

Central Administrative Tribunal,
Mumbai Bench, Mumbai.

O.A.210/00253/2016

Dated this Wednesday the 23rd day of September, 2020.

Coram : Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).

Suresh Patil S/o Ranoji Patil,
Assistant Commissioner (Retired),
Plot No.1, Sonanagar, Savedi,
Ahmednagar - 414 003. .. Applicant.

(By Advocate Shri S.B. Deshmukh).

Versus

1. The Union of India, through
Secretary Ad-V,
Ministry of Finance Department
& Revenue, North Block,
New Delhi - 110 001.
2. Director General of Vigilance,
2nd & 3rd Floor, Samrat Hotel,
Chanakya Puri, Kautilya Marg,
New Delhi - 110 021.
3. Commissioner of Customs, Central
Excise & Service Tax,
N-5 Town Centre, CIDCO,
Aurangabad - 431 030.
4. Pay and Accounts Officer,
N-5, Town Centre, CIDCO,
Aurangabad - 431 030. .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 17.12.2019

Order delivered on : 23.09.2020

O R D E R

Per : Dr.Bhagwan Sahai, Member (A)

Shri Suresh R. Patil, retired Assistant
Commissioner, Customs and Central Excise has filed
this O.A. on 15.03.2016. He seeks -

- (i) declaration that he is entitled for full monthly pension as the findings of inquiry report indicated the level of negligence not high which might not have been expected of him;
- (ii) quashing and setting aside of order dated 08.09.2015 passed by Government of India, Department of Revenue, Ministry of Finance;
- (iii) direction to Respondent No.3 to ensure that pensionary benefits are released to him along with issue of regular PPO from authorized Bank; and to treat his suspension period from 30.04.2009 to 31.10.2009 as duty period for the purpose of full pay and allowances as per provisions of FR-54-B-I; and
- (iv) direction to Respondent No.3 to release leave encashment of 300 days which was to the credit of the applicant when he retired on 31.10.2009; and to pay him interest at admissible rate for delayed payment of gratuity as provided in Department of Pensions and Pensioners Welfare OM dated 21.01.1991 and cost of this O.A.

2. Summarized relevant facts:

2(a). The applicant has stated that he joined as Lower Division Clerk under Central Excise Department on 07.04.1973 at Kalyan Division, later on was promoted as Inspector, Central Excise in 1975 and as Superintendent of Central Excise on

30.09.1991. He was further promoted as Assistant Commissioner by order dated 10.09.2008. He represented for retention in Aurangabad Commissionerate as he was due to superannuate on 31.10.2009.

2 (b) . When his representation and list of officers due to retire in 2009 was examined, the difference in the date of his birth was noticed as per his service book and as declared by the applicant in the attestation form dated 06.04.1973.

2 (c) . A detailed reply was sought from Assistant Commissioner, Ahmednagar, where the applicant was posted and based on his report and record available at headquarters, the discrepancy was noticed and it formed the allegation. He was suspended from 30.04.2009 till his retirement on superannuation on 31.10.2009. Disciplinary proceedings were instituted against him under Rule 14 of CCS (CCA) Rules, 1965 with Memo No.44/2009 dated 26.06.2009 for submission of false information about his date of birth as 13.10.1949 and false certificate showing his profession as student in affidavit dated 10.09.1973 even after having joined the Department on 07.04.1973. These allegations were denied by the applicant. Therefore, regular inquiry was held.

2 (d) . The Inquiry Officer in his report dated

31.08.2010 held that charge no.1 about furnishing false information relating to his date of birth as 13.10.1949 was not proved but the second charge for furnishing false certificate mentioning his profession as student in the affidavit on 10.09.1973 was proved.

2(e). A copy of the Inquiry Officer's report along with disagreement note was received by the applicant with letter dated 23.04.2012 and 10.09.2013 for his submissions which he did on 22.05.2012 and 14.09.2013 contending that the date of his birth in the certificate mentioned as 13.10.1949 issued by the then Tahsildar, Rahuri on 19.07.1971 was correct and genuine. The issue was referred to UPSC for advice who proposed the penalty as per provisions of Rule 9 of CCS (Pension) Rules, 1972.

2(f). With letter dated 23.01.2014, UPSC sent the advice observing that element of charge that the applicant had furnished false information about date of his birth is not established and that correction carried out by the Competent Authority in the Birth and Death Register was valid. The date of birth shown in the birth certificate will prevail over the date of birth recorded in the School Certificate.

2(g). About second charge relating to affidavit

dated 10.09.1973, the applicant had inadvertently stated his profession as student while in fact on the date of the affidavit he was a Government employee. This article of charge was partly proved constituting grave misconduct and, therefore, penalty of withholding of 10% of the monthly pension for two years be imposed on the applicant. The Commission also observed that the gratuity admissible to him should be released, if not required otherwise.

2(h). After due consideration of representation of the applicant on advice of the UPSC, it was rejected and in further consultation with DOPT, the respondents decided to implement the advice given by UPSC for withholding of 10% his monthly pension for two years. This was communicated to him on 08.09.2015 (Annex-A-1).

2(i). By his letters dated 24.09.2015, 03.11.2015 and 13.01.2016, the applicant requested Respondent No.3 for regularization of his pension and release of gratuity and leave encashment but the pensionary benefits have not been released to him. Therefore, this O.A. has been filed.

3. Contentions of the parties:

In the O.A., rejoinder and during arguments of his counsel on 17.12.2019, the applicant has contended that -

3(a). decision of the Disciplinary Authority based on conclusion that the first charge about furnishing false information relating to date of his birth as 13.10.1949 was not proved and second charge relating to furnishing of false affidavit about his profession was partly proved is not acceptable to him;

3(b). in the affidavit dated 10.09.1973 submitted to the Taluka Magistrate, Ahmednagar, the applicant had stated that his occupation was student and the date of his birth in the Matriculation certificate was incorrectly recorded as 05.03.1948 instead of 13.10.1949. Thus the affidavit was about correct date of his birth and not about any profession as concluded by the Disciplinary Authority. The respondents' contention about gross misconduct, misbehaviour by him is arbitrary, illogical and without authority of law as verification of dates of birth of candidates appointed in Government service has to be undertaken by the appropriate authorities on production of documentary evidence such as High School certificate provided in Note 6 under FR 56. The date of birth on the first page of his service book was mentioned as 13.10.1949 but without attestation by authority as required under Note 6 of FR-56;

3(c). the applicant's date of birth and educational qualification were verified by the Administrative Officer, Kalyan Division when he joined the service and on satisfaction he has signed on 20.01.2002 and affixed stamp in token thereof in the service book. Therefore, the applicant cannot be penalised in 2008-2009 by dragging him into the controversy;

3(d). the contention of the Disciplinary Authority is not correct that after 29 years objection raised by the PAO, Aurangabad at the time of verification of 25 years of service that the date of birth of the applicant had not been attested. Since the applicant was not custodian of the service book i.e. Head of the Office, the conception of PAO, Aurangabad about correctness of date of birth in his service book could have been recorded in words and figures but entry in the service book was only in numerical form, the applicant had no intention to hide or manipulate or fabricate the record about date of his birth as alleged by the respondents;

3(e). when the applicant was promoted as Assistant Commissioner by order dated 10.09.2008, he apprehended transfer from Aurangabad Commissionerate. So he applied for retention in the Aurangabad Commissionerate as he was due to

retire on 31.10.2009. As also noted by the UPSC in their advice, since irregularity about date of birth was noticed only in 2008, the applicant cannot be held liable for punishment by treating that irregularity as gross misconduct or misbehaviour. The UPSC also observed that the article of charge is not proved except element of charge relating to mentioning of his profession as student by the applicant in his affidavit dated 10.09.1973 when he was already a Government servant. Therefore, withholding of pension has to be commensurate with the gravity of misconduct;

3(f). the applicant also submitted on 16.12.2008 as collateral evidence that his date of birth had not been used for any purpose other than mention in the affidavit as his profession. Therefore, withholding of his pension by the Disciplinary Authority based on the advice of UPSC defeats the provisions of Rule 9(1) of CCS (Pension) Rules. The respondents have attempted to mislead the Tribunal about release of gratuity and for the financial loss caused to him from 08.09.2015 to 08.11.2016 for non-payment of gratuity, he is eligible for interest as per DOPT OM dated 22.01.1991. Even the UPSC accepted the applicant's date of birth as 13.10.1949. The respondents have not appreciated contents of subsequent letter of

the Tahsildar, Rahuri dated 22.01.2010 confirming the correction made by the Gram Sevak, Grampanchayat Dhamori on 11.09.2009 which was countersigned by Block Development Officer, Rahuri; **3(g)**. the chargesheet issued to the applicant related to the date of his birth and not about affidavit submitted by the applicant during preliminary inquiry. The documents produced by the applicant at the time of joining service on 07.04.1973 have also been scrutinized to conclude that his date of birth is correct. The false information alleged in the chargesheet has also not been upheld by UPSC. The applicant has not been charged with grave misconduct or misbehaviour but only about violation of Rule 3(1) and 3(2) of Civil Services (Conduct) Rules, 1964. The respondents were also silent from 07.04.1973 to 15.12.2008 about discrepancy in the date of birth recorded in his service book and as mentioned in the attestation form, therefore, this cannot be termed as misconduct by the applicant. The Hon. President can withhold or withdraw pension permanently or in part for recovery of pecuniary loss caused to the Government due to pensioners' grave negligence or misconduct during tenure of his service. But the applicant has not been found guilty of grave misbehaviour or misconduct and, therefore,

punishment of withholding of 10% pension deserves to be set aside;

3(h). Delhi High Court in its decision dated 06.11.2007 in similar cases in Writ Petitions © No.12758-61/2006 in Union of India Vs. Mr.T.P. Venugopal held that reasons and findings about commission of grave misconduct have not been recorded by the Inquiry Officer and dismissed the Writ Petition. In view of these submissions, the O.A. should be allowed.

In their reply and during arguments of their counsel on 17.12.2009, the respondents contend that -

3(i). at the time of joining service on 07.04.1973, the applicant had declared his date of birth as 05.03.1948 in the attestation form but subsequently the Department recorded his date of birth as 13.10.1949 in the service book on the basis of certificate issued by Taluka Magistrate, Kalyan on 30.10.1974, relying on birth register abstract of Village Dhamori Khurd attested on 19.07.1971 as True Copy by the Tahsildar, Rahuri, district Ahmednagar, but no valid or legal document such as School Leaving Certificate was attached or pasted in the service book. The Department also did not dispute the date of his birth recorded in service book till his promotion as Assistant

Commissioner. No correspondence regarding correction of date of birth of the applicant was found in his service book and the date of birth as 13.10.1949 had been attested by Administrative Officer, Central Excise & Customs, Ahmednagar on 28.06.2002 i.e. after 29 years of his appointment;

3(j). but when genuineness of birth register abstract in Form No.14 of Village Dhanori Khurd was challenged and inquiry made by the Tahsildar Rahuri, Ahmednagar, new facts came to notice as informed by him on 07.02.2009 stating that as per original record of 1949, at Sr.No.11 of village Form No.14, the particulars mentioned in the photocopy enclosed for verification were not correct. The certified copy had been issued by his office earlier was malafide and manipulated by someone, because the entry at No.11 in Village Form No.14 shows the date of birth of son of Shri Laxman Ranba Zine and not for son of Shri Ranba Madhav Zine. Since it was established that the applicant had submitted false and forged birth register abstract in Form No.14 issued on 19.07.1971 as attested true copy by Tahsildar, Rahuri indicating name of his father as Ranba Madhav Zine claiming date of birth as 13.10.1949 in place of 05.03.1948 as recorded in his School Leaving Certificate;

3(k). the Commissioner, Central Excise,

Aurangabad vide letter dated 26.02.2009 informed the Director General, Vigilance, Central Excise and Customs, New Delhi that the applicant had submitted incorrect and false information about date of his birth as 13.10.1949 but as per school record, the date of his birth was 05.03.1948, according to which he should have retired on 31.03.2008. This action of the applicant was in violation of Conduct Rules, warranting action under CCS (CCA) Rules, 1965 and based on the recommendation of Respondent No.3 i.e. Commissioner of Customs, Central Excise & Service Tax, Aurangabad he was placed under suspension and a chargesheet of major penalty was issued alleging that date of birth of the applicant should be treated as 05.03.1948 instead of 13.10.1949 as shown in false and forged extract of village Form No.14 and for submitting false affidavit about his profession;

3(1). a copy of extract of village Form No.14 corrected by Gramsevak, Dhonori Khurd was submitted by the applicant but when this certificate was got verified from Tahsildar, Rahuri, the latter informed on 22.01.2010 that extract of Village Form corrected by Gramsevak, Dhamori Khurd and countersigned by Block Development Officer was genuine. As such the applicant during inquiry

proceedings submitted further evidence to prove that name of his father had been corrected in village record subsequently by the issuing authority. The Inquiry Officer considered the applicant's submission after verification with the office of Tahsildar, Rahuri and concluded that since the correction had been made by the Tahsildar, Rahuri, who had issued the earlier letter about false Village Form No.14, was relevant and, therefore, the applicant's date of birth as 13.10.1949 can be considered as correct. But the Inquiry Officer also concluded that the charge about submission of false affidavit relating to his profession as student when actually he was already in Government service stood proved;

3(m). when the case was referred to the UPSC, the latter advised that the charge about furnishing of false information about date of birth to the Department by the applicant is not established and the correction carried out in birth certificate was valid. But the profession declared by him at the time of joining the service was false and this charge was proved and, therefore, the UPSC advised for withholding 10% of monthly pension of the applicant. Although the applicant had filed several representations for pensionary benefits including salary for the suspension period, the

order dated 08.09.2015 did not mention details about release of gratuity and regularization of suspension period as the matter was pending with Respondent No.1 for clarification;

3(n). the applicant had filed O.A. 253/2016 before this Tribunal and represented to Commissioner, Central Excise, Aurangabad that the order of Disciplinary Authority dated 08.09.2015 be set aside and the suspension period should be treated as period on duty for all purposes and pension should be released. In response to the above representation, the respondents finalized the other retiral benefits of the applicant and the payment was made in December, 2016;

3(o). during the course of the present O.A., merits of the charge levelled against the applicant need not be dealt with at length because that has already been done during the departmental proceedings and examination of the case by UPSC. There was no attestation or verification of date of birth of 13.10.1949 in his service book by any of the officers of Kalyan Division where he joined the service initially, no valid document such as SSC Certificate was attached with the service book and only extract of Village Form No.14 was attached. Since the Tahsildar, Rahuri had informed that on verification of record for the year 1949, entry at

Sr.11 of birth register in Form 14 of Village Dhamori Khurd had revealed that the certified true copy issued earlier by his office had been manipulated by someone, because that entry pertained to birth of son of Shri Laxman Ranba Zine and not to son of Shri Ranba Madhav Zine. The correction made in the name of Laxman Ranba Zine at entry No.11 of birth register of 1949 is unauthorized and illegal. The request for such correction had been made by Shri Suresh Ranbaji Patil and the aforesaid unauthorized and illegal change in the entry was made with active participation of Shri Suresh Ranbaji Patil and the then Gramsevak of Village Dhanori Khurd. Therefore, it is clear that after the charge-memo was issued to the applicant, he got the entry no.11 in birth register of the concerned village changed to support his claim of date of birth as 13.10.1949;

3 (p) . the Disciplinary Authority has corrected concluded that the applicant had submitted false and manipulated date of birth in Form No.14 for his wrong date of birth as 13.10.1949. The concerned Tahsildar was neither empowered to make entry in Form No.14 of birth and death register nor to issue certificate of date of birth under the Maharashtra Registration of births and deaths Rules, 2000.

Therefore, the interpretation drawn by the Inquiry Officer and the UPSC that correction had been made by Tahsildar, Rahuri is not correct. Since the applicant had submitted false documents of extract of birth and death register Form No.14 to indicate that the date of his birth as 13.10.1949 and his father's name as Ranba Madhav Zine, and also filed wrong affidavit on 10.09.1973 declaring himself as student, disciplinary action against him is fully justified; and

3(q). all pensionary benefits have been released to the applicant including regular PPO from December, 2016. Since treating of his suspension period as on duty is not justified, the question of regularizing it does not arise. The leave encashment amount has already been credited to the applicant in December, 2016 and there was no deliberate delay in processing his pension case. Therefore, the O.A. should be dismissed.

4. Analysis and conclusions:

We have carefully considered the details of the O.A., rejoinder of the applicant and rival contentions of the parties in arguments of their counsels. Based thereon, the case is analysed as follows:-

4(a). When the applicant joined service as LDC on 07.04.1973, he himself filled up and submitted attestation form with date of his birth as 05.03.1948. Therefore, he cannot claim that the entry was made by someone else. Subsequently he changed his claim about

date of his birth, as 13.10.1949 based on an affidavit submitted by him to Taluka Magistrate Kalyan for domicile certificate.

4(b). His School Leaving Certificate issued in 1967 and subsequent college education certificate mentioned his date of birth as 05.03.1948. But he did not submit those certificates. Attestation in his service book was done only mentioning his date of birth numerically on 28.06.2002 i.e. 29 years later by the Administrative Officer, who was not competent to do so. Therefore, the objection raised by PAO during verification of 25 years of service record of the applicant was correct.

4(c). In the ACR form of 1973-74, 1974-75 and subsequent years, the above date of birth was mentioned. In the Village Panchayat Form for date of birth even correct name of his father had not been mentioned as revealed during inquiry. As informed by Collector, Ahmednagar dated 07.02.2009, the correction made in the village record on the applicant's request was unauthorized. From such record it is also revealed that the applicant had never applied to the respondents for change in his date of birth while he was actually in government service since April, 1973. In his affidavit filed on 09.04.1973, he also falsely claimed his profession as student.

4(d). The case record further reveals that the required procedure for disciplinary proceedings under the rules has been followed by the respondents, principles of natural justice have been complied with

and the orders passed by the respondent authorities have been with due and proper application of mind. The advice of UPSC was also duly taken into consideration while issuing the order of punishment dated 08.09.2015 for withholding 10% of monthly pension for a period of two years otherwise admissible to the applicant. In view of consistent manipulating actions of the applicant about date of his birth, in our opinion he fully deserved the punishment imposed on him by the respondents.

4(e). It is a clear case involving repeated indulgence of the applicant in getting created and submitting false evidence of date of his birth. First in own attestation form while joining service he submitted his birth date as 05.03.1948 and later on attempted to get it changed to 13.10.1949. The extract of birth and death register of the concerned Village Panchayat had a different name of even his father. When inquiry came to be made in genuineness of his date of birth and his forgery got exposed, he submitted a certificate of nationality and domicile issued by Taluka Magistrate, Kalyan dated 13.10.1974. As record of births and deaths in their respective jurisdictions is maintained by the Village Panchayats and Municipal Councils/Corporations, the date of birth mentioned in the domicile certificate of the Taluka Magistrate, Kalyan cannot be treated as final since he was not the competent authority to issue certificate of date of birth. Therefore, the view taken by

even UPSC that the concerned revenue authority had corrected the earlier entry is not correct. There is no substance in the applicant's contentions on this issue. When considered in this background, in our opinion the applicant deserved more severe punishment. However, on the quantum of it we do not want to substitute our view with that of the respondents.

Therefore, we find no merit in this O.A., hence it it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
01/10/2020

