
(2002) 04 DEL CK 0136
In the Delhi High Court
Case No : LPA No. 237 of 2001

Maj. P. Gopalakrishnan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Citation : (2002) 04 DEL CK 0136

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Rajiv Shakhddhar, for the Appellant; Jayant Sud, for the Respondent

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—This LPA is directed against the order of the learned single Judge dated February 22, 2001 rejecting the writ petition of the appellant claiming direction to the respondents to rectify his date of birth in the official record and thereafter to grant consequential relief allowing the petitioner to serve the respondent till he reaches the age of actual superannuation. The facts lie in a narrow compass:-

2. The appellant joined government service as a clerk in the postal department. At the time of entry into service he declared his date of birth as 20th January, 1941. Subsequently the appellant claimed that his actual date of birth was 21st January, 1942. He submitted an application before the Joint Commissioner of Government Examinations, Trivandrum for correction of his date of birth entered in the school record. On 23rd December, 1997, the Commissioner of Government Examinations allowed the application of the appellant. As a consequence of the order of the Joint Commissioner for Government Examinations, SSLC certificate of the appellant was rectified and his date of birth was recorded as 21st January, 1942.

3. Some time in the year 1998 the appellant applied to the Government for correction of entry relating to his date of birth in the service record in accordance

with the SSLC certificate and the decision of the Joint Commissioner of Government Examinations. The request of the appellant, however, was rejected. Feeling aggrieved by the rejection of his request, the appellant made a further representation to the concerned authority. The request, on being reconsidered in consultation with the department of Personnel and Training, on 25th January, 1999 was again turned down by the Government. Thereafter the appellant filed a writ petition in this court. The learned single judge noticed that the appellant had filed the application for change of date of birth in the official record after a long delay. The learned single Judge also referred to the note under FR 56, as amended by notification dated 30th November, 1979, which, inter alia, lays down the requisite conditions for effecting change in the date of birth of a government servant.

4. The learned counsel appearing for the appellant submitted that the notification dated 30th November, 1979 on which reliance was placed by the learned single Judge was not applicable to the appellant as the same came into force on November, 1979 while the appellant had joined service in the year 1962. Learned counsel for the respondent contended that the notification has no retrospective operation.

5. We have considered the submissions of the learned counsel for the appellant. It is correct that the appellant joined service in the year 1962 but that does not mean that the notification will not apply to him. Since the notification came into force in 1979 it will apply to the case of the appellant prospectively inasmuch as he could have made an application for seeking alteration of his date of birth recorded in his service record within five years of coming into force of the notification. We are supported in this view by the decision of the Supreme Court in Union of India Vs. Harnam Singh, , wherein it was held as follows:-

"xx xx xx xx xx The CAT in the instant case was of the opinion that the bar of five years could only apply to such Government servants who joined service after 1979, when the amendment came into force and that the said period of limitation would not apply to Government servants who were in service for more than five years prior to 1979.

xx xx xx xx xx The observations of CAT quoted above are neither logical nor sound. Of course, 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 by 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 Government 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 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. The interpretation has to be the one which 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. Indeed, if a Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it 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 a different footing. It would be appropriate and in tune with harmonious construction of 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 intention of the rule-making authority.

xx xx xx xx xx

6. Keeping in view the aforesaid decision of the Supreme Court we are of the opinion that the Government was justified in rejecting the request as the appellant did not apply for the change of his date of birth within five years of coming into operation of the aforesaid notification.

7. Even if the notification was not applicable to the appellant or if there was no such notification the appellant would not have been in a better position as in absence of a rule the government is not under an obligation to consider the application of an employee seeking alteration of his date of birth in the service record. The Supreme Court in Union of India Vs. C. Rama Swamy and others, held that even in the absence of a statutory rule the principle of estoppel would apply and the authorities concerned would be justified in declining the request of the employee to alter his date of birth recorded in his service record. The learned single Judge was Therefore, right in declining to interfere with the refusal of the respondents to effect change in the date of birth of the appellant in his service record. Accordingly the appeal fails and is hereby dismissed.

8. The order passed by us will not stand in the way of the appellant in making a fresh application to the department for change of his date of birth in the official record.