

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

O.A. No. 1287/1988

DATE OF DECISION. 18.11.97

Shri Munna Lal Applicant

U.O.I. & Ors. Respondents.

For the Applicant Sh.M.S.Mann, counsel

For the Respondents Sh.N.S.Mehta, counsel

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Hon'ble Shri S.R.Sagar, Member(J)

The short question involved in this application under Section 19 of the Administrative Tribunals Act, 1985 is regarding date of birth of the applicant which is the basis for retirement on superannuation.

The applicant's case is that at the time of his appointment on 9-9-51 as Monument Cleaner, his date of birth was recorded as 9-11-29. Subsequently in April, 1957, the applicant filed an affidavit before department stating therein that his date of birth was 9-11-29. Pursuant to above, seniority lists in (Annexure-B) mentioning date of birth of the applicant as 9-11-29 was issued. But all of a sudden, the impugned order dated 30-6-1988 (Annexure-A) was issued by the respondents retiring the applicant from the Government service on superannuation w.e.f. 30-6-1988. The applicant has therefore, prayed for quashing the impugned order dated 30-6-1988 (Annexure-A) with direction to the respondents to retire the applicant on superannuation on the basis of his recorded date of birth as 9-11-29.

The respondents have resisted the application, they have disputed the date of birth of the applicant as 9-11-29 and have contended that at the time of his appointment on 9-9-51, the applicant's age was recorded as 24-years by appearance on the date of appointment and this was agreed by the applicant himself by putting his signatures in his Service Book agreeing to the validity of the information filed in the first page of his Service Book. The respondents have admitted that the applicant filed an affidavit on 9-4-1957 declaring that his date of birth was 9-11-29. But it is vehemently denied that the date of birth declared by the applicant was accepted or admitted by the department. The date of birth of the applicant as 9-11-29 has been shown erroneously in the seniority lists. It has further been contended that some of the employees who were not allowed to change their date of birth as declared by them at the time of entry in service by furnishing affidavits filed writ petitions in the High Court of Delhi and the Hon'ble High Court up-held the retirement orders in their judgement dated 28-1-1985 (Annexure R-I). In pursuance of the order of the Hon'ble High Court, in other cases, directing that the correct date of birth of those employees, who have filed affidavits, their date of birth be redetermined. Accordingly an enquiry was conducted by the enquiry officer appointed by the Director General, Archaeological Survey of India, Enquiry Officer called upon the applicant through notice dated 19-5-1985 to submit documentary evidence with respect to their date of birth, but no documentary evidence was produced by the applicant and, therefore, the correct date of birth of the applicant was decided on ^{the} basis of

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the entry in the Service Book. The decision of the Director General (Head of department) regarding date of birth of the applicant was communicated vide letter dated 21/3/86-Admn.II dated 29-6-86 (Annexure R-2) it has further been contended that the date of birth declared by the applicant at the time of his appointment can not be changed and altered by an authority not entitled to do so unless there is a clerical error as provided in rule 79 and 80 of the General Financial Rules (Annexure R-3). The applicant has, therefore, been rightly superannuated by the impugned order dated 30-6-1988.

on the date of appointment

In his rejoinder to the reply of the respondents, the applicant has contended that he never declared date of birth and that his date of birth was recorded by the department simply on the basis of appearance of the applicant that he was 24-years old. He cited the decision of this Bench in O.A. No. 616/86 titled as Hatti Ram V/s UOI showing that dispute regarding date of birth in similar facts and circumstance has already been decided by the Tribunal.

I have heard the learned counsel for the parties. Both have agreed that dispute regarding date of birth has been decided in the similar facts and circumstances in case of Hatti Ram by the Hon'ble Vice Chairman Sh.B.C.Mathur and in some other case. It has been submitted that the instant case should be disposed of in the light of the decision already rendered earlier in the Hatti Ram case.

After hearing the submissions on both sides and consideration of the material on records, it is clear that the department itself has estimated the age of the applicant as 24-years by appearance. So far as I think word 'by appearance' mean physical appearance of the applicant. There is nothing on record to show that before assessing the age of the applicant as 24-years on the basis of his appearance, he was also medically examined. There is also nothing on the record to show that the applicant had declared his age as 24-years at the time of his appointment. In this connection it may be stated that where the exact date of birth of any person is not known, and his date of birth is fixed by general assessment either on the basis of his physical appearance or otherwise including his medical examination ; date of birth would always fluctuate atleast two years on either side, from the date fixed by general assessment or otherwise. If date of birth of the applicant was assessed as 24-years on the basis of his physical appearance it could be 22-years also on the date of appointment. The applicant has shown his date of birth as 9-11-29 on an affidavit. The date of birth(9-11-29) as disclosed by the applicant at the time of appointment on 9-11-51 indicates that the applicant was 22-years old. Thus date of birth as 9-11-29 disclosed by the applicant on affidavit in 1957 was quite reasonable. Besides, it appears that after declaration of date of birth by the applicant on an affidavit in April, 1957 the date of birth has already reacted upon by the department as a consequence whereof seniority lists admittedly mentioning date of birth of the applicant as 9-11-29 were issued by the department.

As regards the date of birth on superannuation as 30-6-1988 shown in impugned order of retirement of the applicant (Annexure-A) does not appear to have been fixed on the basis of any particular date of birth of the applicant said to have been recorded in his Service Book. Admittedly age of retirement on superannuation for a Monument attendant in Archaeological Survey of India is 60-years. Accordingly the date of birth of the applicant would be 1-7-28. It is not understood as to how this date of birth as 1-7-28 had been worked out when date of birth recorded by the respondents on the basis of his physical appearance was 24-years on the date of his appointment. The respondent's own decision is, therefore, without basis.

In connection with the aforesaid dispute regarding date of birth I have got the privilege to go through the detailed judgement of the Principal Bench of the CAT in the case of Hatti Ram V/s U.O.I. and ors. OA No. 616/1986 dated 19-3-87. I have also seen the decision in the case of Kartar Singh and Smt. Jaiwanti, OA No. 619/86 and OA No. 625/86 respectively. The Hon'ble Bench has given a detailed judgement covering all the points raised in defence by the respondents against the date of birth declared by the applicant on his affidavit in 1957. After rejecting the defence his date of birth as disclosed on affidavit was accepted by the Bench in all these cases. I do not find any reasons to differ from the said decision.

In view of what has been discussed by me and what has been decided earlier by the Bench in the case of Sh. Hatti Ram and Ors I hold that the date of birth of the applicant was 9-11-29 as has been declared by him on his affidavit in 1957. The impugned order of retirement No. 14/248/69-AC-1721 dated 30-6-88 (Annexure-I) being illegal is hereby quashed.

Respondents are directed to take the applicant back in service and allow him to continue till the age of superannuation and to pay all the consequential benefits on the basis that he continues in service without any break. These directions shall be complied with by the respondents within a period of three months.

The application stands disposed of accordingly with no order as to costs.

(S. R. SAGAR)
MEMBER (J)

18/11/92

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