

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 26 of 1998

Jabalpur, this the 5th day of February, 2003

Hon'ble Mr. R.K. Upadhyaya - Member (Administrative)

Magrulal Jaiswal, S/o Shri Gokul Prasad Kalar,
aged about 56 years, resident of House No. 684
Gautamganj, Garha, Jabalpur (M.P.).

- APPLICANT

(By Advocate - Shri V. Tripathi)

VERSUS

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.

2. Chairman, Ordnance Factory Board,
10-A, Auckland Road, Calcutta.

3. The General Manager, Gun Carriage Factory,
Jabalpur.

- RESPONDENTS

(By Advocate Shri B. da. Silva through
proxy counsel Shri S. A. Dharmadhikari)

ORDER

The applicant is aggrieved by order dated 20.8.1997 by which he has been intimated that he will stand superannuated with effect from 30.9.1999 on the basis of his date of birth being 21.9.1941 as recorded in the official record. However, in view of the enhancement of age of superannuation, he actually retired on 30.9.2001.

2. It is stated by the applicant that he was working on the post of Store Keeper in Gun Carriage Factory, Jabalpur at the time of filing of this application. He joined the service of respondents in September, 1965 and his date of birth is claimed to have been wrongly recorded as 21.9.1941 instead of claimed correct date of birth as 1.7.1942. The applicant further claims that he had filed a certificate of Higher Secondary School Certificate Examination, 1962 issued on 7.6.1962 (Annexure-A-2) indicating his date of birth as 1.7.1942, at the time of his joining the service. The wrong date of birth as recorded in the office record

[Signature]

came to the knowledge of the applicant subsequently and, therefore, as per representation dated 13.2.1991 (Annexure-A-4) he requested for the same to be corrected. However, the same was not corrected. Therefore, this application has been filed seeking direction to the respondents to give the benefit of correct date of birth.

2.1 The learned counsel of the applicant invited attention to the copy of the identity card of the applicant wherein his date of birth has been noted as 14.7.1942. This was issued in June, 1988. He also referred to the copy of the identity card of the applicant issued on 7.10.1965 wherein the date of birth has been noted as 21.9.1949. It is, therefore, urged by him, the applicant was all along of the impression that the correct date of birth was recorded in the official records as per copy of the Higher Secondary School Certificate filed by him.

3. The respondents in their reply have stated that the present application filed on 8.1.1998 is hopelessly time barred in terms of Section 21 of the Administrative Tribunals Act, 1985 and Note 6 under F.R.56(m). It is stated by the respondents that this Tribunal in the case of Anandi Lal Kewat Vs. Union of India and others, O.A. No.412 of 1997 has held that the date of birth as recorded on the basis of medical examination at the time of entry into the service could not be challenged at the fag end of the service career of the applicant. It is also stated by the respondents that the contentions raised in this application are against the facts on record. The impugned order dated 20.8.1997 intimating that the applicant/stand^{shall} retired on 30.9.1999 has been issued with a view to take advance action on

Ch. M. G. M.

preparation of pensionary benefits. The respondents have invited attention to the report of Medical Officer dated 21.9.1965 (Annexure-R-1) prepared at the time of entry into Government service, wherein the Medical Officer has stated that the applicant was of 24 years on the basis of statement of the applicant and also of 24 years from appearance. It has been intimated by the respondents that the applicant filed a declaration (Annexure-R-4) at the time of entry into Government service in October, 1965 stating that "as regards my date of birth, I have no age proof to keep on record and as such the age as recorded by the Medical Officer is accepted by him. The learned counsel, therefore, stated that it is incorrect to state that the applicant ever filed any Higher Secondary School Certificate with the respondents in support of the claim of the date of birth. The only representation filed by the applicant is dated 13.2.1991 (Annexure-A-4). This appears to be a reminder letter in continuation of earlier application dated 27.12.1990. This representation has been considered by the respondents and the applicant has been informed of the decision as per letter dated 10.6.1996 (Annexure-R-2). The respondents have further stated that the applicant should have filed the supporting evidence either at the time of entry into Government service or at least within five years of joining Government service. The applicant having not done so, cannot agitate for change of date of birth at the tag end of his service career. The claim made being belated deserves to be rejected.

4. After hearing the learned counsel of both parties and after perusal of the records, it is seen that as per admission of the applicant, date of birth being 21.9.1949 was recorded on his identity card issued as early as on 7.10.1965. However, there is nothing on record to suggest that the applicant ever made any attempt to get it

Chintamani

corrected. The respondents have denied receipt of any Higher Secondary School Certificate - a copy of which has been filed as Annexures-A-2 & A-3, prior to his representation in 1990. There is also nothing on record to suggest that the applicant submitted such a certificate either at the time of joining his service. He also did not agitate the correction of his date of birth even within five years of amendment of FR 56(m). The claim made by the applicant that he submitted proof of date of birth at the time of joining the service is contrary to his declaration (Annexure-R-4) regarding age, as given by him in October, 1965 at the time of joining the service. The applicant has not disputed his signature and the contents of the declaration. Even no rejoinder has been filed by the applicant. Therefore, the claims made by the respondents remained uncontroverted.

4.1 During the course of hearing the learned counsel of the applicant had also placed reliance on the decision of Hon'ble High Court of Madhya Pradesh, Jabalpur in S.C.Verma Vs. Union of India and another, 2000(4)M.P.H.T.384 (DB). The facts in that case were entirely different. The petitioner before the High Court was employed as Tailor Grade 'C' in the Army. As soon as he came to know the incorrect date of birth, he preferred representation on 17.10.1976. He had continued to pursue his claim of correction of date of birth even thereafter. On those facts, the Hon'ble High Court had declared the correct date of birth of the petitioner as 18.5.1943 (against 17.8.1940) in that case. Therefore, that decision in S.C.Verma's case (supra) is of no help to the applicant. From the material available, it appears that somewhere in the years 1990 and 1991 the applicant for the first time asked for correction of date of birth. Such belated action on the part of the applicant has rightly been rejected by the respondents. The Hon'ble Supreme Court

Ch. No. 2000
1

in the case of Union of India Vs. Harnam Singh, (1993) 2 SCC 162 have observed that stale and belated applications for alteration of the date of birth recorded in the service records deserve to be rejected. The Apex Court further observed that even within the period of five years from the date of coming into force of notified rules FR 56(m) in 1979, such applications could have been considered.

4.2 On the facts of the present case, there is nothing to suggest that the applicant ever made any attempt for correction of date of birth prior to 1990 or 1991. If a person sleeps over his claim, he deserves no leniency for giving him any benefit.

5. Considering the facts of this case, this Original Application is dismissed, without any order as to costs.



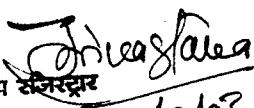
(R.K. Upadhyaya)
Member (Admnv.)

rkv.

पूछावल सं औ/व्या..... जनतानु. दि.....
प्रतिनिधि वर्जे प्रिया

(1) सर्विस नं एवं नाम वा उपनाम वा जननाम वा जननाम
के काउंसल
(2) नाम वा उपनाम/कु..... वा जननाम
के काउंसल
(3) जननी वा विवाही/दृ.....
वा जननी वा विवाही/दृ.....
के काउंसल
(4) जननाम वा उपनाम वा जननाम वा जननाम
सुनाना एवं आवश्यक कार्यवाही हेतु

V. Post with all
SA Shri Ramachandran SCV


उप सचिव
5/2/03

Issued
5/2/03
En