

(5) 20
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1424/88. DATE OF DECISION: 10.11.81

Rajinder Singh Applicant.

V/s.

Union of India & Ors. ... Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, counsel for the applicant.
Shri A.K. Sikri, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a retired Section Supervisor (NA) from Mahanagar Telephone Nigam Limited, New Delhi, has prayed for the following reliefs: -

- "(a) issue writ and/or directions to the Respondents to pay the amount due with all benefits of pension & gratuity considering the date of retirement as on 31.3.1988.
- (b) To direct respondents not to withhold the amount of Rs.7425/- (Rupees Seven thousands four hundred twenty five) towards gratuity payment.
- (c) To direct respondents to fix actual pension payable to the appellant during date of retirement on 31.3.1988.
- (d) To grant all the consequential benefits, reliefs available to the applicant, with exemplary costs.
- (e) to pass any other further order(s) or directions as this Hon'ble court may deem just and proper in the interest of justice."

2. The facts of the case, in brief, are as under: -

The applicant was appointed as Workman on 13.10.1947 in the Department of Telecommunication and his date of birth was recorded on the first page of the Service Book as allegedly 1.4.1929. Later, on the basis of the Matriculation Certificate the SDO Phones changed the date of birth of the applicant

XXXXXX as 1.4.1930 in the Service Book with the remarks 'according to matric certificate'. The retirement orders of the applicant were accordingly issued on 10.3.1988 retiring the applicant on superannuation with effect from 31.3.1988. In sanction letter dated 20-4-88, issued by the office of the General Manager Maintenance (Northern Telecom Region), DCRG to the extent of Rs.29,700/- was stated to have/worked out in the case of the applicant, out of which a sum of Rs.7,425/- had been withheld on account of future liabilities. (Annexure 'A' to the O.A.). The applicant was also sanctioned only provisional pension of Rs.900/- per month vide letter dated 20.4.88 (Annexure 'B' to the O.A.), with effect from 1.4.88. Aggrieved by the aforesaid two orders, the applicant filed the instant O.A. He later filed a petition under Section 25 of the Administrative Tribunals Act, 1985 for amendment/correction of interim relief (No.2476 of 1988) on 27.10.1988, in which he stated that on the date of his retirement i.e., 31.3.1988, his total DCRG amount works out to be Rs.30,525/- and not Rs.29,700/- and thus the total amount withheld by the respondents comes to Rs.8,250/- and not Rs.7,425/-. In the said petition, he prayed:

"1) to amend para (a) of the interim relief and and prays for as "direct the respondents to release the total amount of Rs.30,525/- (Rupees thirty thousands five hundred twenty five) instead of Rs.29,700/- (Rupees Twenty thousands seven hundred) along with pension advance for a period of ten years as per rules, arrears of D.A. for the year 1987-88, Gratuity, Fund, LIC amount, leave salary as due. Bonus for the year 1987 along with interest with exemplary costs to the applicant.

(b) Relief sought para (b) to direct the respondents not to withhold the amount of Rs.8250/- instead of Rs.7425/- towards gratuity payment."

3. In their written statement, the respondents stated that although the date of birth recorded in the Service Book of the applicant was changed by the then SDO Phones, Karol Bagh on 20.1.59 as 1.4.1930, it was objected to by the Finance Department on the ground that the SDO Phones was not competent to do so. On the basis of the original entry of the date of birth in his Service Book, the applicant was due to superannuate on 31.3.1987. In reply to M.P. No.2476/88 the respondents have raised a preliminary objection that the amendment sought is beyond the scope of main application and is untenable. In his main relief with regard to gratuity, he only prayed that he should be paid his entire amount of Rs.29,700/- without withholding a sum of Rs.7,425/- in this respect. In the amendment M.P., he has sought to amend the interim relief by enhancing the amount of gratuity to Rs.30,525/- without amending the main relief in this respect. As far as pension is concerned, the respondents have computed it on the basis of his date of retirement as 31.3.1987. In their reply to the M.P., the respondents have stated that the case is already referred to Department of Telecommunication as submitted in reply to O.A. and if this period is regularised and the applicant is deemed to have retired on 31.3.1988, his pension will have to be accordingly recomputed.

4. In the meanwhile, Department of Telecommunication, vide order dated 1.5.1989 accorded ex-post-facto sanction for re-employment of the applicant for one year beyond the date of his superannuation, i.e., 31.3.1987, as Section Supervisor with effect from 1.4.1987 to 31.3.1988. Accordingl vide order dated 19.5.1989 issued by the office of the Chief General Manager Maintenance, Northern Region, New Delhi, the applicant was re-appointed as Section Supervisor for the above period. This order also, inter-alia, states that the period of re-employment will not count towards pension, gratuity etc. Accordingly, cheques for the following

amounts in pursuance of the Tribunal's order dated 19.4.1989 were produced by the learned counsel for the respondents: -

- (i) Cheque for Rs.29,700/- towards gratuity.
- (ii) Cheque for Rs.14,256/- towards pension.
- (iii) Cheque for Rs.7,841/- towards leave encashment.
- (iv) Cheque for Rs.1,164/- towards group insurance scheme.

The above amounts had been calculated on the basis that the applicant had retired on 31.3.1987. The whole case of the applicant is based on his assertion that as he actually retired on 31.3.1988, his pensionary benefits should be calculated with reference to that date. This contention of the applicant has to be first examined with reference to his date of birth with reference to which alone his date of superannuation can be worked out. Surprisingly, the applicant does not raise the issue of date of birth in his O.A., probably because the modification made in the recorded date of birth in the Service Sheet was in his favour.

5. We have perused the material on record and also the service record made available by the respondents. We have also heard the learned counsel for the parties.

6. It is not the case of the applicant that he had passed the Matriculation Examination before he entered the service of the respondents. The Service Sheet prepared in 1949 shows his date of birth as 1-4-1929 both in figures and words. It bears the signature of the applicant. Similarly, the Service Sheet of 1959 had originally entered the date of birth of the applicant, both in figures and words, as 1-4-1929. It also bears his signature. However, the entries in figures as well as words have been changed to 1-4-1930. The change is initialled by somebody. It is also stated: "According to Matric Certificate". However, there is no date below the initial. There is also a document purported to be a copy of the Matriculation Examination, 1957 certificate of the Panjab University dated May 30, 1957, according to which one Rajinder Singh, Roll No.24879 son of Shri Rattan Singh and of the Delhi State passed the Matriculation Examination.

held in March, 1957 and on this document, the date of birth is shown as 1-4-1930 both in figures and words. However, somebody has written thereon by hand the words "Attested true copy". These words have been partly underlined and there is a stamp of "Engineering Officer, Delhi Telephone District, NEW DELHI", but above the stamp, there are no signatures. However, on the left hand of this paper, the word "Attested" which is underlined, is written by hand and somebody has signed with the date 30/12/ (year is not clear and it can be read as 87). There is no stamp below the signatures and the name of the person who signed it is also not mentioned. The applicant claims that he passed the Matriculation Examination; but when he was asked by the respondents in March 1988 to produce the original certificate, he could not produce the same. Also the same was not produced even before us. In the absence of the original certificate and in view of the deficiencies pointed out above with reference to the document purported to be a copy of the original, it is difficult to hold that his date of birth, as recorded in the socalled Matriculation Examination certificate is correct. Matriculation Examination certificate is an important document which is very carefully preserved by all persons, particularly those in Government service, and the original thereof is never dispensed with. Even if he had given the original Matriculation Examination certificate to the respondent's officer in 1957, though there is nothing on record to substantiate this contention, he should have and would have taken it back. There is nothing on record to show that he ever asked for return of the certificate in original. His averment that he had tried to procure a duplicate copy of the same from the University, but he was informed that the records upto the year 1971 had been destroyed, cannot also be relied upon, because he has not placed any such request

made to the University, nor has he placed any reply, which might have been received in response to his request. The request as also the reply are both stated to be oral and, therefore, much reliance cannot be placed on this aspect of the matter. The respondents have also stated that the S.D.O. Phones was not competent to change the recorded date of birth. Moreover, he is stated to have not informed anyone about the change made by him in the date of birth of the applicant. The applicant has not been able to establish that the S.D.O. Phones was competent to effect such a change in the service record of the applicant.

7. Learned counsel for the respondents also stated that the applicant would have been underage for about six months for appointment in Government service on the basis of his claimed date of birth. This fact has not been countered by the applicant.

8. Learned counsel for the applicant cited^{*} some judgments in support of his case. On the other hand, learned counsel for the respondents also cited² some judgments. We have considered all these cases. Learned counsel for the applicant, at the time of arguments, urged before us mainly two points. Firstly, it was urged that the respondents are estopped in view of their action in

-
- * (i) A.T.R. 1987(1)(C.A.T.) 483 - Shri L.N. Sinha v. Union of India & Others.
- (ii) S.L.J. 1989(1)(C.A.T.) 517 - Dr. Rabindra Nath v. Union of India and others.
- (iii) A.R. 1979 SC 621 - M/s. Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and Others.
- (iv) S.L.J. 1990(2)(CAT) 705 - Sudhir Kumar Sen and others v. Employees State Insurance Corporation and others.
- 2 (i) S.L.J. 1986(2)(CAT) 291 - Raj Kumar Malhotra v. U.O. I. and Another.
- (ii) S.L.J. 1986(2)(CAT) 297 - Gostha Behari Mullick v. Union of India & Others.
- (iii) S.L.J. 1986(1)(CAT) 111 - S.K. Sengupta v. Union of India & Others.
- (iv) S.L.J. 1986(4)(CAT) 537 - K.G. Mukherjee v. Union of India & Others.

having allowed the applicant to continue in service after 31.3.1987 and secondly, his date of retirement could not have been changed to his detriment with retrospective effect. He also referred to the doctrine of promissory estoppel as enunciated in the case of Motilal Padampat Sugar Mills Co. Ltd. (supra). We are of the view that the doctrine of promissory estoppel is not attracted in this case as the respondents had not extended any promise to the applicant that he would be allowed to continue in service beyond the age of superannuation, nor did the applicant take any concrete action pursuant to the alleged promise. The applicant had no legal right to continue in service beyond his date of superannuation unless his service was extended by an order issued by the competent authority in that respect. As regards the change of date of retirement with retrospective effect, it should suffice to say that before his actual retirement on 31.3.1988, he had been asked on 10.3.1988 to produce the original Matriculation Certificate, which he failed to produce. He had, therefore, enough knowledge about the matter. Since he actually worked from 1-4-1987 to 31-3-1988, he has been allowed the pay etc. for the same period, treating the period as the period of his re-employment. The applicant has not shown that he had ever applied for or raised his grievance about his recorded date of birth before he stated to have passed the Matriculation Examination. It may be so because the date of birth as originally recorded in the service record was not incorrect, as he had sought the change therein only on the basis of the date of birth recorded in the so-called Matriculation Certificate. However, he has neither mentioned nor produced any evidence in support of the date of birth as recorded in the so-called Matriculation Certificate. Therefore, it would not at all be proper to place conclusive reliance on the date of birth as recorded in the aforesaid certificate. The applicant has stated that in a number of seniority lists, his date of birth was shown as 1-4-1930. However, he has not

filed copy of any such seniority list. In any case, an entry about the date of birth in the seniority list is not a conclusive proof in regard to the correctness of the date of birth recorded therein. The applicant cannot be allowed to derive two benefits, one of getting appointment about six months earlier when he would have been below the minimum age necessary for appointment to the service and the second of being treated on regular pensionable service for the additional one year.

9. In view of the foregoing discussion, we are of the view that the O.A. is devoid of any merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

L.C.
(P.C. JAIN)
Member(A)

Ram Pal Singh
(RAM PAL SINGH)
Vice-Chairman (J)

Pronounced by me today in the open court.

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)
10.7.1991