

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 321
T.A. No.

198 6.

DATE OF DECISION December 9, 1986.

Shri Hira Lal Petitioner

Shri H.C.Kapoor, Advocate for the Petitioner(s)

Versus

Union of India Respondent


Shri M.L.Verma, Advocate for the Respondent(s)

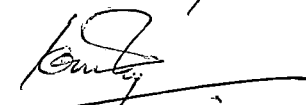
CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter ~~or not~~? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether to be circulated to other Benches? *Yes*


(Kaushal Kumar)
Member
9.12.1986.


(K.Madhava Reddy)
Chairman
9.12.1986.

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO.OA 321/86

Dated: December 9, 1986.

Shri Hira Lal

----- Applicant

Vs.

Union of India

----- Respondents

CORAM :

Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant

--- Shri H.C. Kapoor, Advocate

For the Respondents

--- Shri M.L. Verma, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, by a Tennis Marker employed in Rashtrapati Bhavan(President's Secretariat) for correction of the entry as regards date of birth recorded in his service book and to restrain the Respondents from retiring him on the basis of the said entry on 30.11.1986. According to the applicant although the date of birth in the service record is recorded as 14.11.1926, he was born on 23.12.1933 and hence he would attain 60 years' age in December 1993 and not in November 1986. He made a representation on 11.10.1982 for correction of the entry in the service record. That representation was rejected by the Respondents vide Order No. PF/Estt./58 dated 25.8.1983(Annexure 'A') signed by the Under Secretary (Admn.), President's Secretariat, New Delhi. He made a further representation which was entertained and a report was called for from the District Magistrate, Agra. According to the applicant, he was born in Agra and he had studied in Hublal Inter

[Signature]

College, Agra and left the said college after studying 4th class on 15.2.1942. The District Magistrate, Agra, caused an enquiry through the Tehsildar Agra and also verified the "Scholar's Register and Transfer Certificate Form" of the Hublal Inter College, Agra. A photostat copy of the relevant document is appended to his report in which the date of birth of the applicant is entered as 23.12.1933. That document also records that the applicant had joined the School on 1.8.1938 and left it on 15.2.1942. The District Magistrate, Agra, thus confirmed ~~that~~ the verification of the School record according to which the applicant's date of birth is 23.12.1933. Notwithstanding this report, the applicant's representation was rejected. His further representation dated 7.11.1983 in this regard was also rejected on 13.12.1983. He made a further representation and that was again rejected on 25.3.1986 on the ground that it was not covered under Ministry of Home Affairs (Department of Personnel and Administrative Reforms) Notification No.19017/7/79-Estt.-A dated 30.11.1979.

2. In the reply filed on behalf of the Respondents, the fact that his claim was got enquired into and that the District Magistrate, Agra, sent a report verifying the school record was not denied. The applicant had in support of his claim not only relied upon that record, but he has also filed a copy of the letter addressed by the then Deputy Comptroller, Governor-General's Household, New Delhi, dated 18th December, 1947 which reads as under:-

"Seal
Governor-General's Government House
 New Delhi
 18th December, 1947.

Hira Lal

Fazlur Rahaman, our Head Tennis Marker was murdered during the riots in Delhi in September and the second Marker went up to Peshawar for a month with the Head Marker's family. In the meanwhile Hira Lal was acting as Marker and by all reports from members of the personal staff he carried out his duties well and efficiently. He



proved himself a good tennis player and before long he should be adequate for a more senior tennis marker's job. He is not at present old enough or experienced enough to take on a Marker's job at Government House.

Sd/- Captain
Deputy Comptroller, Governor-General's
Household. "

3. From the above report (Annexure-H to the application) the claim of the applicant is further substantiated that he was born on 23.12.1933. The Deputy Comptroller would not have emphasised that the applicant is not at present old enough or experienced enough to take on a Marker's job. There is no evidence to the contrary. The original entry in the service book was not based on any school record; it appears to have been made on the oral statement of the incumbent himself. There is no reason why the Respondents should not act upon the report of the District Magistrate and the school record which was verified by the District Magistrate also. We, therefore, accept the claim of the applicant that his correct date of birth is 23.12.1933 and not 14.11.1926 which is entered in the service book.

4. Shri M.L.Verma, learned counsel for the Respondents, however, contends that this claim cannot be entertained because the same was not made within five years of his entry into service. Reliance for this contention is placed on Note 5 to F.R.56 which reads as under:-

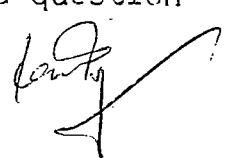
" NOTE 5- The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in

[Signature]

regard to persons serving in the Indian Audit and Accounts Department, or an administrator of a Union Territory under which the Government servant is serving if-

- (a) a request in this regard made within five years of his entry into Government service;
- (b) it is clearly established that a genuine bona fide mistake has occurred; and
- (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service. "

5. According to Fundamental Rule 56, every Government servant shall retire from service on the A.N. of the last date of the month in which he attains the age of 58 years or sixty years as the case may be. The age of a Government servant as of any one else has to be counted with reference to the date on which the person was born. Any error in the service record as regards the date of birth ^{in the service record} cannot alter the date of birth. Of course, there has to be some record or proof as to what the correct date of birth is. If there is any error in the service record in that entry, that has to be corrected, unless some service rule prohibits correction or ordains that irrespective of what the date of birth of a Government servant may be, he shall be deemed to attain the age of superannuation based on the date of birth as entered in the service record and once entered that entry cannot be altered. In the absence of any such rule, a Government servant cannot be precluded from showing that the entry in the service record is not correct. So long as that entry stands he would be deemed to have attained the age of 60 years in November 1986 and retired on 30.11.1986. Once it is established that 14.11.1926 is not the correct date and that he was born much later on 23.12.1933 it follows that he cannot be retired on that date. That being so whenever a question



arises whether the entry of the date of birth in the service record is correct or not, that has to be enquired into and that has been done in this case in accordance with law. Note 5 to Fundamental Rule 56 governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/7/79-Ests.A dated the 30th November, 1979, published as S.O. 3997 in the Gazette of India dated the 15th December, 1979, takes effect from that date. It lays down that a request for the correction of the date of birth in the service record shall be made within five years of entry into Government service. But obviously the five year period of limitation prescribed for the first time under the said S.O. 3997 cannot apply to those Government servants who were in service by that day for more than 5 years. In issuing the said S.O. it could never have been the intention of the Government that there should be two classes of Government employees- those employees who had entered Govt. service prior to 15.12.1974 whose date of birth could not be corrected, however erroneous that entry may be and others who entered the service within 5 years of the said S.O. are thereafter entitled to get the entry as to date of birth in the service record corrected. That would be an invidious discrimination unsustainable in law. It is, therefore, reasonable to infer that that period of limitation prescribed under the said S.O. would be applicable to those who entered service after 15.12.1979.

6. In this view of the matter the application filed by the Applicant in 1986 could not be rejected as barred by time. Obviously the Respondents also took the same view and did not reject his application for correction of date of birth in limine as barred by time or as not maintainable. The Respondents referred his representation for enquiry by the District Magistrate. Now that the report of the District Magistrate

[Signature]

confirms the applicant's claim, the respondents cannot be allowed to turn round and reject it holding that the application was not filed within 5 years of entry into service and insist that he has attained the age of superannuation based on the original entry in the service record.

7. Shri M.L.Verma, learned counsel for the respondents brought to our notice the judgment of a Bench of this Tribunal in Shri Ganpat Rai versus Union of India⁽¹⁾ in which referring to Note 5 to FR 56 observed:

"In the instant case none of the aforesaid three conditions is fulfilled and there is a reasonable doubt about the conduct of the petitioner regarding his date of birth being above board. We have a feeling that the petitioner has not come up to us with clean hands and is trying to utilise this forum for an undue advantage."

It is clear from the judgment that nowhere it is held that the period of 5 years mentioned in Note 5 applied to persons already in service. There was no categorical finding that persons already in service for more than 5 years cannot apply for correction under that S.O. In that case the Bench was also not satisfied about the conduct of the petitioner and refused the relief. In the circumstances, it cannot be held that the Bench expressed a view/contrary to the one we are taking in regard to the period of limitation prescribed under the said S.O. so as to warrant reference of this matter to a larger Bench.

8. Shri Verma also relied upon Rule 79(2) of the General Financial Rules to contend that the petition for correction of date of birth cannot be entertained. That Rule reads as under:-

"The actual date or the assumed date determined under Rule 80 shall be recorded in the history of service, service book, or any other record that may be kept in respect of the Government servant's service under Government and, once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of a Department of the Central Government or an Administrator."

NOTE 1.- Heads of Departments are authorised

to exercise the powers delegated to a Department of the Central Government and an Administrator under Rule 79 in the case of non-gazetted Government servants under their control.

NOTE 2. For the purpose of Rule 79(2), the Controller and Auditor-General exercises the powers of Department of the Central Government in regard to persons serving in the Indian Audit and Accounts Department".

That Rule no doubt prohibits all corrections except clerical errors in the service record regarding date of birth entered. But as discussed above, if a government servant has to retire on attaining the age of superannuation and the question whether he has attained the age of superannuation or not has to be determined, though primarily it is to be determined on the basis of the entry of date of birth in the service record, that person is entitled to show that that entry is not correct.

(A reasonable restriction may not be imposed as regards the period of limitation within which the applicant has made request for such correction).

*deleted as per letter
dt 2-2-87 of Central
Admin. Tribunal*

9. The Supreme Court in State of Assam versus D.P.

Deka⁽²⁾ observed that:

"The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record, and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistent with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Art. 311 (2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record."

The Court further observed:

It is true that ordinarily when an application is made for rectification of age by a public servant concerned, the State should give the applicant proper opportunity to prove his case and should give due consideration to the evidence brought before it...."

In that case the representation after being entertained was rejected on the ground that it was not filed more than three

Lawyer

years before the date of actual superannuation as laid down under the Rules then in force. So far as the representation of the Applicant in this case is concerned, it was not only entertained but a report was called for and as noticed above the report fully supported the Applicant's claim. As laid down by the Supreme Court, an employee is entitled to claim correction^{of} date of birth in the service record.

10. Rule 79(2) of the General Financial Rules came up for consideration before a full Bench of the Himachal Pradesh High Court in Manak Chand versus State of Himachal Pradesh⁽³⁾ Chief Justice Pathak, as he then was, speaking for the Full Bench held:-

"A Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. He is entitled to show that the recorded entry, which determines the date on which he attains the age of superannuation, does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service. Therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If on application made by the Government servant, the Government finds that there is substance in the claim it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law. If it does not have the force of law and is merely an executive direction without sanction of law, it cannot affect the exercise of the Government servant's right to show that the recorded entry is erroneous. Now, the Government of India decision, on which the respondents rely, does not have the status of a statutory rule, and, therefore, cannot defeat the legal right of the Government servant mentioned above. So far as it affects the determination of the true date of birth it must be considered ultra vires for the reasons set out above."

Handwritten signature

11. We find ourselves in entire agreement with the view taken by the Himachal Pradesh High Court in the above case. Rule 79(2) of the General Financial Rules, therefore, cannot stand in the way of the applicant getting the entry in the service record corrected. He has taken steps to get the entry corrected more than 4 years before his date of retirement according to the entry in the service record.

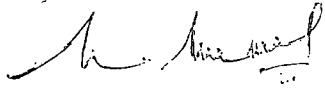
12. Shri Verma, learned counsel for the respondents places very strong reliance on the service record and upon the fact that the applicant had signed the service record on ^anumber of occasions in which his date of birth was shown as 14.11.1926. There is no dispute that he has signed the service record and that that record shows his date of birth to be 14.11.1926. But even from that record it is evident that that date was not based upon any school record or any other authentic document. Even the S.O. recognises the entries in the service records could be erroneous and makes provision for rectification. Hence the mere fact that the Applicant has signed the service record on ^anumber of occasions does not operate as an estoppel against him so as to take away his right to get the erroneous entry as to date of birth corrected in the light of the Note 5 to FR 56. In our view now that the applicant has established that his correct date of birth is 23.12.1933, the respondents cannot refuse to correct the entry in service record and seek to retire him on 30.11.1986 based on the erroneous entry.

13. The application is accordingly allowed. The date of birth of the applicant in Service Record shall be corrected as 23.12.1933. The applicant was to retire with effect from 30.11.1986 on the basis of the previous entry in the Service Record as 14.11.1926. On 28.11.1986

[Signature]

75

this Tribunal had directed that he shall continue in service until further orders. In pursuance of that order he is continuing in service. Now that the application is allowed and the date of birth of the applicant shall be corrected as 23.12.1933, he shall continue in service until he attains the age of superannuation according to that entry. There will be no order as to costs.


(Kaushal Kumar)
Member
9.12.1986.


(K. Madhava Reddy)
Chairman
9.12.1986.