

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

RA 298/93 IN OA 1004/93

Date of decision: 4-10-1993

In the matter of:

Shri Jagdish Singh .. Applicant

Versus

Union of India & Others .. Respondents

CORAM:

Hon'ble Shri C.J. Roy, Member (J)

For the applicants: Shri Shri B.S. Mainee, Counsel

For the respondent: Shri H.K. Gangwani, Counsel

ORDER

This review application is filed by the respondents against the judgement delivered on 15.7.93 in the OA 1004/93 the operative portion of which is as follows:

"Therefore I hold that the acts of the respondents in issuing notice to retire the applicant without holding any enquiry and not at all by producing the service record and without any notice changing his date of birth after a long time, is not only arbitrary but also causes vast prejudice to the applicant by making him to lose the right to serve until he is superannuated according to his actual date of birth.

Following the guidelines laid down by the Hon'ble Supreme Court as stated supra, I feel that the applicant has made out a case very strongly in his favour and I, therefore, set aside and quash the impugned order dated 19.3.1993. No order as to costs".

2. The stand taken by the respondents for filing this RA is that the original seniority list of 1980 could not be produced in Court earlier as it was not traceable at that time despite best efforts and now has become readily

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available and a photocopy of the same is now produced at Annexure A-I containing the date of birth of the applicant as 18.5.35. It is further averred by the respondents that the applicant's representation against the seniority list of 1992 is still pending for disposal. Therefore the respondents claim that there is an error apparent on the face of the record and therefore the judgement dated 15.7.93 may be reviewed or recalled or modified.

3. It may be pertinent to mention here that the Annexure A-4 produced by the applicant is the photocopy of Matriculation Certificate of March 1953 Session bearing Roll No.31443 issued by the Punjab University, Chandigarh on 4th November, 1958, the applicant's date of birth is written in words and figures as "Eighteen May One thousand Nine hundred and Thirty Seven (18.5.1937)". This certificate, which is not corrected or forged, helps the applicant respondents.

4. Annexure A-2 is the seniority list issued on 15.3.80 in which the applicant's name is at Sl.No.30 and his date of birth is clearly written as 18.5.37 and there is no change in the month and year. Annexure A-3 is the seniority list in Hindi issued on 25.6.92 wherein the applicant's name is shown at Sl.No.17 and his date of birth/retirement is corrected as 18.5.37/31.5.95 respectively and duly initialled. It was not placed before me as to who corrected and initialled the same. But the applicant claims that it was corrected and initialled by the competent authority.

5. Even now the respondents in the review application have filed only zerox copy of the seniority list issued on 15.3.80 showing the date of birth as 18.5.35. How did they secure the zerox copy now, when they have earlier mentioned

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that the service record is lost. Even if it was found in the personal files of other persons, this does not establish the contention of the respondents that the applicant has tampered with the date of birth and it can not be accepted because they have not produced the service record in support of their claim.

6. It is clearly mentioned in the Tribunal Docket order dated 7.6.93 that "The service register is not produced. When specifically asked, Shri Gangwani stated that there need not be any direction since it is not available with them. Shri Gangwani however stated that the arguments heard may be taken as final hearing and both the sides concluded the arguments".

7. When the service record is not produced, how this Tribunal could pin point that it is tampered, if at all it is tampered; but the applicant claims that the alteration is done and signed by the competent authority. The respondents' producing the zerox copy of the seniority list now will not help to review the applicant's case. They have not issued any notice, conducted any enquiry, whereas they ought to have issued a notice and conducted an enquiry and taken disciplinary action against the applicant, if it is found that the matriculation certificate was tampered with. Without giving him any opportunity, how could they give order defeating his right? There are a number of decisions on this point.

8. As per Order 47, Rule 1 of CPC, a review application can be filed only (i) when some new material which is not available with the applicant at the time of the hearing and that comes into possession subsequently and which has a

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bearing on the case, or (ii) that there is an apparent mistake on the face of the record that has crept in the judgement or (iii) if there is any sufficient reason. None of these conditions is noticed in the present RA.

9. Also, as per AIR 1975 - SC 1500, a review of the judgement is a serious step and a reluctant resort to it is proper only where a glaring omission or a patent mistake or a grave error has crept in earlier by judicial fallability, whereas no such thing has occurred in this case.

10. While delivering the above stated judgement, I have patiently heard the arguments and averments made by both the counsel during the hearing and carefully gone through the records and material placed before me. Again, a review can not be converted into an appeal by reurging the same points again and again emphatically.

11. Under the circumstances, mere producing of zerox copy now as it was not available earlier at the time of argument, can not be sustained. The other points raised in the RA have already been considered carefully while disposing of the OA and a conscientious decision was taken. The respondents have not made out a proper case for review.

12. In view of the above, the RA is dismissed on merits with no order as to costs.

W. Roy
(C. J. ROY) 4/10/93
Member (J)