

Central Administrative Tribunal
Principal Bench

....

O.A. 392/96

New Delhi, this the 9th day of Sept., 1996

Hon'ble Shri A.V. Haridasan, Vice-Chairman (J)

Ashit Basak,
s/o Late Shri Brindabon Bihari Basak,
r/o 614, Laxmibai Nagar,
New Delhi- 10 023.

(By Shri M.R. Bhardwaj, Advocate)

...Applicant

-Versus-

1. Union of India through
The Secretary,
Ministry of Commerce,
Udyog Bhawan,
New Delhi- 110 001.
2. The Secretary,
Department of Supply,
Udyog Bhawan,
New Delhi- 110 001.
3. The Secretary,
Ministry of Finance,
North Block,
New Delhi.
4. Director General of Supplies & Disposals,
Parliament Street, New Delhi.

(Shri N.S. Mehta, Advocate)

...Respondents

O R D E R (Oral)

By Hon'ble Shri A.V. Haridasan, Vice-Chairman (J):

The applicant who retired on superannuation on 30.9.1995 on the basis of his recorded date of birth i.e. 10/9/1937, has filed this O.A. on 19.2.1996 praying that the order dated 21st Sept., 1995 issued by the Secretary, Ministry of Finance, Department of Economic Affairs retiring the applicant w.e.f. 30/9/1995 and the order dated 28/12/1994 issued by the Department of Supplies, Ministry of Commerce, rejecting his claim for alteration of his

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date of birth from 10.9.1937 to 11.8.1940 may be quashed and the respondents be directed to reinstate the applicant in service w.e.f. 1.10.1995 and to allow him to continue in service till he attains the age of superannuation on the basis of his alleged correct date of birth as 11.8.1940. The applicant commenced the service on 7.5.1962 and his date of birth was recorded as 10.9.1937 in tune with the date mentioned in his school certificate. While the applicant was continuing in service believing that his date of birth recorded in the school certificate as also in the service record was correct, alleging that he came across an affidavit sworn by his father and executed before a Magistrate in which the date of birth of the applicant was stated to be 11.8.1940, the applicant made a representation to the authorities for alteration of his date of birth on the basis of the said affidavit. He repeated the representation in the year 1977 also. The request made by the applicant was not acceded to. He further took up the matter after a long gap in the year 1991 and reminded by making further representations in 1992 and 1993 but ultimately he was served with another order rejecting his representations on 28.12.1994. Thereafter by the impugned order Annexure A.1, the applicant was retired from service on 30.9.1995 on the basis of the date of birth entered in his school certificate and official records. The applicant has stated that as his father ~~xxx~~ was a Medical Practitioner and was working in different places, there had been a total lack of communication between him and his father with the result the applicant had no occasion earlier than the year 1975 to know

that his father had executed an affidavit and that there was in fact no delay in his making the representations to the authorities concerned for alteration of the date of birth and that the action on the part of the respondents is not properly considering his representation for change of date of birth is arbitrary and unreasonable. With the above allegations, the applicant has claimed the reliefs in this application.

The respondents in the reply contend that the claim of the applicant is hopelessly barred by limitation as his request for change of date of birth made in the years 1975 & 1977 had been rejected in those years itself. The order at Annexure A-2 dated 28.12.1994 contains only a repetition of what had been told in reply to his earlier representations and that after his retirement the applicant is not entitled to claim reinstatement and continuance in service on the basis of a date of birth which according to him, is correct and that too is ~~based~~ ^{basely} only on the alleged affidavit executed by his father contend the respondents.

After perusing the pleadings and after hearing the learned counsel, I do not find any merit in this O.A. The decision taken by the respondents and conveyed to the applicant contained in Annexure A-2 that it was rather unbelievable that the applicant did not come to know of the existence of an affidavit on such a vital matter concerning his service does not appear to be either arbitrary or unreasonable. If,

as a matter of fact, there was three years' difference in the date of birth of the applicant as recorded in the official records and his true date of birth, even without seeing an affidavit, the applicant himself must have known that the date of birth has incorrectly been recorded and should have taken steps for getting his date of birth altered. If the applicant has believed that his date of birth was correctly recorded in the service record then he will have to live with that throughout the rest of his life. Further, apart from an affidavit alleged to have been executed by his father more than 30 years ago, there is nothing on record to show that the correct date of birth of the applicant is 11-8-1940. For what purpose the applicant's father executed such an affidavit is not known to any body including the applicant. If the purpose was to get the date of birth corrected in the School record and certificate, the matter would have been followed up. The date of birth of an employee is to be recorded in the official records on the basis of the entry on the matriculation certificate. Only in the case of persons who does not possess matriculation qualification, the date of birth is recorded on the basis of an affidavit and other supporting evidence. Undisputedly, until today, the date of birth of the applicant is 10.9.1937 in his matriculation certificate and without that being changed, the applicant could not have been even lawfully requested for alteration of the date of birth in his official/service records. Therefore, there is absolutely no justification for the

applicant for filing this O.A. even after his retirement praying that he should be reinstated in service and allowed to continue in service considering that his date of birth is 11.8.1940 without any proof other than an affidavit executed by his father.

In the light of what is stated above, I find no merit in this application and the same is dismissed leaving the parties to bear their own costs.



(A.V. HARIDASAN)
Vice-Chairman (J)

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