

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

ORIGINAL APPLICATION NO.2 of 1993

DATE OF JUDGMENT: 6th July, 1993

BETWEEN:

Mr. Ch. Rama Mohan Rao .. Applicant

AND

The Chief Commissioner of Income Tax,
Andhra Pradesh,
Hyderabad. ..

Respondent

APPEARANCE:

Mr. GVRS Vara Prasad, Counsel for the Applicant.

Mr. N.V. Ramana, Standing Counsel for the Respondents

CORAM:

Shri T Chandrasekhara Reddy, Member (Judl.)

JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of
Administrative Tribunals Act, 1985 to direct the respondents to correct the date of birth of the applicant from 1.7.1936 to 2.5.1937 and to pass such other orders as may deem fit and proper in the circumstances of the ~~xxx~~ case.

The applicant had originally joined in the Department of the respondent as Lower Division Clerk on 1.0.1950. He has passed SSLC examination in the year 1954. He is fourth issue to his parents. According to the applicant, his correct date of birth is 2.5.1937. In the SSLC Register the date of birth of the applicant was entered as 1.7.36

and the same was carried out in the service register of the applicant at the time of the applicant entering into service. The applicant had put in a representation on 12.11.1990 to the competent authority to alter his date of birth from 1.7.1936 to 2.5.1937. As per the proceedings dated 26.12.1990, the representation of the applicant was rejected by the competent authority. Aggrieved by the action of the respondents, the applicant filed OA 373/91 before this Tribunal for correction of his date of birth. The Bench as per its judgment directed the respondents to entertain the representation of the applicant for alteration of the date of birth from and also to consider all the documentary evidence that was produced and to examine his case on merits and pass final order from the date of receipt of that order in OA 373/91. In pursuance of the directions of this Tribunal, the applicant put in a representation on 16.7.1992 before the competent authority once again for correction of his date of birth. On 24.11.1992, the impugned order was passed rejecting the claim of the applicant for correction of his date of birth. So, the applicant once again is before this Tribunal for the relief as already indicated above.

3. Counter is filed by the respondents opposing this O.A.

4. We have heard today Mr. GVRS Vara Prasad, learned counsel for the applicant and Mr. N.V.Ramana, learned

Standing Counsel for the Respondents. Even though the applicant had entered in service as early as on 1.8.1958, for the first time the applicant had put in the representation to the competent authority for correction of his date of birth only on 12.11.1990. As could be seen, there is nearly 32 years of delay on the part of the applicant in approaching the competent authority for correction of the date of birth. In this context, we may cite ^{the} latest decision of the Supreme Court reported in (1993) 24 Administrative Tribunals Cases p.92 (Union of India Vs. Harnam Singh), wherein it is laid down as follows--

"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 earlier recorded and even if 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 ~~statute of limitations~~ 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 correcting of date of birth of a Government servant can be entertained. A Government servant can claim relief 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 has good evidence to establish that the recorded date of birth is clearly ^{the law of limitation may operate} harshly but it has to be applied with all its force."

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rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, 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. A public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him.

(Para 7).

only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into service but the intention of the rule making authority in providing the period of limitation for seeking the correction of the date of birth of the Government servant has to be examined which is to discourage stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry. It is the duty of the courts and tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. advances the intention and not the one which frustrates it. It could not be the intention of the rule making authority to give unlimited time to seek correction of date of birth, after 1979, to those Government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. If a Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it

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Copy to:-

Ayakor Bharan, Barreerbagh,

1. The Chief Commissioner of Income Tax, A.P.Hyderabad.
2. One copy to Sri. G.V.R.S.Vara Prasad, advocate, 113/3RT, Vijayanagar, Bolony, Hyd.
3. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
4. One spare copy.
5. one copy to Library.

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would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but the case of Government servant who applied for correction of date of birth only after 1979 stands on the provision to hold that in the case of those 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. This view would be in consonance with the intention of the rule making authority."

(Para 12)

5. We see laches on the part of the applicant in approaching this Tribunal. So, in view of the laches, this OA is liable to be dismissed. According to the amended Note 5 to F.R. 56, the applicant should have approached this Tribunal atleast within five years from the year 1979. So, as the applicant has not approached this Tribunal within five years from the year 1979 ie., from the date when Note 5 to FR 56 was introduced by way of an amendment ~~in view of the decision above~~, there cannot be any ~~in~~ the fact that this OA is barred by time.

6. Hence, we see no other alternative except to dismiss this OA and this OA is dismissed leaving the parties to bear their own costs.
(Dictated in the open Court).

T. Venkateswaran

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CHECKED BY

COMPARED 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. GORTY : MEMBER (AD)

AND

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

AND

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

Dated : 6/7/1993

ORDER/JUDGMENT:

M.L. / R.L. C.A. NO.

O.A. No. 2/93. in

T.A. No. (w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with ~~Interim~~ directions

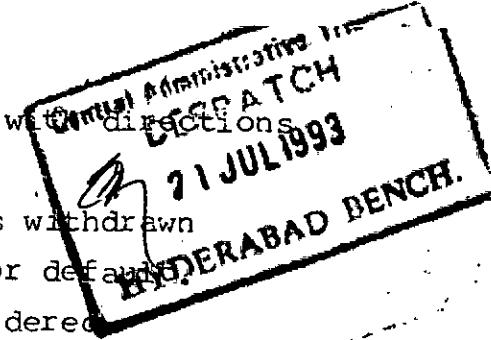
Dismissed

Dismissed as withdrawn

Dismissed for default

Rejected/ Ordered

No order as to costs.



pvm

3/7/93