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 681 /1995

Date of Decision: 22-08-96

Janardan Dattatray Bankar.

Petitioner/s

Shri G. K. Masand,

Advocate for the  
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri Suresh Kumar for  
Shri M.I. Setina,

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri **M. R. KOLHATKAR, MEMBER (A):**

~~Hon'ble Shri~~  
~~K. R. KOLHATKAR~~

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

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 681/95.

Dated, this Pronounced, the 22<sup>nd</sup> day of August, 1996.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Janardan Dattatray Bankar,  
131/A, Room No. 13,  
Panbai Niwas,  
Sane Guruji Road,  
BOMBAY - 400 011.

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Applicant

(By Advocate Shri G. K. Masand)

VERSUS

1. Union Of India  
through the Secretary in  
the Ministry of Finance,  
Department of Economic  
Affairs, New Delhi.

2. The General Manager,  
India Government Mint,  
Shaheed Bhagat Singh Road,  
Fort,  
Bombay - 400 023.

3. Chief Accounts & Admn. Officer,  
India Government Mint,  
Shaheed Bhagat Singh Road,  
Fort,  
Bombay - 400 023.

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Respondents.

(By Advocate Shri Suresh Kumar for  
Shri M.I. Sethna).

: ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

1. In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for change of date of birth from 13.03.1943 (as recorded in the Service Book) to 12.03.1953 (as recorded in the School Leaving Certificate).

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2. The applicant was appointed to the post of Labourer w.e.f. 02.08.1971 by the order dated 09.08.1971. The applicant states that in or about 1986 when the Identity Card was issued, he came to know that his date of birth was recorded in the office record as 13.03.1943, which was not correct, therefore, he represented on 06.02.1987 for correcting the same to 12.03.1953, enclosing a copy of the School Leaving Certificate issued by the Municipal Corporation of Greater Bombay, Department of Primary Education i.e. Shanti Nagar Municipal Marathi School. The applicant made representations vide <sup>those</sup> dated 31.07.1991, 25.03.1994 and 27.07.1994. However, the respondent no. 3 vide memorandum dated 14.08.1994 informed the applicant that his request cannot be acceded to. The contention of the applicant is that his request for change of date of birth was supported by clinching documents. It is also supported by the circumstance that had his date of birth been 13.4.1943 as recorded, his age would be 28 years at the time of appointment and since the maximum age limit for appointment to the post in which the applicant was appointed is 25 years of age, the recorded date of birth is prima facie improbable. The applicant contends that he has the right to continue <sup>in</sup> his service till he reaches the date of superannuation and this right is affected by the rejection of his representations by the respondents. The applicant has been diligent in pursuing his grievance as soon as the correct fact came to his notice. The respondents have not questioned the genuineness of the documents produced by him and they have also ignored the fact that he would not have been eligible for appointment, as in 1971 he would be age-barred.

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3. The respondents have opposed the O.A. They have stated that it would not be correct to say that the applicant came to know for the first time in 1986 that his date of birth was wrongly recorded. In this connection they refer to the Office Order No. 125 dated 09.08.1971 wherein the applicant's date of birth has been correctly mentioned against his name and the token number. It is stated that on the same day 89 labourers were appointed and due to the early date of birth of the applicant, he was shown senior to 87 labourers. This seniority helped the applicant to get the promotion of Asstt. Cl. I, earlier to his 87 juniors. It is not correct now for the applicant to turn back having availed of the benefit from his seniority by dint of his date of birth and seek change of date of birth. The respondent have also produced the copy of the first page of Service Book of the applicant in which the date of birth is clearly mentioned as 13.03.1943 and the applicant had signed the same on 15.01.1974. Moreover, the applicant had given a declaration (about) details of his family on 17.02.1984 wherein his date of birth has been indicated by him as 13.03.1943. It is further stated that the request of the applicant for change of date of birth had been rejected on 17.12.1986, 09.04.1987 and 14.08.1994. The respondents have also invited attention to Government O.M. No. 19017/2/92-Estt.(A) dated 19.05.1993 which contains the gist of amendment to Note 6 below FR 56, published on 15.12.1979 which provides that the request for alteration in date of birth can be made by Government servant only within five years of his entry into Government Service.

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Reference is made also to the Supreme Court judgement in Union Of India V/s. Harnam Singh (Civil Appeal No. 502 of 1993).

4. I have considered the matter in the context of Supreme Court judgement in Union Of India V/s. Harnam Singh [ 1993 SCC (L&S) 375 ]. The Supreme Court while interpreting the note under FR 56 harmoniously laid down that "it would be appropriate and in tune with harmonious construction of the provisions 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." Thus, since the applicant he entered service in 1971, was required to make an application for correction of date of birth latest by 1976 but in terms of Supreme Court judgement in Harnam Singh in the context of Note under F.R. 56, the Central Government Employees could make an application for correction within five years of the coming into force of the relevant amendment i.e. to say, roughly prior to 1984. It is seen that the respondents by their memorandum dated 17.12.1986 have intimated that the applicant did not come forward with a claim to change the date of birth when a notice dated 17.01.1980 alongwith a copy of seniority list indicating the date of birth was displayed on the notice board.

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The contention of the applicant appears to be that he had not seen such a notice. Such a contention is difficult to accept. In any case, in terms of the binding ratio of Harnam Singh, in the absence of any other provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claim, is required to be followed by me. The Learned Counsel for the applicant would argue that he has a right to continue in employment till superannuation and this right is affected by the wrongly entered date of birth. The right to continue in service till superannuation is however required to be read in the context of superannuation in terms of date of birth as entered in service records. From the close reading of the judgement of the Supreme Court, it would have to be concluded that the date of birth as entered in the service record may not reflect the real date of birth but for the purpose of various service benefits, the date of birth as entered in service record has to be treated as conclusive. In this connection, reference may be made to the Supreme Court judgement in Burn Standard Co. Ltd. V/s. Dinabandhu Majumdar [ AIR 1995 SC 1499 ].

5. In the light of the above discussion, I am of the view that the O.A. lacks merit and it is accordingly dismissed. There will be no order as to costs.

*M.R. Kolhatkar*

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