

(1994) 05 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1028 of 1994

Major General Raj Pal Singh	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 12-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1994) 107 PLR 712

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin and Alka Sarin, for the Appellant; Viney Mittal and Raman Walia, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—Petitioner joined as Commissioned Officer in the Army in the year 1960. In the service book of the petitioner, his date of birth at the time of entry into service is recorded as 15.2.1938. As per the case set up by the petitioner, his father, who is no more alive, realized somewhere in the year 1970 that the date of birth of the petitioner is not correctly recorded in the service book. Petitioner, on coming to know about this, started corresponding with the concerned authorities in Pakistan as the petitioner was born in District Sargodha, now in Pakistan. Petitioner who was to retire on 24.2.1994 from the rank of Major General, made an application to the Army Authorities on 15.10.1991 with a request to correct his date of birth. In the application, he stated that his correct date of birth is 4.10.1938 instead of 15.2.1938. After filing of this application, petitioner received his birth certificate from the Indian High Commission, Islamabad. On receipt of this certificate, he made another application on 5.1.1993 asking the Authorities to correct his date of birth as 4.10.1938 as shown in the certificate of birth received from the Indian High Commission. He also attached with the application, corrected matriculation certificate which he had got it corrected in pursuance of a decree obtained

against Punjab University to which admittedly defendants were not parties. The immediate boss of the petitioner i.e. Lt. Col. G.O.C. recommended the case of the petitioner. His case was also recommended by Lt. Col. D.G.M.T. and L.V.K. Sharma, C.S.O/G.S. O-II. However, request of the petitioner and the recommendations made by the aforesaid Officers did not find favour with the competent Authority. Vide order dated 31.5.1993, case of the petitioner was rejected after due consideration of the Rules and Regulations. On receipt of the order, petitioner filed civil suit for mandatory injunction for a direction to the defendants to correct his date of birth in the service record.

2. Defendants, on appearance, contested the suit inter-alia on the ground that the Court at Jalandhar, has no jurisdiction to entertain the suit and also under the instructions/regulations, period of limitation for changing the date of birth is two years from the date of enrollment/commission in the Army. When the application was made in the year 1991, it was much beyond the period of limitation. The request of the petitioner was rightly not accepted by the defendants. Defendants also denied that they are bound by the decree obtained by the Punjab University stating that defendants were not parties to the aforesaid suit.

3. Trial Court, relying upon the instructions dated 1.1.1990, decreed the suit and as a consequence, defendants were directed to alter the date of birth in the service record. Feeling aggrieved against the judgment and decree of the trial Court, defendants filed first appeal before the Additional District Judge, Jalandhar. Vide impugned order, appeal was accepted and judgment and decree of the trial Court was set aside. The Appellate Court not only upheld the objections of the defendants with regard to territorial jurisdiction but also on merits, found that the petitioner was not entitled to get his date of birth corrected. Petitioner has now filed the present civil revision impugning the order of the Appellate Court.

4. Mr. M.L. Sarin, Senior Advocate, counsel for the petitioner contended that the period of limitation of two years for correcting the date of birth was provided for the first time under the instructions dated 1.1.1990. Petitioner having applied to the authorities within this period, defendants were bound to accept his request. He also contended that his application was processed under the instructions dated 1.1.1990. He further contended that judgment against Punjab University is a judgment in rent. The matriculation certificate having been, corrected in pursuance to the decree of the Court, defendants were bound to correct the date of birth.

5. In reply, Mr. Viney Mittal, Advocate, counsel for the respondents, contended that vide instructions dated 1.1.1990, the earlier instructions were clarified and procedure was modified for making an application. He contended that not only the instructions dated 21.4.1964 provided limitation of two years but also the Defence Service Regulations, which were also amended in terms of these instructions, provided (imitation of two years. He placed reliance upon Regulation

138 of the Defence Service Regulations (hereinafter referred to as the Regulations of the Army).

6. Having heard the learned counsel for the parties at length, I am of the view that there is no merit in this civil revision.

7. Regulation 138 of the ibid Regulations as contained in the revised edition of 1962 provided as under:-

"138 ALTERATION OF AGE -

(a) The date of birth or apparent age recorded at the time of enrollment shall be held to be binding and no alteration or amendment thereto will be carried out except with the prior sanction of -

(i) the Chief of the Army Staff in all cases of other ranks and in such of the cases of JCOs wherein change or alteration becomes necessary due to clerical error, involving no re-adjustment of pay and allowances; and

(ii) the Government in cases other than those referred to in sub-para (a) (i) above.

Unless requests for the alteration of the date of birth/apparent age are made within a reasonable time or good grounds are advanced for any undue delay in making such requests, these shall not be considered. No requests made at the time of or after discharge/release/relirement shall normally be entertained."

8. Perusal of sub-para (a)(ii) as contained in the revised edition of 1962, one could make request for alteration of date of birth within reasonable time if good grounds were advanced for any undue delay in making such requests. The Government of India, Ministry of Defence, issued Memorandum dated 21.4.1964 to the following effect :-

"Subject:- Change in date of birth - Of members of the Defence Services.

The undersigned is directed to refer to this Ministry's Memo No. 757/D(MS)/5046-M/D (Coord) dated the 23rd June, 1954 (copy enclosed for ready reference) and to say that no request for change of birth will be entertained after the lapse of two years from the date of (i) grant of first commission in the case of Commissioned Officers, and (ii) enrollment in case of J.C.Os/Other ranks and equivalent in the other two services.

Sd/-(S.V. Iyer) Dy. Secy, to the Govt. of India."

Sub-para (a)(ii) of Regulation 138 was also amended in the year 1968 and the amended sub-para provides as under :-

"(i) Sub-para (a)(ii) be revised as under-

"Unless requests for the alteration of date of birth/apparent age are made within two years of the individual's, enrollment, these shall not be considered. No

requests made at the time of or after discharge/release/retirement will be entertained."

9. As per the revised regulation, limitation for seeking alteration of date of birth is two years. This amendment in the regulation was made in the year 1968. Admittedly, the petitioner joined the Army in the year 1960. Under the instructions of 1964 and regulation of 1968, he was required to apply for correction of date of birth within two years. The explanation that the petitioner came to know in 1970 that his date of birth was wrongly recorded, is no ground to condone the delay in applying for correction of date of birth. Instructions dated 1.1.1990 have no bearing on the facts of the present case as it only reiterates instructions dated 23.6.1956 and 21.4.1964. It was not in supersession to the earlier instructions but provided that application for correction of date of birth must be accompanied with documents such as -

- (a) Matriculation/Higher Secondary Certificate showing the claimed date of birth;
- (b) CTC of first communication, made by officer to the concerned authority for seeking a fresh Matriculation/Higher Secondary Certificate incorporating the claimed date of birth;
- (c) CTC of first communication made by the officer to Gram Panchayat/Municipal Authorities/Registrar for Birth seeking clarification/Information about his claimed date of birth;
- (d) Documentary evidence of date of birth of officer's sisters and/or brothers;
- (e) In the application requesting a change in date of birth, the grounds for seeking a change must be clearly stated."

10. Simply because instructions dated 1.1.1990 provided for sending of documents as contained in the instructions, will not give fresh period of limitation for making an application for correction of date of birth. The judgment in Union of India Vs. Harnam Singh, , relied upon by Mr. Sarin, counsel for the petitioner, does not support the case of the petitioner. In the said judgment, relevant rule providing for limitation of five years for correction of date of birth, was substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, published in the Government of India Gazette dated 15.12.1979 and in that context, it was held that the employees who were already in service before 15.12.1979, would be entitled to apply for correction within five years of the coming into force of the instructions. In the present case, as already noticed above, instructions dated 21.4.1964 and regulation 138 as revised in the year 1968 provide limitation for two years. Application of the petitioner which was made by him in the year 1991, was rightly rejected. .

11. As regards the contention of Mr. Sarin that decree obtained against Punjab University for correcting matriculation certificate of the petitioner is binding on the defendants, cannot be accepted for the reason that the suit in which decree

was obtained against Punjab University, defendants were not a party. In this situation, judgment and decree cannot bind the defendants. It was not a judgment in rem but was a judgment in personnem.

12. Mr. Sarin also contended that the finding of the first Appellate Court with regard to issue of territorial jurisdiction is not correct. Since I am dismissing the civil revision on merits, there is no need to go into this contention of Mr. Sarin.

Consequently, this civil revision is dismissed with costs which are assessed at Rs. 2,000/-.