

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

REGN. No. O.A. 619 of 1986 Date of Decision: 19.8.1987

Shri Kartar Singh

:

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.

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

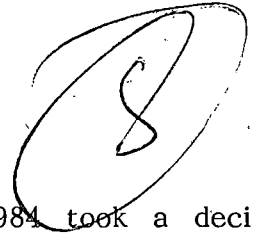
This is an application under Section 19 of the Administrative Tribunals Act, 1985 against orders dated 30.7.1986 passed by Respondent No. 3, the Superintendent, Archaeological Survey of India, New Delhi, retiring the applicant before he attained superannuation with effect from 31.7.1986 (A.N.)

2. The case of the applicant is that he joined the Department of Archaeological Survey of India, Government of India, New Delhi on 17.12.1947 as Monument Attendant. 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 22 years. In the year 1957, the department asked the applicant to produce his proof of age and accordingly the applicant submitted an affidavit duly attested by a Magistrate in which the applicant mentioned his date of birth as 15.4.1931. 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 the respondent No. 3 in which the applicant's name was placed at S. No. 17 in column No. 4. In this document the applicant's date of birth has been shown as 15.4.1931, 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 Respondent No.1 on 22.2.1962 addressed to the applicant wherein the respondent observed that the applicant at the time of his appointment in the department was under age by 5 years and ordered recovery of Rs. 370.54 naye paise from his pay, allegedly stated to have been overpaid to the applicant. Even this order was wrong as even by an entry of age by appearance mentioning him 22 years of age on the date of his appointment on 17.12.1947 and the affidavit furnished by the applicant in the year 1957 showing his age i.e. date of birth as 15.4.1931, the applicant was not under age by 5 years, but was a major.

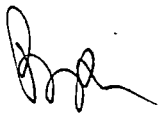
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4. Respondent No. 2 in August, 1984 took a decision regarding the age of the applicant and accepted the entry of age by appearance as 22 years which was not known to the applicant and directed respondent No. 3 to retire the applicant with effect from 30.6.1985 and in pursuance of the order and decision taken by respondent No. 2, respondent No. 3 issued orders of retirement with effect from 30.6.1985 by treating his date of birth as 1.7.1925 and thereby rejecting the date of birth mentioned in the affidavit and the seniority list i.e. 15.4.1931.

5. Aggrieved by the order of respondent No.3 retiring him from service on the basis of his date of birth being treated as 1.7.1925, the applicant filed a writ petition in the Delhi High Court. The High Court quashed the order dated 21.8.1984 and directed that the case of the petitioner should be decided according to the report of the Inquiry Officer as accepted by the Director General, Archaeological Survey of India. The High Court directed that any enquiry for ascertaining the correct date of birth of the applicant should be held after affording a reasonable opportunity to the applicant, but it will be open to the respondents to pass a fresh order after determining the correct age of the applicant.

6. In pursuance of the orders of the Hon'ble High Court, Shri Thakur Singh was appointed as the Enquiry Officer. According to the applicant, the Enquiry Officer did not give him any opportunity before arriving at any decision except that he was asked to appear before a Medical Board which he did. The Medical Board did not give any finding in regard to the age of the applicant.



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7. 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 27.5.1985. 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) That the applicant be superannuated according to his correct date of birth which is 15.4.1931 and not 1.7.1925.
- (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 i.e. 15.4.1931.

8. It has been stated on behalf of the respondents that at the time of his appointment, the applicant declared his age as 22 years and the same was recorded in his Service Book and this was attested by him by putting his 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 that his date of birth is 15.4.1931 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 15.4.1931 in the seniority list unauthorizedly and without properly checking the Service Book. As far as the recovery from the salary

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of the applicant because of his being under-age, <sup>it</sup> 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 15.4.1931 as directed by the High Court.

9. The applicant in his counter reply has denied that he declared his date of birth as 22 years at the time of his appointment and that the respondents recorded the date of birth of the applicant according to their own choice. For the first time in 1957, the applicant filed an affidavit stating his date of birth as 15.4.1931 and thereafter the department entered the date of birth of the applicant as 15.4.1931 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 <sup>accepting</sup> ~~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

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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 an 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 22 years by appearance and then the same has been corrected to 15.4.1931 as given in the affidavit filed by the applicant. A copy of the affidavit is also kept in the service roll of the applicant. Again, the age in the service roll has been corrected in red ink as 1.7.25 and entry to this effect has been made stating that the date of birth has been worked out as 1.7.1925 vide D.G's letter dated 18.9.1979. Apparently, 1st July has been written on the basis of his appointment at that time. There are thumb impressions by the applicant on service roll 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 Enquiry 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 employees 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 their 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

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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 miscarriage 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 in years on the basis of appearance; and
4. Date of birth was not recorded in Christian Era.

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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 <sup>of</sup> ~~of the applicant~~ report dated 19.7.85 does not establish anything.

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

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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 filed in 1957. Rule 80 of the G.F.Rs lays down that if a Government servant 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 be 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 22 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

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the applicant had put his thumb impression on the service roll giving his age as 22 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 15.4.1931. 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 15.4.1931. The revised date of birth, namely, 15.4.1931 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, 15.4.1931. In other words, the applicant should continue to work under the respondents and superannuate on 30.4.1991. 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