

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(6)

REGN. No. O.A. 616 of 1986

19.8.1987

Shri Hatti Ram

Applicant

Vs.

1. The Union of India through
the Secretary, Ministry of Education
Government of India.
2. The Director General,
Archaeological Survey of India,
New Delhi.
3. The Superintendent,
Archaeological Survey of India,
New Delhi.

Respondents.

PRESENT

Shri M.S. Maan, counsel for the applicant.

Shri N.S. Mehta, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.


This is an application under Section 19 of the Administrative Tribunals Act, 1985 against orders dated 30.7.1986 passed by Respondent No. 3, the Superintendent, Archaeological Survey of India, New Delhi, retiring the applicant before he attained the superannuation with effect from 31.7.1986 (A.N.)

2. The case of the applicant is that he joined the Department of Archaeological Survey of India, Government of India, New Delhi on 14.10.1947 as Monument Cleaner. At the time of entering the Government service, no proof of age



was asked for or demanded by the department from the applicant and that the applicant did not know if any official of the department made any entry in his service book mentioning his age by appearance as 24 years. The applicant's designation was later on changed to Monument Attendant sometime in the year 1956. In the year 1957, the department asked the applicant to produce proof of his age and accordingly the applicant submitted an affidavit duly attested by a Magistrate in which the applicant mentioned his date of birth as 11.11.1929. According to the applicant, this affidavit was accepted by the departmental authorities and a Seniority List of Monument Attendants as on 31.12.1978 was published by respondent No. 3 in which the applicant's name was placed at S. No. 13 in column No.4 wherein the date of birth of the applicant has been shown as 11.11.29, the same as given by the applicant in the affidavit filed by the applicant. Since the date of birth of the applicant and other service particulars were correctly shown in the said seniority list, the applicant filed no representation and continued to serve the department.

3. The applicant has further stated that a letter was issued by Respondents No. 3 on 3.9.1962 addressed to the applicant wherein the respondent observed that at the time of his appointment in the department was under age by 3 years and 24 days and deducted the emoluments from the applicant on account of his being under-age. Even this order was wrong as even by an entry of age by appearance mentioning him 24 years of age on the date of his appointment on 14.10.1947 and the affidavit furnished by the applicant in the year 1957 showing his age i.e. date of birth as 11.11.1929 the applicant was not under age, but was a major.



4. For the first time the applicant was communicated vide letter No. 14/98/69-AC dated 22.10.1982 of the respondent No.3 that the date of birth of the applicant has been recorded as 14.10.1923. The applicant represented to the department that on the basis of the previous records and on the basis of the affidavit furnished by

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him, revised orders may be passed in respect of the date of birth of the applicant but the applicant did not get any reply from the respondent No.3. Ultimately, the applicant was informed by order No. 14/98/69-AC/10700 dated 22.10.1982 that he will be retiring from Govt. service on superannuation w.e.f. 31.10.1983 by treating his date of birth as 14.10.1923.

5. Aggrieved by the order dated 22.10.1982 by respondents No.3, the applicant filed a writ petition in the Delhi High Court. The Hon'ble High Court of Delhi vide its judgment dated 7.2.1984 quashed the order dated 22.10.1982 and directed the respondents to re-determine the correct age of the petitioner after affording an opportunity to him of being heard.

6. In pursuance of the orders of the Hon'ble High Court dated 7.2.1984, Shri Thakur Singh was appointed as the Inquiry Officer by the respondents and the Inquiry Officer directed the applicant to appear before the Medical Board for ascertaining the age of the applicant. In accordance with the aforesaid order, the applicant was medically examined, but the Medical Board did not give any finding in regard to the age of the applicant.

7. It has been submitted by the applicant that except the medical examination, the Inquiry Officer did not give any opportunity of hearing to the applicant for arriving at the conclusion that the correct date of birth of the applicant is 11.11.1929 and not 14.10.1923. Secondly, there was no other evidence before the Inquiry Officer to rebut the affidavit given by the applicant regarding his age in 1957. The applicant states that the impugned order dated 30.7.1986 is contrary and in violation of the orders passed by the Hon'ble High Court of Delhi on 7.2.1984. The Inquiry Officer has also not given any finding and the copy of the Inquiry Report has not been given to the applicant till today. The following reliefs have been sought by the applicant:

(1) To set aside the orders dated 30.7.1986 passed by the respondent No.3.



(2) To direct the respondents that the applicant be superannuated according to his correct date of birth which is 11.11.1929.

(3) To treat the applicant in service with all consequential benefits till the actual date of his superannuation i.e. 60 years after taking into account the applicant's correct date of birth as 11.11.1929.

8. It has been stated on behalf of the respondents that at the time of his appointment, the applicant declared his age as 24 years and the same was recorded in his Service Book and this was attested by him by putting thumb impression in the appropriate column of the Service Book. In the affidavit filed by the respondents, it has been mentioned that the Department had not asked the applicant in 1957 to produce a proof of his age, but the applicant on his own filed an affidavit declaring this his date of birth is 11.11.1929 with the malafide intention to continue in service even after the date of his superannuation. Besides, the affidavit was never admitted by the competent authority as there is no order and declaration admitting the affidavit. According to the respondents, the seniority list was prepared by some junior official who mentioned the date of birth as 11.11.1929 in the seniority list unauthorizedly and without properly checking the Service Book. As far as the recovery from the salary of the applicant because of his being under age was worked out inadvertently and the amount was ordered to be refunded to the applicant. It has been further stated on behalf of the respondents that the applicant was given ample opportunity to produce evidence in support of his contention that his date of birth is 11.11.1929 as directed by the High Court.



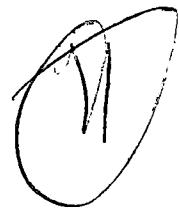
9. The applicant in his counter reply has denied that he declared his date of birth as 24 years at the time of his appointment and that the respondents recorded the date of birth of the applicant

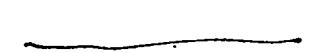
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according to their own choice. For the first time in 1957, the applicant filed an affidavit stating his date of birth as 11.11.1929 and thereafter the department entered the date of birth of the applicant as 11.11.1929 in the service book as well as in the seniority list. The applicant denies that he was afforded an opportunity by the Inquiry Officer in ascertaining his correct date of birth except that he cooperated in the medical examination at the Ram Manohar Lohia Hospital, New Delhi. The learned counsel for the applicant has argued that the applicant never gave his date of birth to the respondents except through an affidavit in 1957. The applicant is an illiterate person and put his thumb impression on the service book without knowing its contents. He filed an affidavit about his age because he was asked to produce evidence and the same was accepted by the respondents because the date given by him in his affidavit has been recorded in his service book as well as in the seniority list mentioned earlier.

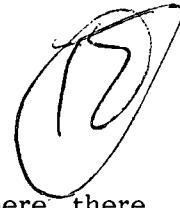
10. The learned counsel for the respondents has stated that the age recorded in the service book at the time of appointment is the authentic age and cannot be changed by anyone except the competent authority. In this case, the competent authority did not pass any orders at any time except the age given by the applicant in his affidavit and, therefore, he was correct in ordering the retirement of the applicant according to the age originally recorded in the service book. It appears that someone at the lower level illegally changed the date of birth of the applicant on the basis of an affidavit without getting orders of the competent authority and illegal order cannot confer any rights on the applicant.

11. I have perused the Service Roll of the applicant and find that the Service Roll showed his original age as 29 years by appearance and then the same has been corrected to 11.11.1929 as given in the affidavit filed by the applicant. A copy of the affidavit is also kept in the service roll of the applicant. There are thumb impressions by the applicant on service establishing that he was illiterate.



12. I have also gone through the report of the Inquiry Officer dated 29.6.1984. The report of the Inquiry Officer states that the irregularity committed in recording the age of the employees by appearance was noted by the then Superintending Archaeologist who desired that the applicant might be asked to produce evidence in support of his date of birth vide his note dated 21.3.1957. Accordingly letters were issued to many persons who then filed affidavits regarding their correct age. The confusion arose about the date of birth as this was also noted in the seniority list of the employees. The contention of the respondents that the applicant was not asked to produce evidence regarding his age in 1957 is apparently incorrect as according to the report of the Inquiry Officer letters were issued to various persons, including the applicant, to produce evidence regarding the correctness of his age. According to rules,   alteration of date of birth of a Government servant can be made if a request in this regard is made within 5 years of his entry into the Government service and it is clearly established that a bonafide mistake has occurred. Keeping these facts in view, the decision of the Director General 'not to entertain alterations in the age on the basis of affidavits' appears to be in order but, according to the Inquiry Officer, the basic error in determining the assumed/approximate age at the time of attesting the entries in Service Roll appears to have escaped the notice of the decision taking levels while dealing with such cases. Recording of age by appearance leaves a doubt whether the Government servant was consulted or not about his age or the date of birth irrespective of the fact that the signature and thumb impression are there on the Service Rolls. According to the Inquiry Officer, no officer can record the age of a Government servant on his own accord. In case there is no confirmatory documentary evidence in support of age, date of birth is required to be determined





under Rule 80 of the General Financial Rules. Where there is a doubt, a medical certificate should have been obtained which should be the deciding factor vide note below para 1 of decision No. 3 below Article 51 of CSR. The medical examination carried out on 19.7.1985 does not prove anything. The Medical Officer has stated clearly that the verification of age of a person by Radiological assessment is possible only upto the age of 21 years and any assessment at a later date may lead to mis-carriage of justice. According to the Inquiry Officer's report dated 29.6.1984, the following position emerges:

1. No declarations/statements as required under rules were obtained from the employees;
2. Date of birth not determined under rules at the time of appointment or attestation of service rolls;
3. The first entry of date of birth was recorded years on the basis of appearance; and
4. Date of birth was not recorded in Christian Era.

13. He has stated that since determination of age in the beginning was irregular, subsequent decision of the Director General basing on the same determination cannot be said to be regular. The applicant is not having any documentary evidence in support of the declaration in the affidavit, but the respondents are also not in a position to change this declaration. The deciding factor should be a certificate of date of birth or the age declared by the competent Medical Board. Where the date of birth has been questioned, the Inquiry Officer has reported that they were not consulted while recording their age by appearance. The Inquiry Officer has recommended that the dates of birth given in the affidavit may be accepted, but in case there was any doubt, there should be a medical examination of the applicant. As stated earlier, the medical examination report dated 19.7.85 does not establish anything.

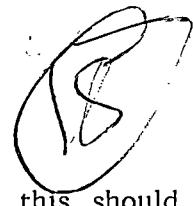


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14. The High Court had directed the respondents to hold an inquiry giving full facilities to the applicant. In the Orissa High Court's case Laxman Swain Vs. Managing Director, Steel Authority of India Ltd. Rourkela - SLR 1985 (2) p. 228, the Orissa High Court has quoted two judgments of the Supreme Court where a principle has emerged that "where the employer seeks to change the date of birth advancing the same resulting in the employee reaching the age of superannuation earlier, the employee concerned must be informed of the case of the employer and the evidence in support of the same and the employee must be given fair opportunity by the employer to meet the evidence in such a case before an adverse decision is taken by the employer." It is quite clear that suitable opportunity has not been given to the applicant before the Director General took a decision to change the date of birth or to fix any date. Before doing so, an opportunity should have been given. The Inquiry Officer appointed in pursuance of the judgment of the High Court has been of the view that the order of the Director General was not quite regular as originally the date of birth should not have been recorded on the basis of appearance and since the original recording was defective and no medical examination or any other proof was asked for, there seems to be no option but to accept the date of birth as given by the employee in his affidavit in 1957. Rule 80 servant of the G.F.Rs lays down that if a Government is unable to state his exact date of birth but can state that year or year and month of birth, the 1st July or the 16th of the month, respectively, shall be treated as the date of his birth. Where a Government servant is able to state his approximate age, his date of birth shall be assumed to the corresponding date after deducting the number of years representing his age from

his date of appointment. In this case, however, there is no proof that the applicant gave any statement about his age at the time of his appointment and his date of birth has been recorded on the basis of his appearance. It is obvious that in the absence of any declaration by the applicant, he should have been sent for a medical examination, as mentioned in the report of the Inquiry Officer.

15. At this stage it does not appear possible to come to a conclusion about the correct age of the applicant. When the applicant was appointed to service originally, he should have been asked to give a declaration about his age and also to produce evidence in support of it. If he could not produce any evidence like a school certificate, which he could not as he never went to school, or a certificate from the Gram Panchayat or some persons of his village, the proper course would have been to send him for a medical examination, but neither a declaration was taken from the applicant nor any medical examination conducted. On the other hand, the date of birth was written as 24 years by appearance. Even this should have been written in the Christian Era giving a definite date as prescribed under Rule 80 of the G.F.Rs. The contention that the applicant had put his thumb impression on the service roll giving his age as 24 years by appearance, does not establish anything as an illiterate person would not know what was written in the service roll. There is no certificate that the contents of the service roll were explained to the applicant and accepted by him. The fact, however, is that the applicant was asked in 1957 to produce evidence of his age and the applicant produced an affidavit filed before a Magistrate giving his date of birth as 11.11.1929. Why this affidavit was not put up before the competent authority is not clear. It is also not clear who made changes in the service roll and then issued a seniority list giving the date of birth of the applicant as 11.11.1929. The revised date of birth, namely, 11.11.1929 continued to be



operative for a very long time and the benefit of this should go to the applicant. There is no advantage in ordering any inquiry at this stage because an inquiry was held earlier. Unfortunately, the applicant does not seem to have been given a reasonable opportunity to state his case before the Inquiry Officer as directed by the High Court and as a fresh medical examination would not bring any new facts, I hold that the impugned order dated 30.7.1986 passed by the Superintendent, Archaeological Survey of India, namely, respondent No.3, must be quashed and the applicant should be taken back in service and retire at the age of 60 years based on the date of birth given in the affidavit, namely, 11.11.1929. In other words, the applicant should continue to work under the respondents and superannuate on 30.11.1989. All the dues payable to the applicant should be regulated on the basis that he continues in service without any break.

16. In the circumstances, there will be no order as to costs.



(B.C. Mathur)
Vice-Chairman