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Central Administrative Tribunal, Principal Bench

Original Application No.124 of 2000

New Delhi, this the 5th day of July, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)

Hon'ble Mr.Shanker Raju, Member(J)

Lalit Mohan s/o Shri Devi Prasad,
Contingency paid Chaukidar (casual labour
with Temp.Status) Post Office Sonai
(Distt.Mathura) (Postal Deptt.).
Residential Address Vill and PO Sonai,
Distt.Mathura (U.P.) - Applicant

(By Advocate Shri D.P.Sharma)

Versus

1. The Union of India through Secretary,
Ministry of Communication (Deptt. of
Posts), New Delhi.
2. The Sr.Suptd Post Offices, Mathura Dn.
Mathura (U.P.)
3. The Sub Divisional Inspector Post North
Sub Dn Mathura (U.P.) - Respondents

(By Advocate Shri N.S.Mehta)

O R D E R

By V.K.Majotra, Member(Admnv) -

The applicant has been working as contingent paid Chaukidar, Sonai Post Office (Mathura) with effect from 15.1.1980. He was granted temporary status of Group 'D'. As per entries in the Government records viz. service book and gradation list the date of birth of the applicant is 25.8.1948. Thus, his retirement is due on 31.8.2008. However, respondent no.3 the Sub Divisional Inspector Post, North Sub Division, Mathura has retired him with effect from 15.6.1996 vide Annexure-A-1 by altering his date of birth to 10.2.1935. The applicant has alleged that action of respondent no.3 in altering his date of birth from 25.8.1948 to 10.2.1935 is illegal, unjust and arbitrary as no show cause notice had been issued to him. As such he is entitled to continue in service till 31.8.2008, when he attains the age of 60 years prescribed for retirement. The applicant has sought quashing of impugned order

112

35
:: 2 ::

dated 15.6.1996 (Annexure-A-1) and direction to respondents to treat him in continuous service from 5.6.1996 and grant him all consequential benefits.

2. In their reply respondents have admitted that the date of birth of the applicant as recorded in the service record is 25.8.1948 and that his retirement as such was due on 31.8.2008. However, a complaint was received from one Mr.C.P.Singh, Advocate, Mathura that the applicant's date of birth was 10.2.1935. An enquiry was made and the allegation was found to be true. Therefore, applicant's date of birth was corrected and recorded as 10.2.1935. Accordingly he was retired vide Annexure-A-1 on 15.6.1996.

3. We have heard learned counsel of both sides and perused the material on record. The learned counsel of applicant drew our attention to Govt.of India's instructions on date of birth and its subsequent alteration stating that the prescribed procedure for alteration of date of birth has not been followed in the present case nor has the applicant been served any notice and the respondents did not have any authority to alter applicant's date of birth after a long period without any notice to him. He relied on the decision in the case of State of Orissa Vs.Binapani Dei, AIR 1967 SC 1269. The learned counsel of respondents admitted that initially applicant's date of birth had been recorded as 25.8.1948 on the basis of his 'Janam Patri'. When the aforesaid complaint on enquiry was found to have been established the correction in his date of birth was made, however, no show cause notice was issued to the applicant.

4. When aforestated complaint was made on 14.10.1994 (Annexure-VIII), During the enquiry school leaving certificate regarding the applicant was obtained

from Basic Shiksha Parishad, Mathura on 1.10.1994 in which applicant's date of birth was mentioned as 10.2.1935 (Annexure-IX). Basically, on the basis of this document applicant's date of birth was altered to 10.2.1935 and he was retired on 15.6.1996. We find from the record that applicant joined service on 15.1.1980. Statement Annexure-A-3 relating to his date of birth entry in service, etc. was ~~made~~^{lb} somewhere in 1991. In the service book Annexure-A-2 his date of birth was recorded as 25.8.1948. According to respondents they had sought information and proof from the applicant somewhere in 1991 relating to his date of birth. The applicant made application Annexure-VI and enclosed a copy of his 'Janam Patri' Annexure-VII in which his date of birth was mentioned as 25.8.1948. On the basis of this document entries relating to his date of birth were made in the Government records. This means that the respondents made entries relating to the applicant in his service book etc. somewhere in 1991 instead of immediately after he joined service in 1980. However, after a long period of 15 years after his joining the service the respondents altered his date of birth and retired the applicant without issuing any show cause notice.

5. Note 5 below F.R.56 as amended by D.P.& A.R. Notification No.19017/7/79-Ests.A dated the 30th November, 1979 published as S.O.3997 in the Gazette of India dated the 15th December, 1979 and takes effect from that date, states as follows:-

".....The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and

Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if-

- (a) a request in this regard is made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake had occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any school or university or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

Whereas as per these instructions alteration of date of birth of a Government servant can be made with sanction of the Department of the Central Government, in the present case alteration in date of birth of the applicant seems to have been made at the level of Sub Divisional Inspector, on the basis of which the applicant has been retired.

6. In the case of **Binapani Dei** (supra) it has been held that orders involving civil consequences have to be passed consistently with rules of natural justice. In that case a show cause notice was issued to the employee, however, without recording any evidence the order dispensing with his services was passed. In the present case even a show cause notice has not been issued and respondents have unilaterally proceeded to correct the date of birth of the applicant without giving him any show cause notice and without giving him an opportunity to defend his case. The change in the date of birth has prejudicially affected the interest of the applicant and is violative of one of the fundamental principles of natural justice as it has been carried out without a show cause notice.

7. Placing reliance on the above case as well as **S.Nagasundaram Vs. Union of India**, (1991) 17 ATC 833 and taking into account the facts and circumstances of

201

the present case in which the applicant's date of birth was changed to his disadvantage by several years after he had already put in service of about 15 years and without issuing him any show cause notice resulting in his premature superannuation, we hold that action of the respondents in altering applicant's date of birth without issuing him any show cause notice and retiring him prematurely is arbitrary and in violation of the relevant Government instructions on the subject as also the principles of natural justice.

8. In the result, the O.A. is allowed. The impugned order dated 15.6.1996 retiring the applicant with effect from 15.6.1996 and action of the respondents in changing applicant's date of birth from 25.8.1948 to 10.2.1935 are quashed and set aside. The respondents are directed to reinstate the applicant with immediate effect and grant him all the consequential benefits within a period of four months from the date of communication of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (Admnv)