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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::

O.A.No.783/1993.

Date: 26.7.1993.

Between:

B.R.Satyanarayana

Applicant

And

The General Manager,
South Central Railway,
Rail Nilayam, Sec'bad.

Respondent

HEARD:

For the applicant

: Sri K.Sudhakara Reddy, Advocate

For the respondent

: Sri N.R.Devaraj, SC for Rly.

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE-CHAIRMAN

THE HON'BLE MR.P.T.THIRUVENGADAM, MEMBER (ADMN.)

X ORDER OF THE DIVISION BENCH AS PER HON'BLE SRI JUSTICE
V.NEELADRI RAO, VICE-CHAIRMAN X

....

When the applicant joined service in Railways he declared his date of birth as 14.7.1935. On 10.5.1993, the applicant submitted an application to the respondent requesting for correction of his date of birth as 14.7.1937, as there was a mistake in declaring the date of birth at the time of entering into service. In support of the said

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(17)

pleas
~~application~~, he filed a Birth certificate issued by the Government Junior College, Yellamanchili. The same was rejected by the respondent vide letter No. P(GAZ)/508/Engg/BRS/370 dt. 21.5.1993 which is challenged in this O.A.

2. Rule-225(4) (old 145(3)) of Indian Railway Establishment Code to the extent ~~of which~~ it is relevant reads as under:-

"145. Date of Birth -

- (1) Every person, on entering railway service, shall declare his date of birth which shall not differ from any declaration expressed or implied for any public purpose before entering railway service. In the case of literate staff, the declared date of birth shall be recorded by a senior Class-III railway servant and witnessed by another railway servant.
- (2)
- (3) 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 gazetted railway servant, and a General Manager in the case of a non-gazetted railway servant to cause the date of birth to be altered.
 - (i)
 - (ii)
 - (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 circumstance 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 records amended."

(Emphasis Supplied).

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7.

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It was contended in T.A.No.1104/86 and 1089/86 on the file of this Bench that the amendment as per the underlined portion which had come into effect on 3.12.1971 is not applicable for the employees who joined service in Railways earlier to 3.12.1971. The said contention was upheld by the Full Bench of this Tribunal in the case reported in [1990(1) SLR 264]. It was upheld by relying upon the Judgment of the Principal Bench of this Tribunal in Heeralal's case, reported in [AIR 1987 CAT 414], wherein it was observed that the relevant amendment in fixing the period of limitation for applying for correction in regard to date of birth as per the amendment to F.R.56 which had come into effect on 15.12.1979 was not applicable for those who were in Central Government service by 15.12.1979.

3. The Supreme Court considered in ~~the case~~ between Union of India Vs. Harnam Singh [AIR 1993 SC 1367] the scope of the amendment dt. 15.12.1979 in regard to F.R.56 which prescribed a period of 5 years from the date of entry into Service as limitation for request for alteration in regard to the Date of Birth and held that it was equally applicable in regard to the employees of ~~xxx~~ Central Government who were in service by 15.12.1979. It was further observed therein that if the application for alteration of date of birth was filed prior to 15.12.1979 ^{without reference to period of limitation} the same had to be considered, and if the Central Government Employees who were in service prior to 15.12.1979 filed such applications beyond 5 years from that date ^{they} cannot be entertained.

...4/-

3-18-79

To

1. The General Manager, S.C.Rly,
Railnilayam, Secunderabad.
2. One copy to Mr.K.Sudhakar Reddy, Advocate, CAT.Hyd.
3. One copy to Mr.N.R.Devraj, SC for Rlys. CAT.Hyd.
4. One copy to Deputy Registrar(J)CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. Copy to All Benches and Reporters as per standard list of CAT.Hyd.
7. One spare copy.

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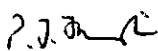
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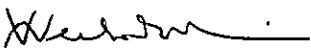
(19)

4. Thus, it is clear from the above Judgment of the Supreme Court that amendment dt. 15.12.1979 to F.R.56 prescribing period of limitation is equally applicable to the employees who were in service by 15.12.1979. Hence ~~by adopting the principle of per incuriam~~ the ^{conclusion} principle in Heeralal's case, wherein it is stated that the amendment dt. 15.12.1979 is not applicable in regard to the employees who were in service by then, does not hold good. As already observed the Full Bench of this Tribunal in Mallela Sreerama Murthy's case held by relying upon the order in Heeralal's case that the amendment dt. 3.12.1971 to Rule 225(4)(iii) of Indian Railway Establishment Code is not applicable in regard to railway employees who were in service by that date. Hence, it follows that the said finding of the Full Bench in Mallela Sreerama Murthy's case also had to be held as no longer good law in view of the Judgment of the Supreme Court referred to above by resorting to 'per incuriam' principle.

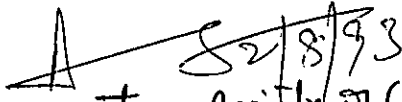
5. As the application for correction of date of birth was filed more than three years after 3.12.1971 the date on which Rule-225(4)(iii) had come into effect the application filed by the applicant praying for correction of his date of birth is not maintainable. Accordingly the O.A. does not merit consideration and it is dismissed at the admission stage. No costs.

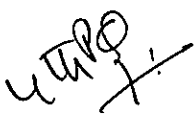
(Dictated in open court)


(P.T. Thiruvengadam)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

grh.


Deputy Registrar (J).



5/8/93
TYPED BY (S)

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. EIRUVENGADAM : M(A)

Dated: 26 - 7 - 1993

ORDER/JUDGMENT:

M.A/R.A/C.A.No.

in

O.A.No. 783/93

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

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