

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.2380/2000

New Delhi this the 12<sup>th</sup> day of January, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER(A)  
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri B.L. Kaushal,  
S/o Lt. Shri Ram Gopal,  
R/o Z-1/2, Model Town,  
Delhi-110009.

-Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. Government of National Capital Territory of Delhi,  
Through its Chief Secretary,  
5, Sham Nath Marg,  
Delhi-110054.
2. The Registrar,  
Registrar of Co-operative Societies,  
Govt. of NCT of Delhi,  
Parliament Street,  
New Delhi-110001.
3. The Controller of Accounts,  
Govt. of NCT of Delhi,  
Mori Gate,  
Delhi-110006.

-Respondents

(By Advocate: Mrs. Jasmine Ahmed)

O R D E R

**Mr. V.K. Majotra, Member (A)**

The applicant is aggrieved allegedly by the arbitrary and illegal action of the respondents in withholding his pensionary and terminal benefits, though he had submitted all relevant documents to the respondents on 30.6.2000. The applicant retired on superannuation w.e.f. 31.8.2000. The respondents had issued a Memorandum against the applicant on 2.8.2000 (Annexure A-4) seeking clarification on various aspects of the alleged change of date of birth from 31.8.39 to 31.8.40. The applicant has claimed that neither any disciplinary nor judicial proceedings were/are pending against him on his date of retirement. He has referred to various seniority lists issued by the respondents on 30.3.1968, 4.12.1980 & 23.11.92 (Annexure A-8 Colly.) where his date of birth has

been mentioned as 31.8.1940. The applicant is aggrieved that the issue of his date of birth has been racked up after decades and made the basis for withholding his entire terminal benefits. The applicant has sought direction to the respondents to release his entire terminal benefits along with interest.

2. The respondents have stated in their counter that the Accounts Officer of the Department discovered at the time of preparation of pension papers/case of the applicant that the date of birth originally mentioned in the service book as 31.8.39 had been changed to 31.8.1940. The respondents had made query to the Sales Tax Department where the applicant initially worked but the Sales Tax Department could not trace the old records. According to the respondents "the change of Date of Birth entry has purportedly been attested by Shri B.K. Kaul, Supdt., Sales Tax Department and who has retired 10 years back. Possibility of attestation of Shri B.K. Kaul in original entry and some body changed the entry later or forgery of sign of Shri B.K. Kaul cannot be ruled out".

3. We have heard the learned counsel of both sides and perused the material available on record.

4. Learned counsel of the respondents also filed a letter dated 8.1.2001 addressd to her stating that the respondents have agreed for payment of provisional pension, provisional leave encashment and provisional UTGEGI amount and provisional GPF amount taking the date of retirement as 31.8.97, subject to final outcome of the police enquiry. Thus, PAO has been requested for authorisation of provisional pension. The learned counsel of the respondents stated that the applicant joined the DASS service only three months before his retirement, therefore, the respondents did not have information about the change

of date of birth by the applicant. On being asked, the applicant failed to give any evidence regarding the time and basis of change of date of birth. On the apprehension of forgery in changing the date of birth, the respondents did not release the retiral benefits to the applicant. The learned counsel of the applicant stated that Annexure A-8 colly. which are seniority lists relating to the service of the applicant dated 30.3.1968, 4.12.1980 and 23.11.92, all indicate 31.8.40 as applicant's date of birth. Applicant had made representations for release of his pensionary benefits. These averments have been made in para-4(H) of the OA which have been admitted and not denied by the respondents. In Annexure A-5 dated 4.8.2000, the applicant had informed the respondents that due to terrible flood in Model Town on 5.9.78 when his house was flooded under 16-20 feet of water, all his documents got destroyed and, therefore, he was not in a position to produce any documentary proof in support of his date of birth. It was also stated that he made an attempt to obtain a certificate regarding his date of birth from the Municipal Corporation of Amritsar where he was born but he was not able to get the same, the record being very old (Annexure A-6). The learned counsel further drew our attention to Rule 69 of CCS(Pension) Rules,1972 contending that grant of cent percent pension is mandatory even if departmental or judicial proceedings are continued. In the present case, there are no departmental or judicial proceedings against the applicant.

5. We find that seniority lists issued by the respondents from time to time since 1968 have been showing date of birth of the applicant as 31.8.1940. Whereas the Sales Tax Department where the applicant started his service failed to trace out the old records, doubting of attestation of change in date of birth by the

Superintendent, Sales Tax Department who retired 10 years ago and apprehending forgery etc. cannot be made basis for withholding the retiral benefits of the applicant. The respondents have failed to show any rules authorising them to withhold retiral benefits when there is no departmental/judicial proceedings pending against the applicant. Authorisation of payment of provisional pension and other benefits taking the date of retirement of the applicant as 31.8.97 is obviously arbitrary and illegal.

6. Having regard to what is stated above, the OA is allowed and the action of the respondents in withholding the entire terminal benefits of the applicant is declared as illegal and arbitrary. The respondents are directed to release the entire terminal benefits of the applicant finally and not provisionally within a period of one month from the communication of this order treating his date of birth as 31.8.40 and date of retirement as 31.8.2000 with liberty to the respondents to take appropriate action against the applicant in accordance with rules/law for misconduct/offence, if any. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

cc.

V.K. Majotra  
(V.K. Majotra)  
Member (A)