
(2006) 07 DEL CK 0187

In the Delhi High Court

Case No : Writ Petition (C) No. 15144 of 2000

Mahipal

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 07 DEL CK 0187

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : H.K. Kathuria, for the Appellant; Poonam Lau, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—In this petition under Articles 226-227 of the Constitution of India, the petitioner prays for issuance of writ of mandamus directing the respondents to correct the date of birth of the petitioner in his service record from 23rd September, 1940 to 24th December, 1940 and to grant him all consequential benefits arising from such change.

2. The petitioner had joined the military service. After serving the army for some time, the petitioner left the army and joined the unit of Central Industrial Security Force on 12th July, 1971. During his tenure in CISF, he was posted at various places in India. He was also given promotion as ASI. The petitioner was retired on 30th June, 2000 in the rank of ASI. According to the petitioner, he was wrongly retired on 30th June, 2000 as the date of birth of the petitioner was 24th December, 1940 and hence the petitioner was due to retire on 31st December, 2000, the date of birth of the petitioner being 24th December, 1940, which was already recorded in the service record of the petitioner. However, he was wrongly retired on 30th June, 2000. The petitioner has heavily relied upon the identity card issued to him by defense authorities wherein his date of birth was mentioned as 24th December, 1940. The petitioner had served a notice upon the respondents on 5th November, 2003 requiring them to correct his date of

birth and grant him all other service benefits till the date of his retirement. However, the request of the petitioner was not acceded to by the respondents. Hence the present petition.

3. In para 6 of the petition, the petitioner has raised the following points for consideration of the Court:

(a) Whether the respondents are not bound to change the date of birth from 23.9.1940 to 24.12.1940, when it affects the pension benefit every month to the petitioner.

(b) Whether the respondents are not bound to consider the documents in which the date of birth of the defense authority is mentioned as 24.12.1940.

4. In reply to the petition, the respondents filed counter affidavit wherein it has been stated that as per the record of the Army, the date of birth of the petitioner is 1st July, 1940 and on that basis, he was retired on 30th June, 2000. Thus, the request of the petitioner, which is at the fag end of his career and the notice issued being even post retirement, cannot be considered. It is also submitted that the prayers made by the petitioner are not even maintainable. Along with the counter affidavit, the respondents have annexed Annexure-R-1, which is a questionnaire signed by the petitioner wherein the petitioner has mentioned his date of birth as 23rd September, 1940. However, on the basis of the service record of the petitioner, he was correctly retired from the service on 30th June, 2000.

5. We may notice that in the present petition, the prayer of the petitioner is misconceived and lacks bonafide. On his own showing, the petitioner had written his date of birth as 23rd September, 1940 while in his service record, it was 1st July, 1940. Now the petitioner has come up with his third date of birth, which is 24th December, 1940. No justification whatsoever has been given as to why the petitioner did not correct his date of birth for all the years i.e. from 1971 to 30th June, 2000. It is expected of every member of the force to disclose his correct date of birth and in the event there is some error, then attempt to correct such error should be taken at the earliest and the person is not expected to wait till the date of his retirement. No Rule has been brought to the notice of the Court during the course of hearing nor has been stated in the petition with reference to which the petitioner claims the right requiring the respondents to correct his date of birth at any time. It is settled principle of law that in the absence of Rule, an employee must act within a reasonable time to require the authorities to correct his date of birth and it must be result of an error. The concept of reasonableness would squarely apply even to the facts and circumstances of the present case.

6. In the case of Brigadier Ashok Kumar Singh v. Union of India and Ors. (W.P.(C) No. 9850/2005 decided on 13th July, 2006), a Division Bench of this Court held as under:

8. It is difficult to provide a straight-jacket formula, which would be uniformly

applicable to the cases without reference to peculiar facts and circumstances of each case. Whenever a person joins service and makes declaration of his date of birth in his own handwriting, normally he cannot go back from such an admission unless there were exceptional and compelling circumstances of a bonafide mistake. In the case of *Harchand Singh v. Punjab State* 2004 (4) SLR 349, the court dismissed the petition on the ground that the application for correction had been made after 20 years and the claim of the petitioner was belied to his own earlier documents and in fact, he took two years advantage in entering the Government service as he could not enter the service unless he was 18 years old. In the case of *P.S. Bheemeswara Rao v. Regional Joint Director of Intermediate Education* 2004(3) SLR 347, the court also stated the principle that a party at the fag end of his career cannot seek correction of entries in the service record as entry regarding date of birth in service record is final. Of course, it may have some exceptions.

9. Latches has been a very material factor in accepting or denying a relief to the petitioner raising such a claim. In the case of *Sheo Pujan Lal v. State of Bihar* 2004(1) SLR 593, the court held that a petitioner, who had declared his age in the metriculation certificate and such a date was entered in the service record, later on, cannot be heard to argue that there was a different date of birth more advantageous to the petitioner and he had not declared correct date of birth in his certificate. The Supreme Court in the case of *State of Punjab v. S.C. Chadha* 2004(2) SLR (SC) 741 held as under:

Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Deka* 1970 (3) SCCF 624 : 1971 (2) SLR 14 (SC), this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure." In the case of *Government of Andhra Pradesh and Another Vs. M. Hayagreev Sarma*, the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was inter alias

observed by this Court:

The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth.

xxxxxxxxxxxxxxxxx As observed by this Court in State of T.N. Vs. T.V. Venugopalan, and State of Orissa and others Vs. Ramanath Patnaik, when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in R. Nirubakaran's case (supra) was adopted.

xxxxxxxxxxxxxxxxx In view of the aforesaid, the inevitable conclusion is that the High Court was not justified in interfering with the orders of the Government and directing correction of the date of birth in the service records of the respondent as now claimed by him. The appeal is allowed but without any order as to costs.

10. The above enunciated principles clearly demonstrate that a discretion is vested in the appropriate authorities of the respondents to accept or decline the request of the petitioner for change of date of birth. Unless the discretion is exercised arbitrarily or offends specific rules which are to the benefit of the employee, the court would not normally disturb such discretion. In the present case, the petitioner is a senior officer and was expected to act with greater care in regard to the matter of his service record. The petitioner consistently accepted and acted upon his date of birth being 16.8.51 by his declaration in writing and otherwise. We are unable to see any patent error in exercise of discretion by the respondents and particularly in face of instruction dated 21.4.64 issued by the Government.

7. In support of his contention that respondents are obliged to correct the date of birth, learned Counsel appearing for the petitioner has relied upon a decision of Punjab and Haryana High Court in the case of Bhagat Singh v. Union of India and Anr. 1992 (1) RSJ 384. This decision is of no help to the petitioner. Firstly, the facts of that case were totally different and secondly the plaintiff in that case had relied upon the school certificate, which was considered as primary evidence and suit of the plaintiff was decreed on the basis of evidence adduced before the trial Court.

8. This Court is exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India and there is no document except the identity card issued by the defense authorities, which has been relied upon by the petitioner. Copy of the identity card has been placed on record as Annexure P-1 and this does not bear any date as to when the said identity card was issued and secondly it records the date of discharge of the petitioner as 2nd April, 1967 and his date of birth was

described as 24th December, 1940. This is no evidence much less a primary evidence of the fact that petitioner was born on 24th December, 1940.

9. Learned Counsel appearing for the Union of India, on the directions of the Court had produced, the original record of the petitioner maintained by the army authorities at the time when he was enrolled as a member of the force. We have examined the original records. The Sheet Roll for Combatants of Rajasthan Rifles, shows that the petitioner was enrolled as a member on 23rd September, 1959 and his date of birth was recorded as 1st July, 1940. Being of 19 years of age, the petitioner was enrolled in the army and if he was born in December, 1940, as pleaded now, he obviously would not have got appointment at that time. In the entire record produced by the army authorities, it is nowhere stated that the date of birth of the petitioner is anything different than 1st July, 1940. The petitioner was discharged from army with the same date of birth in the year 1967. He received pension from the army for all the period till 1971 when he was employed with Central Industrial Security Force. The authenticated record maintained by the army, thus, clearly shows that correct date of birth of the petitioner is 1st July, 1940. He has received all the benefits of service on the basis of said date of birth and now cannot be permitted to turn back and plead to the contrary.

10. The present petition in any case suffers from the defect of delay and latches on the part of the petitioner in approaching the authorities as he took no steps firstly from the year 1959 till 1967 in army to get his date of birth corrected and then from the year 1971 to 2000 in Central Industrial Security Force. Thus, we find no merit in this petition. The same is dismissed while leaving the parties to bear their own costs.