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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1240/93

Date of Order: 9.11.1993

BETWEEN:

Mohd. Jan Khan

.. Applicant.

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1. Supdt. of Post Offices,
Nalgonda Division,
Nalgonda.
2. Director of Postal Services,
Hyderabad Region, Hyderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.S.Ramakrishna Rao

Counsel for the Respondents

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

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This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to correct the date of birth of the applicant from 17.3.1934 to 17.2.1935 and to treat the date of superannuation of the applicant as 28.2.1993 instead of 31.3.1992 with all consequential benefits and to pass such other order or orders as may deem fit and proper in the circumstances of the case.

The facts so far necessary to adjudicate this O.A. in brief are as follows:-

2. The applicant entered in the Postal Department as Extra Departmental Agent. In the year 1966 he was promoted to Group 'D' post. The correct date of birth of the applicant is 17.2.1935. But in the Service Record that was opened for the applicant ^{when he} ~~was~~ promoted to Group 'D' post in the year 1966 the date of birth of the applicant was entered as 17.3.1934. The applicant was issued a notice by the Superintendent of Post Offices, Nalgonda on 14.8.91 stating that the applicant was ^{to} ~~retire~~ on 31.3.1992, on the basis of the applicant's date of birth as 17.3.1934. On receipt of ^{the} ~~notice~~ ^{the applicant} ~~said/represented~~ that his correct date of birth was 17.2.1935 and that he was liable to ~~be~~ superannuated on 28.2.93. The applicant approached this Tribunal by filing O.A.1097/91 to direct the respondents to allow ^{to continue} ~~him~~ in service up to 28.2.93 on the basis of the date of birth as 17.2.1935. Any how the applicant was retired from service by the Superintendent of ~~Post~~ Offices on 31.3.1992.

3. O.A.1097/91 filed by the applicant before this Tribunal was disposed of by the judgement dated 20.8.1992

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by a Single Member of this Bench. This Bench while disposing of the said O.A. as per its judgement dated 20.8.92 head as follows:-

" - - - - -
We direct the respondents to consider the case of the applicant for change of his date of birth on merits taking into consideration the material produced by the applicant, within a period of four months from the date of receipt of this order. The respondents shall also consider additional papers, if the applicant chooses to produce in support of his claim and the applicant shall be given an opportunity of personal hearing, if he chooses. With the above directions, the application is disposed of with no order as to costs."

4. In view of the said directions given by this Bench in O.A.1097/91, the Superintendent of Post Offices, Nalgonda as per the directions of the Bench directed the applicant to produce the ^{original} Transfer Certificate of the school where ^{applicant is} ~~she~~ said to be studied. As the applicant had filed the original Transfer Certificate before the Tribunal in O.A.1097/91 the applicant submitted a xerox copy of the same to the Superintendent of Post Offices, Nalgonda. According to the applicant the Transfer Certificate was got verified through the Inspector of Post Offices. According to the applicant the Transfer Certificate was found to be genuine by the Inspector of Post Offices. In the Transfer Certificate that had been produced before the Superintendent of Post Offices the date of birth of the applicant ^{was} mentioned as 15.5.1344 Fasli which date corresponds to 17.2.1935 A.D. But the respondents did not correct the date of birth of the applicant in his Service Record as 17.2.1935 to 17.3.1934. So, the present O.A. is filed by the applicant ~~for~~ for the relief as already indicated above.

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5. When the OA had come up for admission ^{we had} hearing heard learned counsel for the applicant Mr. S. Rama Krishna Rao and learned counsel for the respondents Mr. N. V. Ramana.

6. The entire OA rests on the strength of the Transfer Certificate issued by the Zilla Parishad High School, Narkatpally Division, Nalgonda. The Original Transfer Certificate is available before this Tribunal. According to the applicant he has studied upto 4th class in the said Z.P.H. School, Narkatpally, Nalgonda and that he left the school on 21.9.1366 Fasli which corresponding for the applicant is that the Transfer Certificate issued by the Z.P.H. School, Narkatpally, Nalgonda is a genuine one and so the date of birth as contained in the said certificate as 17.2.1935 is liable to be accepted and the prayer of the applicant is to be granted. An entry in any public or other official book, register or record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty is a relevant fact in view of Section 30 of the Indian Evidence Act. This is based on the circumstances that as regards public documents entries therein are made by officers authorised for the purpose and in discharge of public duty cast on them. The date of birth as contained in the Transfer Certificate should have also been entered in the school records as and when the applicant was admitted in the Z.P.H. school, Narkatpally, Nalgonda. It is only on the basis of the entry of the date of birth in the school records that the date of birth of the applicant in the Transfer Certificate would have been mentioned as 17.2.1935. Accepting that the applicant had studied in the said Z.P.H. School, Narkatpally, Nalgonda and that the Transfer Certificate issued

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by the said school is a genuine one whether the date of birth as entered in the Transfer Certificate as 17.2.1935 could be taken as conclusive proof. Even though the Transfer Certificate containing the date of birth as 17.2.1935 is admissible in evidence the contents therein do not prove by themselves. In this case we do not have any independent and acceptable documentary evidence to corroborate that date of birth of the applicant is 17.2.1935. Naturally, the birth extract of the applicant would have been a strong and conclusive applicant is 17.2.1935. But the birth extract of the applicant to show that his date of birth is 17.2.1935 is not filed before this Tribunal. For what reasons the date of birth extract of the applicant has not been filed is not entered in the School Register at the time of admission of the applicant. The date of birth of the applicant is not furnished by the person accompanying the pupil. Admittedly the applicant comes from an illiterate family. So at the Narkatpally, Nalgonda it cannot be said that the correct date of birth of the applicant had been given in the absence of any other independent documentary evidence to show that the date of birth of the applicant is 17.2.35. Ofcourse the date of birth of the applicant entered in the Service Register as 17.2.34 may not be the correct date. Because the date of birth of the applicant is 17.3.34 as found in the Service Register is not the correct date, we cannot automatically accept that the date of birth of the applicant is 17.2.35 in the absence of the required proof. As already pointed out the date of birth as contained in the Transfer

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Certificate of the applicant does not conclusively establish that his correct date of birth is 17.2.35. As already pointed out no other independent documentary evidence is forth coming to substantiate that the correct date of birth of the applicant is 17.2.35 this OA is liable to be rejected. The major hurdle in view of the applicant is also a recent decision of the Supreme Court reported in AIR 1993 S.C. 1367 Union of India V. Harnam Singh. As could be seen from the pleadings for first time the applicant had approached the competent authority to correct his date of birth only in the year 1991 that too when a notice had been served on the applicant that he was due to retire in the year 1992 on the basis of his date of birth as 17.3.34. Admittedly the applicant had entered in Group 'D' service in the year 1960. For nearly 30 years the applicant had not approached the competent authority for correction of date of birth. We may refer to the decision of the Supreme Court with regard to limitation in case of Union of India V. Harnam Singh (AIR 1993 SC 1367) where in it is laid down as here under:-

"A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service records. A Government servant who had declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable

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proof relating to his date of birth as different from the one earlier recorded and even in there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he had good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of the servant or limitation to expire. Unless determine his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. According to the Note 5 by notification D/-30-11-1979 it is obvious that the request for correction of date of birth is required to be made by the Government servant within five years of his date of birth may be corrected if birth at the time of his entry into Government service. While early Government servants between those who joined service before and after cannot be created by ignoring the ground realities and the intention of the rule making authority to Government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. The interpretation had to be the one which advances the intention and not the one which frustrates it.

In the instant case where the date of birth recorded at the time of entry of the servant into service before 79 had continued to exist, unchallenged for almost three and a half decades and the servant had the occasion to see his service book on numerous occasions and he signed the service book at different places at different points of time but never did he object to the recorded date and the same date of birth was also reflected in the seniority lists which the servant had admittedly seen, and yet, he remained silent and did not seek the alteration of the date of birth till just a few months prior to the date of his superannuation, inordinate and unexplained delay or laches on the part of the servant to seek the necessary correction

It is established that a genuine bonafide mistake had occurred while

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would in any case justify the refusal of relief to him. Even if the servant had sought a correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either his inaction for all the period of about thirty five years from the date of joining service, precluded him from showing that the entry of his date of birth in service record was not correct."

7. So, as the applicant had not approached the appropriate judicial forum for alteration of date of birth atleast within 5 years after the incorporation of note 5 to FR 56 in 1979 the OA also appears to be barred by time.

8. We see any amount of the delay on the part of the applicant in approaching the appropriate judicial forum. It is only in the year 1991 the applicant had approached the judicial forum for correction of his date of birth. Of the delay on the part of the applicant in approaching the judicial forum the applicant is not to be taken into consideration. The prayer which he seeks for. In view of this position O.A. is liable to be rejected and is accordingly rejected. There shall be no order as to costs.

T. Chandrasekhara Reddy
(T.CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 9th November, 1993

(Dictated in Open Court)

Deputy Registrar (J)

To

1. The Superintendent of Post Offices,
Nalgonda Division, Nalgonda.
2. The Director of Postal Services, Hyderabad Region, Hyderabad.
3. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

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

AND

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

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 01-11-1993

ORDER/JUDGMENT:

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

in
O.A.No. 1240/93

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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