

Union Of India & Ors vs Kantilal Hematram Pandya on 14 February, 1995

Equivalent citations: 1995 AIR 1349, 1995 SCC (3) 17, AIR 1995 SUPREME COURT 1349, 1995 (3) SCC 17, 1995 AIR SCW 1297, (1995) 2 GUJ LR 1650, (1995) 1 CURLR 726, (1995) 70 FACLR 1023, (1995) 2 LABLJ 659, (1995) 1 LAB LN 779, (1995) 1 LS 27, (1995) 2 SCT 520, 1995 SCC (L&S) 599, (1995) 2 SERVLR 54, (1995) 2 SCR 71 (SC), (1995) 3 SERVLJ 130, (1995) 29 ATC 522, (1995) 2 JT 365 (SC)

Author: M.K Mukherjee

Bench: M.K Mukherjee

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
KANTILAL HEMATRAM PANDYA

DATE OF JUDGMENT 14/02/1995

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
MUKHERJEE M.K. (J)

CITATION:
1995 AIR 1349 1995 SCC (3) 17
JT 1995 (2) 365 1995 SCALE (1) 708

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.

2. The respondent entered Railway service on 1.7.1955 giving his date of birth as 6.9.1930 at the time of entry into the service. That date of birth was entered in his service record. On the basis of the said date of birth, the Railway Administration issued order on 5.2.1988/8.3.1988 for the retirement of the respondent w.e.f. 30th September, 1988, on attaining the age of 58 years. The respondent protested. According to him, his correct date of birth was 4.9.1934 and not 6.9.1930 and he was liable to be retired from service only on 30th September 1992. The order of the Railway Administration directing retirement of the respondent with effect from 30th September, 1988 was challenged by him through OA No. 283/87 before the Central Administrative Tribunal, Ahmedabad. By its order dated 26.8.1988 the Tribunal partly allowed the application directing as under:

"The decision dated 5th February, 1988 of the Competent authority communicated to the petitioner under letter dated 8.3.1988 is hereby quashed and set aside. It is directed that either the general Manager or his delegate C.P.O. of the respondent Railway Administration shall inform the petitioner at the earliest about the documents with a copy thereof, on which reliance is sought by the Railway Administration for arriving at a correct decision for his D.O.B. and permit the petitioner to produce relevant documents in support of his claim and decide the same within 6 months from the date of this order by a speaking order after giving the petitioner a personal hearing in the light of the ob-

servations made herein above and in accordance with law. I have no doubt that the competent authority will decide the matter afresh, without being influenced by the orders passed earlier. It is further ordered that in case the petitioner's claim for correction of birth date is established the competent authority will give effect to such corrected birth date by giving all consequential benefits on the basis thereof

3. In obedience to the aforesaid directions, the C.P.O. of Railway Administration held an enquiry into the claim of the respondent regarding his date of birth. Parties were directed to produce their evidence and were also heard. The Railway Administration in the course of the enquiry by the C.P.O. relied upon various documents including the option forms dated 16th September, 1960 and 20th February, 1980, wherein the respondent had given his date of birth as 6.9.1930 as well as the Provident Fund withdrawal form filed on 20.2.1980 in which again the date of birth had been shown by the respondent as 6.9.1930. It was also noticed that the respondent had not availed of the opportunity given by the Railway Board in 1972 asking all the literate employees serving with the Railways to submit their representations if any, in case, they wanted any correction or alteration in their recorded date of birth, latest upto 31.7.1973. It was found that the respondent had made a representation for the first time on 25.12.1985 and then on 12.3.1987 seeking an alteration of his date of birth and claiming his date of birth to be 4.9.1934. The respondent produced copies of school leaving certificates, issued in 1988, in support of his claim that his date of birth was 4.9.1934. The C.P.O. after analysing the evidence and the material on the record and hearing the parties rejected the claim of the respondent for the alteration

of his date of birth from 6.9.1930 to 4.9.1934 vide order dated 24.1.1989. Aggrieved by the aforesaid decision, the respondent once again moved an application before the Tribunal challenging the order dated 24.1.1989. By its impugned order dated 30th September, 1993, the Tribunal allowed the application and quashed the order dated 24.1.1989. and directed the Railway Administration to alter the, date of birth of the respondent in his service records from 6.9.1930 to 4.9.1934 and since, the respondent had already retired from service on 30.9.1988, the Tribunal directed that the respondent be treated as if he had continued in service from 1.10.1988 till 30.9.1992 and on that basis be given all the consequential benefits including the pay and allowances. The Tribunal took the view that even though vide its earlier order of 26.8.1988 the C.P.O. had been directed to pass a speaking order after giving an opportunity to the respondent to produce his evidence and considering the same, the C.P.O. had not complied with the order in its correct perspective. The Tribunal found fault with the opinion of the C.P.O. that since the respondent had not availed of the final opportunity, provided by the Board asking all the literate employees to submit their representations if any, for correction of their recorded date of birth latest by 31.7.1993, therefore his belated claim for correction of his date of birth suffered from the vice of laches. The Tribunal relied upon a Full Bench judgment of the Tribunal in T.A. No. 1104/86 and 1089/86, wherein it had been held that the Railway Board's letter No. E(NG) ii70-BR/1 dated 4.8.1972, prescribing 31.7.1973 as the last date for making representation, for effecting the change of date of birth, did not have the force of law and that an application by a railway employee for correction of his date of birth, could not be rejected on the ground that it had not been made before the last date prescribed in the Railway Board's letter dated 4.8.1972.

4. Learned counsel for the appellant while assailing the impugned order of the Tribunal submitted that it had labored unnecessarily to get out of the binding judgment of this Court in *Union of India v. Harnam Singh* 1993 (2) SCC, 1621 which was fully attracted to the facts and circumstances of the case. Learned counsel submitted that the date of birth which had been recorded in the service record of the respondent was 6.9.1930 and that till almost the eve of his retirement, the respondent took no steps to have the recorded date of birth altered, even though opportunity had been granted to all literate employees of the Railways to have their date of birth altered, in case the same had been recorded wrongly, till 31.7.1993 and as such, the Tribunal should have refused the alteration of the date of birth of the appellant, which had been claimed after an inordinate and unexplained long delay of more than quarter of a century.

5. In *Union of India v. Harnam Singh* (supra) this Court opined that:

"A Government servant, after entering into service acquires the right retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the

service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. 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 this 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 a n 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 or 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."

6. The Tribunal noticed the judgment rendered by this Court in Harnam Singh's case (supra) but curiously failed to follow it observing:

"Although the respondents neither quoted in the reply nor took the opportunity of bringing the case to our notice. We are bound to respect the ratio of the latest Supreme Court judgment in Union of India and Ors. v.

Harnamsingh, (1992 SC (L & S) - 375), in the matter of date of birth and which over rules CAT Full bench decision in Darshansingh's case. That case which related to interpretation of Note No. 5 to FR-56 (M) which was incorporated only in 1979 provided for request to be made for correction of date of birth within five years from the date of entry in to service. The Hon'ble Supreme Court held that in case of Government servants who entered service prior to 1979, it will be appropriate and in tune with harmonious construction to be held that they may seek the correction of date of birth after 1979, but in any event not later than 5 years after coming into force of the amendment in 1979. The Supreme Court also observed that Darshansingh's case was distinguished by the fact that Shri Darshansingh had not been shown the service book even once during his entire service. The Supreme Court also referred to the General rule that in the absence of date of birth the general principle of refusing relief on the ground of laches and stale claim is generally applied by the Courts and Tribunals We are bound by Supreme Court's decision in Harnamsingh's case but in view of the special features of the instant case, we hold that we are required to

consider the case on merits The approach of the Tribunal is patently objectionable and does not commend to us. It attempted to circumvent the law laid down by this Court on untenable reasons by stating that "we are required to consider the case on merits" without in fact so considering. The law laid down by this Court is binding on all courts and tribunals. Indeed, the law as declared by this Court has to be applied to the facts of a given case and not applied mechanically but we find that in the present case the facts were so eloquent that no scope was available with the Tribunal to get over the opinion expressed by this Court in Harnam Singh's case (supra) and on the facts as established on the record the Tribunal had no option but to refuse relief to the respondent.

7. From a perusal of the record we find that, after joining the service in 1955, the respondent had himself in 1960 as well as in 1980 mentioned his date of birth as 6.9.1930 (as had been recorded on the first sheet of his service record) on various documents including the Provident Fund withdrawal form dated 20.2.1980. No explanation, muchless a satisfactory explanation, has been furnished by the respondent as to why he mentioned the date of birth as late as 20.2.1980 in the Provident Fund withdrawal form, as 6.9.1930 if he was already in possession of such evidence which showed his date of birth as 4.9.1934.

8. On 25.12.1985, for the first time, three decades after the respondent had entered into service, did the respondent make an application for correction of his date of birth without adducing any reliable documentary evidence in support of its claim and without in any manner explaining as to why the respondent had taken no action for all those thirty years. In the enquiry held by the C.P.O., consequent upon the remand of the case, the respondent relied upon three school leaving certificates procured belatedly and containing contradictory assertions. In this connection, it may be noticed that one of the school leaving certificate produced by the respondent shows that he was admitted to the school on 23.4.1949 and had left the school on 12.1.1950, without even completing one academic year of study, The respondent, on the basis of the above certificate, would appear to have joined the school in midsession and left the school again in midsession. Before the C.P.O., the respondent contended that he had to withdraw from the school on account of the death of his father but curiously the Certificate records that he was leaving the school to study in some other school. That apart, the basis on which the entry of date of birth was made in that certificate has not been disclosed. This certificate was produced before the Tribunal also. The copy of the other School Leaving Certificate which was produced by the respondent during the enquiry by the C.P.O. and was also produced before the Tribunal, issued by the Principal of the V.C. Techn. High School, a private school, reads as follows This is to certify that Shri Kantilal Hemantram Pandya's Date of Birth in figures - 4.9.34 (In words) Four September Thirty Four. This certificate is given as per this School Register No. JR. NA3716 dated 19.9.1988 on charging of Rs. 1/- as per rules.

9. A bare or cursory look at the above document shows that the certificate was issued on 19.9.1988, just a few days prior to the date of superannuation of the respondent on the basis of his recorded date of birth and appeared to be a document brought into existence for the benefit of the pending proceedings. The C.P.O., therefore, rightly did not place reliance on the said certificate. The copy of the certificate, as already noticed had been issued in 1988. The Tribunal, as a matter of indulgence

directed the respondent on 15.2.1993 to obtain an affidavit from the Headmaster of the school disclosing the date on which the original certificate was issued as also why the copy was issued in 1988, but no such affidavit was produced for reasons best known to the respondent. In spite of this lacuna, the Tribunal erroneously relied upon the said certificate, the correctness and genuineness of which was not free from doubt to grant relief to the respondent. The material on the record established that after filing the option forms declaring his date of birth as 6.9.1930, in 1960, and after the filing of the Provident Fund withdrawal form on 20.2.1980, the respondent made his representation for correction of date of birth in 1985 and 1987 but failed to substantiate his claim through any reliable and trustworthy documentary evidence. He allowed the matter to rest till he neared the age of superannuation. The respondent slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only. The law laid down by this Court in Hamam Singh's case (*supra*) was, thus, fully applicable to the facts and circumstances of the case of the respondent and the Tribunal failed to follow the same without even pointing out any distinguishing features on facts. Stale claims and belated applications for, alteration of the date of birth recorded in the service book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement, need to be scrutinized carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual. On facts, the respondent was not entitled to the relief which the Tribunal granted to him. The order of the Tribunal is erroneous and the directions issued by it cannot be sustained. We, accordingly, set aside the order of the Tribunal and allow this appeal. No costs.