

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1830/1988
TAXON

199

DATE OF DECISION 3.4.89

Shri K.L. Mehta

Petitioner

Shri D.S. Choudhary

Advocate for the Petitioner(s)

Versus

Union of India and Another

Respondent

Shri A.K. Sikri

Advocate for the Respondent(s)

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The Hon'ble Mr. P.C. JAIN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. J.P. SHARMA, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether the Lordships wish to see the fair copy of the Judgement ? Y
4. Whether it needs to be circulated to other Branches of the Tribunal ? Y

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, MEMBER (J))

The Applicant, since retired, an Assistant Engineer from the office of Deputy G.M., Planning, Eastern Courts, New Delhi, filed the application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the Order dated 7.9.1988 passed by Deputy General Manager, Administration, Mahanagar Telephone Nigam Limited, New Delhi. By the aforesaid order dated 7.9.1988, the Applicant was retired forthwith and it was further stated that his terminal benefits will be settled as if he had retired on super annuation w.e.f. 28.2.1987 and

that the payment of DCRG will be withheld till further orders.

2. The Applicant has claimed the following reliefs :-

- (a) to quash the Order dated 7.9.1988 (Annexure A-1)
- (b) the Applicant be treated on duty upto 31.10.1988 (A/N) along with all consequential benefits.
- (c) the Applicant's terminal benefits be settled as if he retired on superannuation w.e.f. 31.10.1988.
- (d) the Respondents be directed to release all the amounts of the Applicant at the time of the retirement and the Respondents be restrained from withholding the amount of death-cum-retirement gratuity payable to the Applicant.

3. The brief facts of the case are that the Applicant joined Post & Telegraph Office on 27.3.1948 and continued to serve in the same department getting promotions during the course of his employment and he became Assistant Engineer w.e.f. 28.8.1982 and since then he had

continuously served the department in the said post upto 12.9.1988. The Applicant has filed the gradation list of Junior Engineers (Annexure A-2) in which at Sl.No.197, the date of birth of the Applicant has been shown as 16.10.1930. The Applicant has further filed the corrected list of officers of the department of Tele-Communications (Annexure A-3) in which also, against the Applicant, the date of birth is shown as 16.10.1930. Both the gradation list and the corrected list of officers appear to have been issued in the year 1985. The Applicant has further stated that he was informed along with others by the letter dated 11.12.1986 (Annexure A-4), that ^{his} date of retirement is 13.10.1988. However, the Applicant received a letter dated 7.9.1988 (Annexure A-1) wherein the Applicant was ordered to retire forthwith from Government service. It is stated in the said letter that the Applicant's terminal benefits will be settled as if he has retired on super-annuation w.e.f. 28.2.1987. The Respondents have further ordered to withhold the payment of DCRG till further orders. The Applicant further stated that no disciplinary/vigilance case was pending against him and the order of the Respondent No.4 dated 7.9.1988 (Annexure A-1) is a punitive order amounting to compulsory retirement of the Applicant inasmuch as those persons

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at Sl. No.12 and 13 of the letter dated 11.12.1986 (Annexure A-4) ^{who} were due to retire in November, 88 and December, 1988 respectively, have not been ordered to proceed on retirement forthwith, but the Applicant has been singled out and has been ordered to proceed on retirement well before the due date of his retirement/super-annuation and that too with retrospective effect. According to the Applicant, this action of the Respondents is arbitrary, illegal, unreasonable and discriminatory in character and also is violative of the provisions of Article 14 of the Constitution of India.

4. The Applicant filed the present application on 21.9.1988 for the aforementioned reliefs.

5. The Respondents contested the application and in the reply stated that the Applicant has suppressed the material facts and is not entitled to any relief. At the time of the employment on 27.3.1948, the date of birth of the Applicant was recorded in the Service Book as 2.2.1929 (Annexure R-1). The said date of birth ~~stands~~ ^{remains to be} still recorded and the Applicant never made any representation for changing the said date of birth. If the date of birth

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as 16.10.1930 is accepted, then at the time of entering in service, the Applicant would have been minor, less than 18 years of age, and he would not have got the employment at that time. It is further stated that when the first copy of the Service Book was completed and the second copy was opened, the Applicant tampered the record thereby disputing his recorded date of birth because of which the vigilance enquiry had also been ordered against him (Annexure R-2 dated 6.9.1988). Till the vigilance case is over, the Applicant cannot be given even the terminal benefits which are withheld for this reason. It is further stated by the Respondents that before ordering vigilance enquiry by the order dated 7.9.1988, the entire matter was again looked into and even the representations made by the Applicant in this matter were considered. The Applicant was also asked to furnish any evidence in support of his claim, i.e., his date of birth was 16.10.1930 and not 2.2.1929. The Applicant, however, failed to produce any such record inspite of adequate opportunities given to him. The Applicant has concealed material facts in his application and on this ground alone, it is alleged that the application is liable to be dismissed.

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6. The Respondents have further stated that the Applicant has based his case entirely on the gradation list in which the Applicant's date of birth was wrongly mentioned and the Applicant is trying to take advantage of the said mistake. The said gradation list is not an authentic document of the date of birth of the applicant. It is further stated by the Respondents that without prejudice to the contentions raised above in the reply, the Applicant cannot take advantage now by alleging that his date of birth is 16.10.1930, by allegedly misrepresenting at the time of seeking employment which he could not have got on the basis of his alleged date of birth as 16.10.1930, being less than 18 years of age on that basis. The Applicant wrongly continued in service even after attaining the age of super-annuation and when the mistake came to the knowledge of the department, then after issuing notice to the Applicant, he was retired from service vide letter dated 7.9.1988 w.e.f. 28.2.1987. By the letter dated 9.6.1988 (Annexure R-3), the Applicant was asked to submit any such document in support of his date of birth alleged by him as 16.10.1930 and the Applicant submitted the reply dated 15.6.1988 (Annexure R-4) wherein the Applicant relied only on the

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gradation list of Junior Engineers issued in 1985. It
of 15.6.1988
is further stated in the said reply that the Applicant
submitted his original matriculation certificate with
department on his own initiative to get date of birth
corrected, but no receipt of the same was issued to him.
It is further stated in the same reply that the
Applicant has forgotten the matriculation Roll No. of
1946, so ^{he} could not get the duplicate. The Applicant was
again informed by the letter dated 20.7.1988 to produce
any other documentary proof in support of his claim
for the change in date of birth. To this, the Applicant
submitted the reply dated 21.7.1988 (Annexure R-6), but
he did not mention any documentary proof in support of
his alleged date of birth as 16.10.30. In view of the
above facts, the Respondents prayed that the application
is devoid of merits and be dismissed.

7. We have heard the learned counsel of the parties at
length. The counsel for the Respondents has also filed
for the perusal of the court, the following documents:-

- (i) Service Book of the Applicant in two parts.
- (ii) Gradation List of Linemen wherein the date of
birth of the Applicant has been shown as 2.2.1929.
- (iii) Personal File of the Applicant.

There is no doubt that the
gradation list of Linemen as on 1.7.1967 at Sl.No.24
shows the name of the Applicant and against the name, the

date of birth recorded is 2.2.1929. Since this is the photo-copy of the first four pages, so it has been taken on record. The second part of the Service Book shows the date of birth as 16-10-1930, but there is over-writing on the month of October and under it, it is written that the date of birth is under dispute vide department's letter dated 15/17 April, 1957. However, the original part-1 of the Service Book which is signed by the Sub-Divisional Officer, Telephone on 6-5-1948 shows the date of birth as 2.2.1929 and also bears the signature of the Applicant in English. In the departmental file, there is a certificate, issued by the Punjab University, of matriculation examination of 1946. But in this, the date of birth of the Applicant is not recorded, and it appears that he had moved an application on 25-8-1965 that he obtained the date of birth certificate from the Ministry of Education in 1956 and had submitted the same to the department. However no such certificate of date of birth is on the departmental file. It is stated therein that the records at the hand of the department were verified to find out the certificate of date of birth. In 1972, the Applicant moved the department that a certificate of his date of birth recorded in the Service Book be given to him. Thus from the above departmental file, it is evident that the date of birth recorded in the Service

Book sheet of the Applicant in the year 1948, is 2.2.1929.

The Applicant has never applied for the correction of date of birth. In the second part of the Service Book in 1957, the date of birth now recorded is 16.10.1930 and under which there is a note in the same year that it is disputed. It is further evident from the departmental file that in the gradation list of 1967 of the linemen, the date of birth of the Applicant is 2.2.1929. It was for the first time in the gradation list of Junior Engineers that the date of birth of the Applicant is shown as 16.10.1930. This gradation list is dated 31.5.1985. The Applicant ~~has~~ not explained how this change or alteration in the date of birth has taken place. The Applicant was given adequate ~~opportunities~~ by the Respondents to furnish evidence regarding his correct date of birth, but the Applicant did not file any evidence whatsoever and took the plea that he did not remember the roll no. of the matriculation which he passed in 1946 from even the Punjab University. So he could not file the matriculation certificate of date of birth. This fact is falsified from the departmental file where the applicant has filed the certificate of passing matriculation examination with roll no. 35439 in the year 1946 issued on 25.10.1948 and in this there is no column for recording the date of birth.

In 1965, the Applicant moved the department to give him a certificate of the recorded date of birth and still the Applicant did not move for any correction in the recorded date of birth. Under FR-56, every Central Government employee in Class III or Class II has to retire after attaining the age of 58 years. The Applicant should have retired from service on the basis of the recorded date of birth as in the Service sheet, in February, 1987, but he continued to serve till September, 1988 only due to the mistake of the office. The Applicant cannot take advantage of any such mistake unless the Applicant satisfies that his correct date of birth is 16.10.1930 and not 2.2.1929.

3. The contention of the learned counsel for the Applicant is that the Applicant was a refugee from erstwhile Pakistan and he did not file any certificate at the time of getting employment in P & T Department in 1948. It was in 1965 that the Applicant took the competitive examination for appointment to the post of Engineering Supervisors and Wireless Operators and in that the Applicant has shown his date of birth as 16.10.1930, but along with this form, no certificate of date of birth is attached.

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The certificates which are attached in the departmental file, are the matriculation examination and the B.A. examination and in none of them, the date of birth of the Applicant is recorded. Thus the Applicant has utterly failed to place before the department any certificate or documentary evidence to show that his date of birth is 16.10.1930. It is now well settled that administrative matters are not liable to be re-opened after lapse of many years as held in Malcom Lawrence Ccil D'Souza Vs. Union of India and Others, para-9 reported in AIR 1975 S.C. P-1272. In the service sheet under the signature of the applicant, the date of birth recorded is 2.2.1929. In the gradation list of linemen of 1967, the date of birth of the Applicant is shown as 2.2.1929. It was only in 1985 for the first time in the gradation list that the date of birth column against the Applicant shows 16.10.1930. This cannot be taken, therefore, to be an authentic description of the date of birth. The gradation list is primarily to show the seniority of the person in the service. It cannot be said that the date of birth recorded therein may not find fault with the one recorded in the Service Sheet and the Service Sheet is more authentic than the date of birth shown in the column of date of birth in the gradation list against any person. Thus the gradation

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list cannot be relied upon in the matter of the correctness of the date of birth of the person, when it is different from the one shown in the service record.

9. A person is not stopped from moving the department for correction of his date of birth in spite of his earlier declaration given by him on the basis of which there is another recorded date of birth. However, the burden lies on the Applicant to prove that his correct date of birth is not the one which is recorded in the service record. The Applicant has to apply at the earliest opportunity and not at the fag end of his service as in this case. However, in the present case, department has given adequate number of opportunities to the Applicant to substantiate his assertions regarding his date of birth as 16.10.1930. The Applicant has utterly failed. Also there are allegations against the Applicant that he conspired to make alterations in the recorded date of birth and a vigilance enquiry appears to have been going on against him as contended by the learned counsel for the Respondents.

10. The learned counsel for the Applicant has placed reliance on the case of State of Assam and Another Vs. Basant Kumar Das reported in 1973 SLJ P-265. The facts

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of this reported case are totally different. In the reported case, there was a memorandum of agreement dated 21.3.1963 wherein the persons were given a right to continue in service even after they had completed their 58 years. The contention of the Government in that case was that no one has a right to continue in service after completing 55 years. It has been held that no Government servant has a right to continue in service beyond the age of super-annuation, but if he ^{is} retained beyond that age, it is only in exercise of the discretion of the Government.

11. In the case of Sami Ahmed Vs. Union of India, reported in 1987 Vol.I SLJ P-432 CAT Patna, it has been held that the date of birth can be challenged for bona fidal clerical mistake. If the date of birth is entered as per declaration and attested by the applicant who is educated, there is no mistake in the date of birth. In this reported case, the matric certificate was not produced while entering in service, though available and the date of birth was recorded on the basis of declaration. It was held that long silence amounted to acquisience and grants finality to recorded date of birth.

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12. In the case of Mehar Chand Vs. DG, P&T and Another, reported in 1987 VOL.II SLJ P-612, the date of birth was altered after giving opportunity to the Applicant. The Applicant retired as Assistant Post Master in 1978 on super-annuation. The Applicant joined the postal service in 1943. The department later on passed order in 1976 changing the date of birth of the Applicant from 15.3.1926 to 15.3.1920. It is said that the Applicant was not afforded an opportunity before the date of birth was changed from 15.3.1926 to 15.3.1920. There was no matriculation certificate in the case of the Applicant of the reported case. So an enquiry was made from the school where he took his education and the Principal of the school gave the certificate that the date of birth of the Applicant recorded in the school is 15.3.1920. The Applicant in the reported case passed the higher school examination in March, 1938 and so obviously his date of birth could not be 15th March, 1926. The prayer of the Applicant, therefore, was rejected by the Tribunal and the order of the retirement of the Applicant in the reported case was maintained.

13. In Vinayak Ram Chander Vs. Union of India and Others reported in 1987 Vol.IV SLR P-203 CAT Jabalpur, the correction of date of birth was allowed on the basis of primary school

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certificate signed by two different authorities as the documents were more than 30 years old and produced from proper custody. In the reported case, the date of birth was recorded on the basis of medical opinion. In this reported case, relying on R.S. Kllolimath Vs. State of Mysore AIR 1977 S.C. P-1980, the Hon'ble Supreme Court held that the correction of date of birth can even be ordered after the employee had retired. The facts of the present case, however, are totally different. In the case of Faquir Chand Vs. Union of India, ATR 1987 (1) CAT P-15, it was held by the Principal Bench of the Central Administrative Tribunal that the entries in the service records which have stood the test of time and remained unchallenged for a considerable period, cannot be modified unless there are overwhelming reasons to establish that the entries have been made under erroneous circumstances which throw great doubts about the authenticity or validity of the entries. It has been further held that if the Government servant had not derived an undue benefit which he would not have enjoyed by his claim of change of date of birth, the changed date of birth at the fag end of one's career should not be countenanced. It has been further held that where the conduct of the Applicant himself throughout his career makes his claim of change of date of birth quite

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unconvincing and where he had derived some benefits at the time of his original recruitment by the recorded date of birth, then he cannot be allowed to get his tenure of his service extended by modifying his date of birth at such a late stage and thus enjoy the ~~best~~ of both the worlds. Again the same view has been taken by the Jodhpur Bench in Sridevi Singh Vs. Union of India, ATR 1987 Vol.I CAT P-27. In this reported case, the Applicant appealed for correction of date of birth on the basis of matriculation certificate, but the Applicant was under-age according to such certificate, so the date of birth entered in his service records was not altered.

14. The Respondents have rightly pointed out that the Applicant has never filed any evidence in support of his alleged date of birth as 16.10.1930. However, in the rejoinder, the Applicant contended that he had filed the matriculation certificate in the year 1957 and his date of birth was corrected at that time. Further it has also been contended that as per the provisions of FA-202, the Respondents were obliged to show the Service Book to the Applicant every year and to obtain his signature thereon in token of having inspected his Service Book, but it has

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never been done by the Respondents. This contention of weightage keeping other facts of the case in the learned counsel cannot be given view. In the application it is contended by the Applicant that he could not obtain the matriculation certificate as he did not remember his roll number in the matriculation. Secondly the departmental file shows that in 1965, the Applicant himself requested the department to give him a certificate about his date of birth recorded in the Service record. All these circumstances speak against the Applicant.

15. Thus we are of the opinion that the correct date of birth of the Applicant is 2.2.1929 and not 16.10.1930

16. According to FR-56(a), every Government servant is to retire on attaining the age of 58 years and so the Applicant reached the age of super-annuation in February, 1987 and he cannot get advantage of his service beyond that date. The Applicant has already earned his salary for the work done till 12.9.1988. The Applicant cannot draw both the benefits, i.e. of serving as a minor according to his own alleged date of birth as 16.10.1930 and now after serving as such he again wants to draw advantage of longer service which cannot be allowed on the principles of natural justice.

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17. The Applicant is facing a vigilance enquiry regarding the tampering of the date of birth in service records. He has also been issued a notice in that regard. So till the enquiry is over, the DCRG of the Applicant can rightly be withheld under Rule 69 of the G.C.S. Pension Rules, 1972.

18. In view of the above facts, we are of the opinion that the application is devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 3/4/91
MEMBER (J)

C. C. Jain 3/4/91
(P.C. JAIN)
MEMBER (A)