

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1014 of 1998.

Dated this _____ the 9th day of September, 1999.

Motiram V. Patil, _____ Applicant.

Shri G. K. Masand alongwith _____ Advocate for the
Ms. S. Gode, _____ applicant.

VERSUS

Union of India & Another, _____ Respondents.

Shri R. K. Shetty, _____ Advocate for the
Respondents.

CORAM: Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ? No

(ii) Whether it needs to be circulated to other Benches No
of the Tribunal ?

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

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ORIGINAL APPLICATION NO.: 1014 of 1998.

Dated the 9th day of September, 1999.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Motiram V. Patil,
Electrical Pickler in
Ordnance Factory.
Residing at -
R-13/13, Ordnance Factory
Estate, Ambernath. ... Applicant.

(By Advocate Shri G. K. Masand
alongwith Ms. S. Gode).

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
North block,
NEW DELHI.
2. The General Manager,
Ordnance Factory,
Ambernath. ... Respondents.

(By Advocate Shri R. K. Shetty)

ORDER

This is an application made by Motiram V. Patil of Ordnance Factory, Ambernath, seeking the relief, substantially, for correction of his date of birth in Service Record to read as 02.05.1951 instead of 02.05.1949, and thus to allow the applicant to remain in service till the age of superannuation, *accordingly.*

2. The facts of the case, as brought out by the applicant, are that he joined service at Ordnance Factory, Ambernath, in

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January, 1976 as a Labourer Grade 'B' in Class IV Service. He states that his date of birth was recorded at the time of admission to school as 02.05.1951. However, for the first time, in 1993, he learned through a literate co-worker, that his date of birth was recorded as 02.05.1949. He approached the administration for rectification of this error, through a representation dated 17.05.1994, but his representation, and a further one made on 12.03.1997, have remained unattended. Thus, he comes before this Tribunal seeking the relief as mentioned above.

3. The respondents have filed a reply where the claim of the applicant is stated to be hit by the Government orders to the effect that a request for change of date should be made within five years of entry to Government service. Reliance is placed on the decision of the Apex Court in the case of Union of India V/s. Harnam Singh [AIR 1993 SC 1367]. In their reply statement, the contentions made in the application are commented upon, parawise. It is also contended that the application is badly hit by limitation, and that repeated representations made by the applicant cannot save the applicant from limitation.

4. All documents in the case, including the annexures filed during arguments have been perused. The Learned Counsel on both sides have been heard and their arguments considered.

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5. The Learned Counsel for the applicant argues the case in detail. The contentions and arguments made by him are reproduced below in gist :

- (a) The mistake between the dates 02.05.1951 and 02.05.1949 may have occurred because of the marathi script. In this case, exhibit 'A' filed at page 10 was referred to.
- (b) The identity card of the applicant shows the date of birth to be 02.05.1951 (page 17). This, according to the applicant's counsel, was a proof of the fact that his right date of birth was 02.05.1951.
- (c) The applicant could not come to know of his age being recorded as 02.05.1949 as he is only a Class IV pass person and does not know English, in which language records are kept.
- (d) It was contended that the respondents have made investigations, as pointed out by them at para 4 of their written reply to the rejoinder. Nothing is found in this investigation.



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- (e) The five year period may not be treated as sacrosanct, and could be taken as five year period after the knowledge of wrongful record of date of birth.
- (f) Counsel for the applicant contended that his claims are not disputed on merits or on facts but only by taking the shelter of Harnam Singh's case. A point was also made that the circular of Government does not apply to Class-IV and that Harnam Singh's case dealt with a literate person.

On the point of limitation, the Learned Counsel for the applicant contended that this was a genuine right, as early retirement would do him great damage, also no third party's rights were being affected and no rights of others were being intervened through the seeking of those reliefs.

5. The counsel for the respondents also argued the case in great detail. The contentions and arguments advanced by him are recorded below in gist :

- (a) It was stated that the duplicate copy (prati utara) of the School Certificate supplied by the

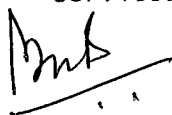
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applicant is a bogus certificate issued as late as in 1994. It does not contain the name of the Head Master.

- (b) The entry of date of birth made in the Workmen's record of service in exhibit R-6 submitted by respondents was heavily relied upon. It was stated that the entry read - " 2-5-1949 as per School Certificate" and bore the signature of the applicant.
- (c) Reliance was also placed heavily on exhibit R-7 where the applicant himself at the time of entry into service had stated his date of birth to be 02.05.1949.
- (d) It was denied that any investigations were made in the School since the Counsel for respondents asserted that there was enough evidence with the respondents for the dismissal of the case.
- (e) Attention was also drawn to exhibit R-7 to make the point that the Attestation Form was attested
- (f) This case was clearly hit by limitation, as any request for amendment of date of birth should have been done within five years of joining service.



7. Harnam Singh's Case reported in AIR 1993 SC 1367 was relied upon by the Counsel for respondents who strenuously argued that this case had settled the law in this regard, finally, and provided him great support in the dismissal of the application. The Counsel for the respondents cited two cases to show that the Identity Card was not a Service Record in the sense that undisputed reliance can be placed on the date of birth recorded therein.

8. The original document of which a copy is annexed at R-6 was shown ^{to B.S.} to me and was also shown to the counsel for applicant, who contended that the entry regarding the date of birth was made in different handwriting, and could not be relied upon, whereas the age in the same statement as indicated by the Doctor ^{B.S.} could be relied upon.

9. In the first place, it is an admitted fact that Government Instructions clearly state that any request for a change in the date of birth must be made by a Government servant within five years of joining service. On this, the defence taken by the applicant is that he did not know, until very late, that his date of birth was, as he contends, wrongly recorded. The argument made on behalf of applicant that the Identity Card provided proof ~~reg.~~ his date of birth cannot be accepted, both, in view of the citation made, and the plausibility of the argument that date of birth on Identity Card cannot be relied upon as authentic proof.

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The claim of the applicants cannot be sustained. The Identity Card has the purpose of allowing entry into an Institution like the Ordnance Factory and the date of birth could quite plausibly have been entered without proper checks. In any case, this fact can in no way become the basis on which the correctness or otherwise ^{of date of birth ~~has~~} could be conclusively ~~proved~~, without reference to other valid documentation.

9. Now, as regards the documents at exhibit R-6 and R-7, there is no doubt that there is a clear entry indicating the date of birth as 02.04.1949 as per School Certificate. The point made by the Learned Counsel for the applicant in re-argument that this is an interpolation and the correct age is as filled in the Medical Examination Report, on the same document, also does not hold water. The Medical Examination Report records the age as 25 years in general and cannot help the applicant in any case. Further, this is a document where entries have been made in normal course at the relevant time by the competent authorities, and since there is no strong reason to doubt its varacity in the absence of any ~~strong~~ ^{sub} proof to the contrary, this will have to be depended upon. And, indeed, it shows the date of birth to be 02.04.1949. Similarly, the attestation form at exhibit R-7 also shows the date of birth as 02.05.1949 and has to be relied upon as correct, for the same reasons.

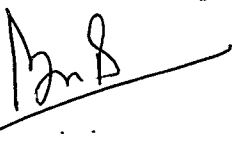
10. In the judgement in the case of Harnam Singh, which has been strongly relied upon by the Counsel for respondents, the Headnote reads as under :

Harnam Singh

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"Constitution of India, Art. 309 - Fundamental Rules, R. 56(m) Note 5 - (As amended by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt. A D/-30-11-1979) - Correction of date of birth - Limitation of five years for seeking it introduced by amendment in 1979 - Entry as to date of birth recorded at time of entry into service continuing to exist for three and half decades without challenge - Servant having numerous opportunities to see entry - Correction sought 5 years after amendment of note 5 - Refusal to grant - Not unjustified - Classification between servants joining before 79 and those joining thereafter for applicability of rule - Not proper."

The law settled in this case is very much relevant to the case before us. In this case also, the entry of the date of birth of the applicant has continued to exist unchallenged between 1976 and 1994, for almost two decades. It is difficult to agree that the claim of the applicant could be agreed to merely on the argument that he is only educated upto Class IV and that he does not know English. This could have been perhaps understood if



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the period of time would have been few weeks or months but a person who is working in an organisation for such a long time cannot take this plea. The law settled in the case of Harnam Singh could certainly apply in the case before us, and goes against the applicant. Thus, on the basis of the analysis and reasons as discussed above, it is clear that no convincing grounds have been made before the Tribunal for any interference in the matter. There is no justification for the relief sought.

12. In the consequence, this application is hereby dismissed. There will be no order as to costs.

B. N. Bahadur

(B. N. BAHADUR) *09/09/99*
MEMBER (A)

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