

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 23.05.2003

OA No.510/2001

Narain Lal s/o late Shri Sardara Ram r/o MES Govt. Quarter located behind GE Office, Jaipur, Khatipura presently serving with Military Hospital, Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary to the Govt. of India, Ministry of Defence, New Delhi.
2. The Adjutant General Branch Org 4 (Civ) (d) through Director General Medical Services, Army Headquarters, DHQ PO, New Delhi.
3. The Commanding Officer, Military Hospital, Jaipur.

.. Respondents

Mr. R.S.Bhadauria, counsel for the applicant

Mr. P.C.Sharma, proxy counsel to Mr. Sanjay Pareek, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant was initially appointed on the post of Syce in the Remount Veterinary Unit, Pal, Jodhpur on 16.4.64. At the time of his appointment, his date of birth was recorded as 12.1.1942. It is the case of the applicant that he obtained transfer certificate on 24.2.70 from Upper Primary School, Boranada, Jodhpur. The date of birth recorded in this certificate is 19.2.1946 which is the actual date of birth of the applicant. Soon after

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obtaining the aforesaid transfer certificate (Ann.A2), he handed over the same to the Administrative Officer, Mule Breeding Area RVC, Babugarh with a request to enter the correct date of birth in his service documents. The applicant was assured by the Administrative Officer, Mule Breeding Area RVC, Babugarh that the needful will be done and his record will be up dated by reflecting correct date of birth as shown in the transfer certificate. It is further averred that during March, 2001, the applicant was verbally informed that he is going to retire during January, 2002. The applicant without loss of time submitted original transfer certificate to the authority concerned on 12.3.01 who kept the same and assured the applicant that they will look into the matter and do the needful. The said certificate was returned to the applicant after a month of so that nothing could be done at this stage and the date recorded in the service book will be deemed to be correct. It is further the case of the applicant that failing to get any satisfactory reply from respondent No.3, he submitted an application dated 15.6.2001 requesting the respondent No.3 to reflect his correct date of birth and educational qualification in his service documents so that he may not suffer for no fault of his own. A copy of this representation is placed on record at Ann.A3. Thereafter the applicant submitted reminder dated 7.9.2001 (Ann.A4) to the respondent No.3 to reflect correct date of birth in his service book. Since nothing was heard from the respondents, the applicant got a notice of demand of justice dated 24.9.01 served on the respondents praying therein to examine the matter within 15 days failing which the applicant would be left with no alternative, but to seek the redress through the court of

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law. A copy of the notice of demand of justice is ^{annexed} placed ^{by} as Ann.A5. In response to the notice, the respondent No.3 vide the impugned order dated 9.10.2001 has declined to take any action on the plea that the applicant has failed to take action to amend his date of birth within the stipulated period from the date of enrolment as per rules, hence no action can be taken at this belated stage. It is against this order the applicant has filed this OA thereby praying that the direction be issued to be respondents to amend/rectify the date of birth of the applicant from 12.1.1942 to 19.2.1946 based on the education certificate and he be allowed to continue in service till he attains the age of superannuation.

2. The respondents have contested this application by filing reply. It has been stated that at the time of his appointment on 16.4.64, the applicant has disclosed to the appointing authority that his date of bith was 12.1.1942. Relying upon his declaration, the appointing authority recorded his date of birth as 12.1.1942. Now after almost 37 years, the applicant has approached this Tribunal for correction of date of birth and therefore, the present OA is hopelessly time barred. The applicant was aware of the fact that his date of birth was recorded as 12.1.1942 yet he has filed this OA in the year 2001. It is further submitted that the applicant has not disclosed the name of the officer to whom he gave his original educational certificate, who returned the same to him and when such exercise was done. In the absence of all such material facts, the statement made by the applicant is liable to be ignored. It is further averred that the applicant never applied for change of date of birth before

15th June, 01. For the first time, he applied for change of date of birth vide his application dated 15.6.01 received in the office on 19th June, 01. The applicant again applied for change of date of birth vide his application dated 7.9.2001. The applicant was interviewed by the Administrative Officer of the hospital to clarify the following points:-

- a) Any evidence of his application earlier to Administrative Office, Mule Breeding Area, RVC, Babugarh.
- b) Original copy of Transfer certificate issued by Education Department, Govt. of Rajasthan.
- c) Why did he not apply at MH Jaipur since he had served 19 years.

Since there was no reply from the applicant and he has not submitted any document in support of above clarification till today.

3. The applicant has filed rejoinder in which he has reiterated that the applicant applied for change of date of birth during 1970 soon on receipt of the transfer certificate filed at Ann.A/2 and the same was submitted to the office of Mule Breeding Area RVC, Babugarh and the original were returned to the applicant after due verification. It is denied that any interview of the applicant was ever arranged nor such clarification was sought in writing to form part of the record.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The main contention of the learned counsel for the applicant is that no doubt the date of birth was

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initially recorded as 12.1.1942 in the service book on the basis of the statement made by the applicant, but the said date of birth was based on guess work and ought to have been corrected when the applicant submitted transfer certificated dated 24.2.70 to the Administrative Officer, Mule Breeding Area RVC, Babugarh which had assured him to do needful. It is further contended that he was acting on the assurance so given by the Administrative Officer in 1970 and he came to know during March, 2001 when the applicant was verbally informed that he is going to retire during January, 2002 and thereafter he made representation to the authorities for correction of his date of birth. Thus, according to the learned counsel for the applicant, it was incumbent upon the respondents to correct the date of birth as per the school certificate Ann.A2 especially when the date of birth as recorded at the time of entry in service is not based on any document. I have considered the submissions made by the learned counsel for the applicant and is not inclined to accept the same.

4.2 In the case of Union of India vs. Harnam Singh; AIR 1993 SC 1367, the Apex Court has held 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, the Govt. 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 and stale claim is generally applied to by the Courts and Tribunals. A Govt. servant who makes an application for

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correction of date of birth beyond the time fixed in the service rules cannot claim as a matter of right, the correction of this date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. It is obvious that the request for correction of date of birth is required to be made by the Govt. servant within the five years of his entry into Govt. service and his date of birth may be corrected if it is established that a genuine bona-fide mistake had occurred while recording his date of birth at the time of his entry into Govt. service. Note 5 to FR 56(m) was incorporated 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 what is necessary to be examined is the intention of the rule making authority in providing the period of limitation for seeking the correction of the date of birth of the Govt. servant viz. 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 would be appropriate and in the tune with harmonious construction of the provision to hold that in the case of those Govt. 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.

4.3 Viewed from this angle, it is clear that the applicant has not made out any case within the parameters

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of the ratio as laid down by the Apex Court. The Apex Court has specifically observed that the Govt. servant who makes an application for correction of his date of birth beyond the time fixed in the service rules 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 erroneous. In the instant case the applicant has entered into Govt. service before 1979 when Note 5 to FR 56 (m) was recorded and according to the aforesaid decision of the Apex Court, the applicant could have sought correction of date of birth within reasonable time after 1979 but in any event not later than 5 years after coming into force of the amendment in 1979 i.e. before 1984. In the instant case, the applicant has filed application for correction of date of birth on 15.6.01 vide annexure A3 for the first time and subsequent reminder dated 7.9.01 (Ann.A4). The applicant has not placed contemporaneous record in this OA to show that he has made applications for correction of date of birth in the year 1970 immediately after he obtained transfer certificate on 24.2.70 from Upper Primary School, Boranada, Jodhpur. This fact is further clear from the perusal of the application/representation of the applicant dated 15.06.01 whereby he has requested for change of date of birth to 19.2.46 on the basis of the transfer certificate. In this document the applicant has not mentioned that he has ever made any representation to the authorities prior to the said date. Similarly, in subsequent application/representation dated 7.9.01, the applicant has only mentioned that he has earlier made representation dated 15.6.01 regarding correction of date of birth and there is no such ^{by mention of the fact that any is} application prior to 15.6.01

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~~which he~~ ^{was ever} made for correction of date of birth to any authority which is sought to be pleaded now. It is only in the notice of demand of justice dated 24.9.01, the fact regarding approaching the Administrative Officer, Mule Breeding Area RVC, Babugarh with educational certificate during 1970 has been mentioned for the first time. This vague assertion without any supporting document cannot be accpeted. The applicant has categorically stated in the rejoinder that he has submitted original transfer certificate in the office of the Mule Breeding Area, RVC, Babugarh in the year 1970 and the original certificates were returned to the applicant after due verification. The applicant has not produced any such letter vide which the transfer certificate (Ann.A2) was submitted in the office of Mule Breeding Area RVC, Babugarh. He has also not produced any letter on record whereby such original certificate was returned by the authorities to the applicant. On the other hand, categorical stand of the respondents is that no such document was ever submitted by the applicant in the year 1970. The applicant was also interviewed pursuant to his representation dated 7th Sept. 01 (Ann.A4) and he was asked to submit proof regarding submitting of such application to the Administrative Officer, Mule Breeding Area, RVC, Babugarh and also to produce a copy of the transfer certificate (Ann.A2) and further the reason that he did not apply at MH, Jaipur where he had served for 19 years and according to the respondents the applicant could not give any convincing reply. The applicant was aware about his date of birth recorded in his service book as 12.1.1942. Admittedly no action has been taken by the applicant for about 37 years. Further, no action was taken by the applicant even within

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5 years after Note 5 to FR 56 (m) was incorporated in the year 1979 which stipulates that request for correction of date of birth is required to be made by the Govt. servant within 5 years of the entry into service and in the instant case within 5 years after coming into force of the amendment in 1979 i.e. latest by 1984. Under these circumstances, no fault can be found in the impugned order Ann.A1 whereby the case of the applicant has been rejected. The applicant must have had the knowledge of the School Leaving Certificate and date of birth recorded therein but he failed to produce it when he entered into service. The applicant has not given any explanation why he had not produced the transfer certificate in the year 1964 when he entered into service of the respondents when such document was available and could have been produced by the applicant. The Apex Court has repeatedly held that the date of birth cannot be allowed to change at the fag end of the career and inordinate delay in making the application is itself a ground for rejecting the correction of date of birth.

4.4 During the course of arguments, the learned counsel for the applicant has drawn my attention to the decision of the Allahabad High Court in the case of Pitamber Dutt Semwal vs. State of UP; 2001 LAB I.C.328 and another decision of the Calcutta High Court in the case of Satnam Bowri vs. Union of India; 2001 LAB I.C. 1472. These decisions are not applicable in the instant case. In the case of Pitamber Dutt Semwal, on the basis of the enquiry made it was found that the date of birth recorded in the service book was made subsequently to the other entries in the service book and there was no supporting evidence of the entry recorded when he entered service. On enquiry, it was found that the actual date of birth of the employee

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was 6th July, 1942 but the authority expressed his helplessness in permitting the correction in the date of birth on the ground that such representation cannot be entertained after a prescribed period as provided under the rules. It was under these circumstances that the Hon'ble High Court held that the date incorrectly recorded can be corrected. Similarly, in the case of Satnam Singh Gowri (supra) as per service record the date of birth was recorded as Sept. 15, 1942. In another place of the service record the date of birth of the employee was recorded as Feb. 24, 1943. The applicant was allowed to superannuate on the basis of the date of birth recorded as Sept. 13, 1936 on the basis of some entry in personal file. It was under these circumstances that the action of the authorities in superannuating the employee on the basis of the date of birth as Sept. 13, 1936 was set aside and direction was given to the Director, Health Services, Govt. of West Bengal to constitute a Medical Board for ascertaining the actual age of the employee and date of birth of the applicant be corrected on the basis of such report. As already stated above, this is not the case of the applicant. In the present OA these authorities are of no assistance to the applicant.

5. In view of what has been stated above, the applicant has not made out any case and as such the OA is dismissed for the reasons recorded above. No order as to costs.


(M.L. CHAUHAN)

Member (J)