

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 197/97

Date of Decision:

24.6.97

Shri R.B. Bhavsar

.. Applicant

Shri A.G. Deshpande

.. Advocate for
Applicant

-versus-

Union of India and others.

.. Respondent(s)

Shri S.S. Karkera

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble **Shri B.S. Hegde, Member (J)**

The Hon'ble

(1) To be referred to the Reporter or not ? *y*

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

B.S. Hegde
(B.S. Hegde)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 197/97

24th the ~~Thursday~~ day of June 1997.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

R.B. Bhavsar
Offg. Postmaster
Malegaon Head Post
Office, Malegaon.

... Applicant.

By Advocate Shri A.G. Deshpande.

V/s.

Union of India
through Secretary
Ministry of
Communications,
New Delhi.

Director General
Deptt. of Posts,
New Delhi.

Chief Postmaster General
Maharashtra Circle
Mumbai.

Postmaster General
Aurangabad Region,
Aurangabad.

Superintendent of
Post Offices,
Malegaon
Division, Malegaon.

... Respondents.

By Advocate Shri S.S. Karkera.

ORDER

¶ Per Shri B.S. Hegde, Member (J) ¶

The short point for consideration is whether the plea of the applicant for change of date of birth from 5.2.1940 to 25.8.1941 is justified in the facts and circumstances of the case.

2. The applicant has joined in the department as P.A. on 26.4.1970. The applicant will be retiring on 28.2.1998 retired from service with effect from 2.7.91 and the applicant has filed this petition on 27.1.97.

The applicant himself conceded that at the time of appointment his date of birth was recorded on the basis of the school documents, but he states that it is not correct. Therefore the applicant had applied to the Head of the Office for correction of his date of birth from 5.2.1940 to 25.8.1941. The application was duly supported by the extract of the Birth Register as well as the necessary affidavit before Magistrate. The applicant states that he had preferred representation in the year 1971 to the competent authority, but not annexed any copy of the representation.

3. The learned counsel for respondents states that the applicant has not agitated the same at that point of time, therefore it is not possible for the respondents to say whether the representation filed by the applicant was rejected or not, as the records were not traceable. If there is any delay on the part of the respondents it is open to the applicant to approach the forum at an appropriate time, which he did not do so. On the other hand, the applicant preferred a representation in the year 1995 and also did not file any application for condonation of delay. Therefore, on this ground the application deserves to be dismissed as it is hopelessly barred by time. The respondents further states, that the applicant kept mum about his real date of birth till finalisation of his education and after appointment in the Department, because that it was beneficial to him for his appointment in the department. The respondents further states that had he alleged real date of birth i.e. 25.8.1941 been noted at the time of his entry in the school, he could not have been admitted in the school being lower age. The applicant was

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previously working in the Military and was appointed in the department in the Ex-serviceman quota. The respondents states that at the time of appointment in the department he has submitted the documents regarding his service in the Military and the school certificate and failed to get his date of birth corrected in his Military service. The respondents further states that if the birth extract had been received by the applicant in the year 1961, it was his duty to get changed his date of birth in the service record in the Military service as well as in the respondents department, which he did not do till his retirement. Nowhere it is stated that the representation made in the year 1971 was rejected by the respondents. Further it is noticed that the discharge certificate submitted by the applicant which clearly shows that the request made in the year 1971 might have been rejected by the respondents. The applicant has not brought out the true facts in this O.A.

4. The applicant in this O.A. has relied upon the judgement in the case of Union of India V/s. Harnam Singh (1993) 2 SCC 162 wherein it is stated that " It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth."


5. The respondents further states that the applicant at the time of appointment was furnished 'school leaving certificate'. The correct date of birth was entered at the time of his appointment [redacted]

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made in the year 1970. The applicant has not brought to the notice of the respondents any change in date of birth or any documentary proof within the specified time. Therefore, assuming that the ratio laid down in Harnam Singh would apply to the applicant's case, he has not aduced any documentary proof within the specified period, to take advantage of the ratio of that judgement. In this case, the applicant has made representation in the year 1995 i.e. after a lapse of 25 years. Therefore, the application is liable to be dismissed on the score of delay.

6. In view of the consistant view taken by the Apex Court in respect of change in date of birth cases that it is not open to the applicant to agitate the matter after the lapse of more than 5 years from the date of coming into force of note 5 to FR 56(M) in 1979. Normally, the Tribunal should not give overindulgence of the Government employee by overdoing administrative decisions on technical grounds especially at the fag end of their service.

7. In the result, I do not find any merit in the O.A. and the same is dismissed after hearing both the parties. No order as to costs.


(B.S. Hegde)
Member (J)

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