

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

O.A. NO. 2126/1989

DATE OF DECISION 1-1-92

SHRI DULI CHAND

...APPLICANT

VS.

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI G.D. GUPTA

FOR THE RESPONDENTS

...SHRI P.H. RAMCHANDAN

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not Y

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant under Section 19 of the Administrative Tribunals Act, 1985 assailed the retirement of the applicant w.e.f. 30.11.1988 stating that his actual date of birth is 1.12.1936, though it is wrongly recorded in the service record as 1.12.1930 and he is aggrieved by non-correction of his date of birth by the respondents for which he has made several successive representations. In this application,

1.1.92

Judgement pronounced
to-day.

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the applicant has prayed for the following reliefs:-

(A) allow this application of the applicant with costs;

(B) issue such appropriate direction or directions, order or orders

- (i) quashing the letters dt. 23rd April, 1968; 29th September, 1988 and 28th October, 1988 rejecting the request of the applicant to change the date of birth from 1st December, 1930, which had been unilaterally entered in the Service Book of the applicant to 1st December, 1936;
- (ii) declaring the applicant entitled to have his date of birth corrected from 1st December, 1930 to 1st December, 1936;
- (iii) also declaring the applicant entitled to continue in the service upto the date of superannuation according to his correct date of birth, i.e., 30th November, 1994 and consequently entitled to be reinstated into service with retrospective effect from the date from which he had been retired unilaterally with all consequential benefit such as arrears of pay, seniority, promotions, if any, etc. to which he would have been entitled had he not illegally been retired from service with effect from 30th November, 1988;
- (iv) directing the respondents to correct the date of birth of the applicant in his Service Book from 1st December, 1930 to 1st December, 1936 and allow him to continue in service upto the date of superannuation, i.e., 30th November, 1994 with all consequential benefits, such as, arrears of pay and allowances, seniority, promotion, if any, etc. to which he would have been entitled had he not illegally been retired from service with effect from 30th November, 1988;
- (v) also directing the respondents to reinstate the applicant into the service with retrospective effect from the date from which he had been unilaterally retired with all consequential benefits, such as, arrears of pay and allowances, seniority, promotions, if any, etc., to which he would have been entitled had he not illegally been retired from service with effect from 30th November, 1988.

2. The facts of the case are that the applicant joined the respondents as a Peon in the Office of Joint Controller of Defence Accounts (Funds) in 1958. It is stated by the applicant that at the time of entering into service, he has given his date of birth as 1.12.1936 and in support thereof

he submitted a school leaving certificate. The applicant for the first time in November, 1976 learnt of the wrong entry in the Service Book as 1.12.1930. The applicant was informed about the rejection of that representation in November, 1967. In October, 1984, the applicant was promoted as a Clerk. The applicant again applied for the correction of his date of birth in August, 1988 (Annexure A5). The applicant was informed on 29.9.1988 about the rejection of his representation (Annexure A9) and this is the order assailed before us. The respondents contested the application and took the preliminary objection that the application is misconceived and is contrary to the facts. The date of birth of the applicant is 1.12.1930 at the time of his recruitment in Government service based on his middle school certificate produced by him at that time. It is stated that the applicant himself recorded the same date of birth in the form of Verification Roll in his own hand-writing. At the time of the recruitment of the applicant, his date of birth was 1.12.1930 and the applicant himself signed all the entries of the Service Roll on 12.3.1958 (Annexure R1). Not only this, the applicant submitted a form of Verification Roll containing his detailed particulars including the date of birth and duly signed by him on 15.4.1958. In this the applicant has himself given his age as 27 years and 4 months on 15.4.1958. The applicant also stated therein that he passed the middle

school from K.V. Inter College, Machhra (Meerut) (Annexure 32). The prescribed age for entry in the Government service at that time was 18 to 25 years. The applicant being a Scheduled Caste candidate was given age relaxation at the time of his initial entry in service and this fact has been duly recorded at the relevant time at p-2 of the Service Book. Had the applicant's date of birth recorded as 1.12.1936, he would not have been granted any age relaxation in 1958 at the time of initial entry in the Government service. It is stated that the applicant has again signed the Service Roll on 18.6.1965 and he never raised any objection regarding the date of birth. Not only this, for the verification of the date of birth recorded in the school leaving certificate of the institution filed by the applicant, an officer was deputed to K.V. Inter College, Machhra (Meerut) to verify the school register maintained for the purpose by the Principal of the school. The report of the officer indicated (Annexure 33) that record had been tampered with. As such, according to the applicant, the duplicate school leaving certificate obtained by the applicant can not be taken to be a genuine one. Thus in view of the above facts, the respondents stated that the application be dismissed as devoid of merit. The applicant has filed the rejoinder to the above reply of the respondents. In the rejoinder, most of the points taken in the application have been reiterated stating that the correct date of birth of the applicant is

1.12.1936 and not 1.1.1930. However, the applicant in para-1C stated, "In fact, initially the date of birth of the applicant was recorded as 1st December, 1930 in the school record and, later on, the father of the applicant had given an affidavit and on that basis the correction had been made in the school record and the date of birth was accordingly corrected as 1st December, 1936 and on that basis the School Leaving Certificate had been issued in September, 1957." In the rejoinder for the first time, the applicant stated that in the High School examination, the applicant gave his date of birth as 1.12.1936 and in the High School Certificate also, the date of birth is recorded as 1.12.1936.

3. The learned counsel for the parties have been heard at length. The original school leaving certificate has not been filed. In para-2 of the application, it is admitted to the applicant that the original school leaving certificate showing the date of birth of the applicant as 1.12.1936 was returned to him after verification of the date of birth. The applicant has not filed that original certificate. In this context, the averment made in the rejoinder has to be read where the applicant has stated that initially his date of birth was recorded in the school as 1.12.1930. But subsequently, his father gave an affidavit and got this entry corrected regarding date of birth as 1.12.1936. This fact

has not been stated by the applicant in his Original Application and has come in reply filed by the respondents where they have clearly stated that the applicant in the Service record in his own hand has written his date of birth as 1.12.1930 and also in the Verification Roll, filled in the hand writing of the applicant as 1.12.1930. Thus it is not denied by the applicant that initial record in the school was showing his date of birth as 1.12.1930. The report of the officer appointed by the respondents to verify from the school records, the actual date of birth of the applicant becomes very much material and the respondents have annexed this report to their counter as Annexure R3 which is reproduced below :-

"I, the undersigned reached Machra on 4.12.89. Machra is a village which is about 50km. from Meerut. On reaching Machra by bus I hired rickshaw to K.V. College which is about 3 km. from bus stand. I went straight to the Principal and requested him to show their records of entries in respect of S.R. Register for the year 1946-47 batch. From their records, I traced the name of Shri Buli Ram. The date of birth's entry in their record shows it as 1.12.1936 but the 1936 clearly seems to be amended because there is difference in ink in the Zero of 1936 and the tail of 1936. A few professors who were there during my verification including the Principal himself unanimously agreed that this was clearly an amended case. I told the Principal that the record may be kept in safe custody to be produced as and when the same is demanded to which the Principal has agreed."

4. It all goes to show that 1.12.1930 was the date of birth of birth given by the father of the applicant at the time of his admission in village school in 1946. The applicant took education only of Class-VI, VII & VIII and left the school in

1949 (Annexure A2). This does not show as to when the date of birth originally recorded as 1.12.1930 was changed to 1.12.1936 and the burden lay heavily on the applicant to establish this fact either by the affidavit of his surviving father, if any, or of the institution where he attended. Normally, the record for the correction of date of birth is always annexed with the application form for admission in the institution and the Scholar Register and transfer certificate should also indicate a correction in that regard under proper signature. The duplicate Scholar Register and transfer certificate form (Annexure A2) filed by the applicant do not show any such thing. Thus the applicant could not establish that the Scholar Register which he has filed along with this application (Annexure A2) is the only genuine document of his date of birth and it, therefore, becomes a suspicious document.

5. The applicant has made several representations to the authorities. As early as in 1968, the applicant was informed vide Memo dt. 23.4.1968 (Annexure A4) that when once the date of birth has been verified at the time of his appointment, it is immaterial if the individual has lost his original certificate and so his request was rejected.

Against this fact, the applicant has stated in the rejoinder that he has filed his original Scholler Register and transfer certificate with the High School form while to the department he represented that he has lost the original Scholler register and transfer certificate. Moreover, the cause of action arose to him in 1968 and he had already passed the High School Examination in 1958, so he had a valid ground to represent and to come for legal redress of his grievances at that relevant time ^{in 1936} rather waiting upto the time of retirement.

6. It appears from the grounds taken in the Original Application that the applicant has placed reliance on the original school leaving transfer certificate, but that certificate as per discussion above has lost much of its sanctity because the evidence of the correction of date of birth from 1.12.1930 to 1.12.1936 has not been furnished. No ground has been taken that the age of the applicant is recorded in the High School Certificate as 1.12.1936. It was only in the rejoinder that the applicant filed a certified photocopy of the High School Certificate of U.P. Board of High School and Intermediate Education. This certificate shows that the applicant passed 1958 examination held in the month of March-April, 1958 and he appeared from Devnagri

Intermediate College, Meerut Centre. This certificate has its date as December, 1958. The applicant entered in the service in June, 1958. In fact, the applicant while in service appeared in any such examination, he should have got his application form forwarded by the employer. Secondly, it appears that in the very first representation in 1967, the applicant though he has passed Higher School Examination did not refer to the date of birth recorded in the High School Certificate and only referred to the duplicate copy of school leaving certificate referred to above. Thirdly, it appears that the name of the applicant in the Scholar Register and in transfer certificate is Duli Ram, while the name in the High School Certificate of 1958 is Duli Chand. Though the applicant has been promoted to Class-II as Clerk in 1984 and also got his name changed from Duli Ram to Duli Chand, but he never tried to establish as a fact that the date of birth which was earlier recorded as 1.12.1930 in the institution first attended by the applicant was got changed to 1.12.1936. Normally the High School Certificate should be given due weight as an evidence of age. But in the present case, on the applicant's own showing in the rejoinder in para-10 quoted above, the date of birth earlier recorded in the school was 1.12.1930 and the respondents through an officer got an enquiry conducted and the report thereof dt. 5.12.1989 (Annexure R3) goes to show that there is some tampering with the year of birth. Normally, if the

correction is made and the date is amended by striking the wrongly written date and over-writing the correct date with due signature. This was not shown in the original Scholar Register where there was a clear evidence of tampering on the digit zero of 1930 to read 6 as 1936. Thus this High School Certificate has lost much of its importance.

7. From another angle also when the applicant joined the service in 1953, he was given a relaxation of age and that is recorded in his Service Book. It is not the case of the applicant that the date of birth was recorded casually by some official without seeing any document. It is the case of the applicant that he furnished the original Scholar Register Certificate in proof of his age and that was returned to him. If this was the fact, then there was no necessity for taking permission for relaxation of age in the case of the applicant and that adds weight to the contention of the respondents that the date of birth in 1936 has been wrongly averred. When an original document becomes suspicious, then the further reliance on such a document also loses its genuineness. The case of the applicant is that he has filed the original with the affidavit for appearing in the High School Examination. Though the fact has not been established because of difference of name in the Scholar Register being Duly Ram and in the High School Certificate being Duli Chond, yet how it was changed from 1.12.1930 to

1.12.1936 remains unexplained and goes much against the applicant. (See *Manoranjan Dass Vs. Union of India*-1990(12)ATC 10 Guwahati, where High School Certificate was held inadmissible in proof of age).

3. Though the applicant has a right to get his date of birth corrected at any time and reliance has also been placed on the case of *Hira Lal Vs. U.O.I.* (1987 (3) ATC 130), but at the same time when there is unexplained conduct of the applicant, then it creates certain doubts. In this case, the request for change of date of birth was rejected in 1968 (Annexure A4) and after that, the applicant kept quiet, though he had High School Certificate with him. He was promoted as a Clerk in 1984 and after 4 years, in August, 1988, he makes another representation, but without mentioning that he has High School Certificate in possession, only referred to the Scholar Register Certificate. He was again informed by the letter dt. 29.9.1988 (Annexure A9) that no correction is possible in his recorded date of birth which is 1.12.1930. However, a demand was made from the applicant of the Scholar Register and transfer certificate. In reply, the applicant has intimated the department that what he furnished at the time of recording his date of birth in the Service record was an eighth pass certificate and he be permitted to move the court of law (Annexure A11). The respondents have also filed the Service Record of the applicant and the same has been perused and also shown to the

learned counsel for the applicant. The applicant has filed this application in the year 1989 when he already stood retired from service on 30.11.1988. The conduct of the applicant, therefore, goes to show that he has never been serious for the cause for which he has so seriously pleaded subsequently after his retirement.

9. Even in the application which has been filed, no shelter has been taken by the applicant of the High School Certificate and it is in the rejoinder only that the applicant has filed the same. It is not a case of an illiterate person.

10. In view of the above discussion, I am of the opinion that the present application is devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

J. P. SHARMA
1-1-92
(J.P. SHARMA)
MEMBER (J)