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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn. No. OA 322/88

Date of Decision: 17.5.88

Shri B.K. Das

...Applicant

Versus

Director of Enforcement and
Union of India

...Respondent

For Petitioner: Shri T.N. Kaul, Shri H.L. Tikku and
Shri B.L. Bali, Advocates.

For Respondent: Shri P.P. Khurana, Advocate.

CORAM: JUSTICE MR. RAMANUJAM, VICE CHAIRMAN
HON'BLE MR. P. SRINIVASAN, ADMINISTRATIVE MEMBER

JUDGEMENT

(Judgement of the Bench delivered by
Mr. P. Srinivasan, Administrative Member)

In this application, the applicant who is working as Assistant Director, Enforcement Directorate, Calicut is agrieved with a seniority list as on 1.4.87 circulated on 17.8.87 in which his date of birth has been shown as 20.4.1930. According to the applicant it should have been 20.4.1932. According to the date of birth entered in the seniority list, the applicant was due to retire on 30.4.88. As a result of ad interim orders passed by this Tribunal on ^{28.4.1988 M} ~~24.8.88~~ and 12.5.88, his retirement has been stayed and hence he continues to work in the post of Assistant Director till today.

2. Shri H.L. Tikku learned counsel for the applicant made the following submissions:- There had been a mistake in the matriculation certificate issued to the applicant in which his date of birth had been wrongly shown as 20.4.30. The applicant's father had sworn an affidavit on 16.5.85 before the District Magistrate, Rewa stating that the real date of birth of the applicant was 20.4.32. He further averred in that affidavit that a child had been born to him in 1930 but that child died before the applicant was admitted to school. The "unforgettable memory" of the child who had died had led to his date of birth being entered in the school register by "unadvertance" as that of the

P. Srinivasan

applicant. Shri Tikku pointed out that this affidavit was sworn before a Magistrate before the applicant entered service in 1955 and was, therefore, clear evidence of the applicant's correct date of birth. In the service book of the applicant, when he entered service in the Central PW Department in 1955, his date of birth had been recorded as 20.4.32 on the basis of this affidavit. From C.P.W.D., the applicant came over to the Enforcement department where, on 3.4.63, his date of birth was changed to 20.4.30 without any reference to him. However, his date of birth continued to be shown as 20.4.32 in successive seniority lists as on 1.3.83 and 1.1.85. For the first time in the seniority list brought out on 1.4.87, his date of birth was noted as 20.4.30 and it was only at this point that the applicant realised that his date of birth as originally recorded had been changed to his disadvantage. In fact, in seniority lists prepared as on 31.12.81, 1.3.83 and 31.12.83 also, his year of birth had been recorded as 1932. The applicant had made an application for Housing building loan in 1981 in which he had declared his year of birth as 1932 and on this basis he was sanctioned the loan to be repaid in instalments upto 1990. Surely, the authorities would not have fixed the instalments of repayment upto 1990 without scrutinising the date of birth given by the applicant in his application as 20.4.1932. If the authorities felt that the year of birth was 1930, the instalments of repayment would not have gone beyond 1988. The respondents could not alter the date of birth once entered in the service register under FR 56. So, the date of birth originally recorded being 20.4.1932, the applicant could not be retired in 1988. In the leave account prepared by the respondent, the date of his entry into Government service had been wrongly shown as

P. S. - 6

...3...

1.9.1935 and the date of birth was noted as 20.4.1930. The applicant had corrected the date of his entry into service in his own hand to 1.9.1955 but he had not altered the date of birth recorded there, which itself shows that the applicant would not have tampered with the entry of his date of birth in his service register as alleged by the respondents. The respondents had referred the nomination form signed by the applicant in respect of the Central Government Insurance Scheme, but this was no proof of his age or date of birth. While making the correction of the date of birth in the service register in 1963, the Director had referred to the Higher Secondary School Certificate of the applicant; the applicant did not furnish the said certificate to him and, therefore, there was no basis for the correction.

3. Shri Khurana learned counsel for the respondents submitted that there were several entries of the applicant's date of birth in the service book and elsewhere according to which he was born on 20.4.1930. The entry at the beginning of the service register was originally 20.4.1930 and ^{at} close look at the entry would show that it had been cleverly changed to 20.4.1932. In fact, in the date of birth recorded in words originally, the word "two" had been inserted after "thirty" and this had probably been done by the applicant when he was Head of Office at Jullundur having control over his service book. The entry of date of birth in successive seniority lists was a typographical error. The affidavit sworn to by the applicant's father was not conclusive of the matter. If the applicant felt that his date of birth had been wrongly recorded in the school certificate^M, he should have approached the authorities concerned to get it corrected. In 1963, the applicant himself had produced the Secondary School certificate on the basis of which the entry in the service book was corrected. The leave account of the applicant showed that his date of birth ^M was 20.4.1930.

P. S. - 6

10

4. We have considered the rival contentions carefully. The applicant alleges that the date of birth in his service book was wrongly altered by the respondent, while the respondents, in turn, alleges that the applicant had tampered with the entry. A close look at the entry in the service book suggests that the original entry was 20.4.1930 in figures, but the last zero(0) had been cleverly altered to 2. In the record made in words, the word "two" has been inserted subsequently after the word "thirty". We are of the view that the affidavit sworn by the applicant's father cannot be relied upon as it is a self serving statement by an interested party. One strange thing about the father's affidavit is that the elder child who is supposed to have died and whose date of birth is said to have been given as that of the applicant in the school register was also born on 20th April like the applicant. In this state of uncertainty and controversial assertions of fact, the only course left to us is to go by the entry in the school leaving certificates which is one of the primary sources of ascertaining date of birth. Both parties agree that the applicant's date of birth as recorded in the school certificate was 20.4.1930, though the applicant avers that it was a mistake. If it was a mistake, the applicant could have got it corrected in time. Since that has not happened, we are of the view that the date recorded in the school leaving certificates is the only reliable evidence of the applicant's date of birth and that being 20.4.1930, we have to accept it as the applicant's correct date of birth. In view of this, we are unable to accede to the request of the applicant to quash the entry relating to his date of birth appearing in the seniority list as on 1.4.87. The applicant should, therefore, have retired on 30.4.1988, but for the ad interim orders passed by this Tribunal. He will now be retired from service with effect from today. Shri Khurana submitted that the applicant should not be allowed full pay and allowances for the period 1.5.88 till today,

P. S. Khurana

because he could not have continued in service after 30.4.1988.

5. We are unable to agree with this contention. The applicant having worked as Assistant Director from 1.5.1988 till today, he is entitled on the principle of quantum meruit for full pay and allowances attached to that post. In the result we pass the following orders:-

- (i) The applicant will stand retired from service with effect from today afternoon, but he will be paid full pay and allowances of the post of Assistant Director till today.
- (ii) The application is dismissed but in the circumstances of the case, parties to bear their own costs.

2/17/5/88

(Justice Mr. Ramanujam)
Vice-Chairman

P. Srinivasan 17/5/88

(P. Srinivasan)
Administrative Member