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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~T.A.~~ No. 2525 of 1997
M.A. No. 1241 of 1998

Decided on: 23/1/98

Har PrasadApplicant(s)

(By Shri S.C. Bhasin Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By ~~Shri~~ Mrs. P.K. Gupta Advocate)


CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? 75

2. Whether to be circulated to the other Benches of the Tribunal?


(K. Muthukumar)
Member (A)

(43)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2525 of 1997

M.A. No. 1241 of 1998

New Delhi this the 13th day of September, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Har Prasad
DNN 246, Washerman
COD Delhi Cantt.

....Applicant

-By Advocate Shri S.C. Bhasin.

Versus

1. The Union of India through
Secretary,
Ministry of Defence,
South Block, DHQ
P.O. New Delhi-110 011.
2. The Quarter Master General,
Army HQ, DHQ PO,
New Delhi.
3. The Master General of Ordnance,
Army HQ, DHQ PO,
New Delhi.
4. Commandant
COD, Delhi Cantt.-110 010. ...Respondents

By Advocate Mrs. P.K. Gupta.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant was issued a memorandum in regard to the question of his date of birth. On the basis of his reply, a Board of officers under the respondents was constituted for purpose of ascertaining the correct date of birth in respect of the applicant. The Board gave the finding that at the time of enrolment, he was medically examined and he was assessed to be of 30 years of age by the Medical Officer. His date of birth was accordingly fixed as 1.7.1931. Later on it was found that the date of birth of the individual as recorded in the Service Card is 1.7.1937. It was pointed out in that the Sl. No.05 of the

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service book was despatched by 39 GTC to COD Delhi Cantt. in the year 1966, the date of birth was found originally recorded as 1.7.31 and amended to read as 1.7.37 and the Board found that it was clear from the verification of the ink used that the figure of 31 has been amended to read as 37. It was also stated that the applicant's age was medically assessed on 19.12.1961 as 30 years and as per individual's own statement, he was 30 years of age on that date. After considering the finding of the Board of officers and considering other aspects, the respondents came to the conclusion that the correct date of birth of the applicant should be 19.12.1931. In the light of this, the impugned order deeming him to retire from service with effect from 31.12.1991 was passed. The applicant was also directed to deposit the excess pay and allowances drawn by him, for the overstayal period from 1.1.1992 to 30.5.97. By an interim order of this Tribunal, the operation of the order was stayed.

2. Applicant challenges the impugned order on the ground that he is an illiterate Washerman and has worked for almost 30 years under the respondents and he has been illegally retired. He alleges that the mistake/default is that of the respondents and he has now been asked to pay the excess amounts which cannot be withheld or attached as he had worked for the aforesaid period.

3. The respondents in their reply have stated that during the local audit, the date of birth was found manipulated and the matter was entrusted to Board of

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officers consisting of 5 Gazetted Officers and on the basis of the findings conducted by the Board of officers, they have come to the conclusion that the date of birth of the officer to be taken as 19.12.1931 and accordingly, the applicant was deemed to have retired on 31.12.1991, when the impugned order was passed.

4. We have heard the learned counsel for the parties and have perused the record.

5. It is an admitted position that there is no documentary evidence in regard to the date of birth of the applicant. He relies merely on the identity card issued to him which shows his date of birth as 7.8.1937. The date of birth as recorded in the identity card cannot be taken as a valid document. The Board of officers which had examined the service book had found that the date of birth which was originally recorded as 1.7.1931 was amended to read as 1.7.37 and from the verification of ink, the original date was seen to have been amended. The applicant has not produced any material in support of such amendment and, therefore, his correction in the date of birth cannot be taken to be duly authorised under the rules. In the circumstances, the Board of officers taking into account the original medical officer's assessment of his age and his own statement concluded, that the correct date of birth should be taken as 19.12.1931. According to the relevant provisions relating to the declaration of the date of birth, if the person is able to state only his approximate age, his date of birth is assumed to be

corresponding date after deducting the number of years representing his age from the date of appointment. Taking into account his date of appointment on 19.12.1961 and deducting the number of years representing his age, his date of birth was assumed to be 19.12.1931. We do not see any infirmity in the aforesaid procedure. The applicant was also duly heard in the enquiry and there is no allegation of any mala fide or denial of natural justice to the applicant. In the light of this, we do not find any ground to interfere with the impugned order deeming the applicant to have retired on 31.12.1991. To some extent the respondents are also responsible for not verifying the service book entries from time to time and allowed the matter to be raised at a much later date. However, since the applicant had worked and drawn his salary in good faith for the period from 1.1.1992 to 30.5.97 and taking into account the facts and circumstances of the case and also the fact that he is a low paid employee, we direct as follows:-

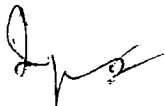
We quash that part of the impugned order directing him to refund the excess payment. The respondents are also directed to ascertain the dues if any to be paid to the applicant in accordance with the rules, and pass appropriate speaking order in this behalf within a period of 3 months from the date of receipt of a copy of this order. The amounts due shall also be paid within this period to the applicant.

6. The application is disposed of on the above

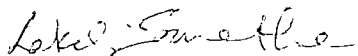
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lines and there shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)



(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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