

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.350/01548/2014

Date of order : 28.03.2016

LIBRARY

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Mr. P.K. Basu, Administrative Member

Lakshmikanta Bera, Son of
 Sri Hemanta Kumar Bera, now
 Posted as Gramin Dak Sevak
 Branch Post Master(GDSBPM),
 Rajaniganj BO, via-Geokhali SO,
 District- Purba Medinipore,
 Pin -721 603

.....Applicant

Vs.

1. The Union of India, Service through the Secretary General, Department of Posts India, Ministry of Communications, Govt. of India, Dak Bhawan New Delhi, Parliament Street, New Delhi, Pin-1100 001
2. The Chief Post Master General, West Bengal Circle, Jogajog Bhawan, Kolkata-12
3. The Superintendent of Post Office, Tamluk Division, Tamluk, Dist. Purba Medinipur Pin-721 636
4. Inspector of Posts, Haldia Sub Division, Pin-721 606
5. The ADPS(PG), O/o The CH, PMG, W.B. Circle, Kolkata-700 012
6. The ADPS-II, O/o The PMG, SB Region, Kolkata-700 012
7. The ASP, Tamluk Sub Division, Tamluk, Dist. - Purba Medinipur, Pin721 636

.....Respondents

For the applicant : Mr. P.K. Bhattacharyya, counsel

For the respondents : Mr. P. Mukherjee, counsel

O R D E RPer Mr. P.K. Basu, A.M..

In this case the dispute is whether the date of birth of the applicant is 04.01.1950 or 04.01.1956. The applicant was appointed as Extra Departmental Branch Post Master(EDBPM),

Rajaniganj vide Memo dated 17.08.1976 w.e.f. 26.06.1976. He has claimed that his date of birth is 04.01.1956 based on the following documents:-

- (i) Identity Card issued by Chloride India Limited, Haldia in which his date of birth is shown as 4.1.56;
- (ii) Pan Card in which his date of birth is shown as 04.01.1956;
- (iii) Pension Card under the New Pension Scheme indicating his date of birth as 04.01.1956;
- (iv) Election Commission of India Identity Card showing his date of birth as 01.01.1956(not 04.01.1956)
- (v) Copy of Admission Register of Pupils for the year 1966-19....of Geonkhali High School, District. Purba Medinipur in which his date of birth is shown as "4th January, 1956";
- (vi) Admit Card issued by West Bengal Board of Secondary Education showing his date of birth as "4th (fourth) day of January, Nineteen Hundred and Fifty Six";
- (vii) Certificate of Higher Secondary Examination (compartmental) issued by West Bengal Board of Secondary Education indicating his date of birth as "Fourth day of January, One thousand nine hundred and fifty six";
- (viii) Letter dated 18.08.1984 signed by one M. Sengupta issued on behalf of West Bengal Board of Secondary Education regarding the applicant's prayer for correction of age in which again "fourth day of January, nineteen Hundred and fifty six" is shown as his date of birth;
- (ix) Copy of the Inspection report of Rajaniganj Branch Office dated 16.09.2009 showing the date of birth of the applicant as 4.1.1956;
- (x) The certificate of the Headmaster, Geonkhali High School dated 22.04.2014 in which it is stated that the applicant's date of birth as recorded in the Admission Register is 04.01.1956;
- (xi) Higher Examination Certificate of Sri Arabinda Bera who is claimed to be the elder brother of the applicant. This certificate shows that the date of birth of Arabinda Bera is 2nd January, 1950. The claim of the applicant is that since his elder brother was born on 2nd June, 1950, he could not have born on 04.01.1950.

2. The respondents in their reply have countered the claim of the applicant on the following grounds:-

- (i) Vide Office Memorandum of Department of Personnel and Training, F.No.19017/1/2014-Estt.(A-IV) dated 16.12.2014 regarding alteration of date of birth of a Government servant it is clearly provided that alteration of date of birth of a Government servant can be made only when the following conditions are fulfilled:-

- (a) A request in this regard is made within five years of his entry into Government service;
- (b) It is clearly established that a genuine bona fide mistake has occurred; and
- (c) The date of birth so altered would not make him ineligible to appear in any School or University of Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

The Office Memorandum also cites the judgment of the Hon'ble Supreme Court in the case of **Union of India Vs. Harnam Singh**. Para 3 of the said Office Memorandum reads as follows:-

"3. The Supreme Court of India in Civil Appeal No.502 of 1993 – Union of India Vs. Harnam Singh-Judgment dated 9th February, 1993 had observed that:

"Inordinate delay and unexpected delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. His inaction for all this period of about thirty five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct."

The observations of the Apex Court was also circulated to all Ministries and Departments of the Government of India vide OM No.19017/2/92-Estt.(A) dated 19-5-1993."

(ii) It is stated that during the time of his recruitment Health Certificate was issued by the respondents on 12.07.1976(Annexure R-1) in which the following statement has been made:-

"I do not consider this a disqualification for employment in the office of Rajaniganj Post Office. His age is according to his own statement, about 27 years, and by appears about 27 years."

(iii) In the descriptive roll filled up by the applicant and certified by the then Superintendent of Post Offices the applicant himself declared that his date of birth is 04.01.50(4th January, 1950). In the Transfer Certificate issued by the Headmaster, Geonkhali School dated 04.03.1970 it is stated that the applicant's date of birth as recorded in the Admission Register is 04.01.1950.

3. Heard the ld. counsel for the parties and perused the materials placed on record.

4. We have considered the judgment of the Supreme Court in the case of **Union of India Vs. Harnam Singh [(1993)2 Supreme Court Cases 162]**. Relevant portion of para 7 of the said judgment is extracted hereunder for ready reference:-

"7.....A Government servant who has 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 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 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 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 has 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 of 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."

As could be seen from the judgment of the Hon'ble Supreme Court in **Harnam Singh(supra)**, correction of date of birth has to be applied for within a time limit fixed in the Service Rules and even if it is not fixed in the Service Rules, within a reasonable time. The applicant entered service in 1976 and made an attempt for change of date of birth for the first time only in 2011. Therefore, this O.A. is clearly hit by DOP&T's O.M. dated 16.12.2014(Annexure R-2) as referred to by the respondents in their reply as well as judgment of the Hon'ble Supreme Court in **Harnam Singh**. Secondly, self declaration that the applicant gave at the time of appointment itself shows his date of birth is 04.01.1950 and the School Certificate also shows so.

5. The evidence regarding Pan Card, Election I.D. Card etc. cannot be considered now specially because these are secondary documents and at the time of issuance of the documents no verification by the authority is done of date of birth and self declaration of the applicant itself is accepted. Rather we find it strange that while on the rolls of the respondents, the applicant was also employed with Chloride India Ltd. We are not sure whether this is permissible under the Rules. Respondents may wish to look into this aspect as well.

6. In view of the facts and circumstances, we are of the considered view that this O.A. cannot be maintained in view of clear instructions in DOP&T's O.M. dated 16.12.2014(Annexure R-2) which renders this application as time barred and also clear ruling of the Hon'ble Supreme Court in the case of **Harnam Singh** as cited above.

7. The O.A. is, therefore, dismissed. There shall be no cost.

(P.W. BA8U)
Administrative Member

s.b

(B. BANERJEE)
Judicial Member