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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 816/1986.

DATE OF DECISION: May 15, 1990


Jagdish Chander Joshi Applicant.
Shri S.S. Tiwari Counsel for the
Applicant.


V/s.

Union of India & Ors. Respondents.
Mrs. Raj Kumari Chopra Counsel for the
Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their lordships wish to see the fair copy of the judgement? No.
4. To be circulated to all Benches of the Tribunal? No.


(P.C. JAIN)
MEMBER(A)


(AMITAV BANERJI)
CHAIRMAN

(15)

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Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was employed as Refgn. Mechanic in the office of Garrison Engineer (North), A.F. Palam, Delhi Cantt., has assailed order dated 26th March, 1985 (Annexure 'A'), by which he has been retired from service with effect from the afternoon of the same date, and order dated 2nd September, 1986 (Annexure 'K'), by which his appeal dated 21.4.1986 has been rejected. He has prayed for a direction to reinstate him in service with all service benefits and back wages by setting aside the retirement order dated 26.3.1985 and declaring it as null and void.

2. The relevant facts are that the applicant was appointed as a Packer in the Armed Forces Medical Store Depot (for short, AFMSD), Lucknow, on 15.8.44. He was declared surplus and later on appointed as a Mazdoor in MES on 15.11.56. He was declared permanent as Refgn. Mechanic in 1968.

3. The applicant's case is that his date of birth is 18.2.1928, but he has been prematurely retired vide impugned order dated 26.3.1985 with effect from the afternoon of the same date, without giving him any opportunity of showing cause. He has also alleged that the court of enquiry which

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was held after his premature retirement is against all norms of law and was a mere eye wash. He was also not given any opportunity to produce the relevant documents regarding his date of birth from the Government records and the certificate of his date of birth from his native place. The allegation of mala-fide has also been made.

4. The case of the respondents, in brief, is that the recorded date of birth given by AFMSD in Part I of the Service Book was 18.2.1923 both in figures and in words, but the date of birth in figures has been tampered with to make it as 18.2.28. It is stated that while carrying over the entries from Part I to Part II of the Service Book during 1967-68, the date of birth appears to have been carried over as 18.2.28 in figures only. The leave record as maintained by the Garrison Engineer, Jodhpur, shows the date of birth as 18.2.23 in figures and his date of retirement is shown as 18.2.1983. Thus, according to the respondents, the applicant should have retired on 28.2.1983 on completion of 60 years of age, being an industrial personnel, but he had overstayed from 1.3.1983 to 26.3.1985. The local Audit Officer, Delhi Cantt., detected ~~the~~ the tampering of the date of birth during the course of the audit of the Service Book of the applicant and pointed out the same. He further advised to retire the individual and order a staff court of inquiry. Departmental instructions were also received from Chief Engineer, Delhi Zone, Delhi Cantt, vide letter dated 25.3.1985 to retire the applicant and to arrange staff court of inquiry. It was in these circumstances that the applicant was served with the retirement notice on 26.3.1985 (A.N.). The allegations of premature retirement as mala-fide and against arbitrary nature of proceedings of the court of inquiry have been refuted.

5. We have carefully perused the material on record and have also heard the learned counsel for the parties.

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6. Photostat copy from the service record of the applicant at Annexure R-1 shows the date of birth of the applicant as " 18-2-1928 " in figures and "Eighteenth February Nineteen hundred and twentythree" in words. It also shows that this was recorded 'vide declaration attached'. It is also seen that this was attested and reattested by the applicant. The figure "3" in the figures "18-2-1923" has clearly been changed to figure "8". However, the date of birth as recorded in words is unchanged. Extract of the leave record at Annexure R-2 also shows the date of birth as 18.2.1923 in figures and the 'Date of compulsory retirement' is mentioned as '18.2.1983' in figures. The learned counsel for the applicant filed photostat of two documents - one Application for Final Withdrawal from GP Fund / IOFW Fund and the other Movement Order dated 12th September, 1975 - in both of which the date of birth is shown as 18-2-1928. This is in figures. The first document is an application by the individual and the entry has been made by him. In the second document, the entry has been made by the office of Garrison Engineer. These, however, cannot be taken as an authentic record of the correct date of birth. Moreover, when the tampering of the date of birth recorded in figures is clearly manifest in Part I of the Service Book, reliance has to be placed on the date of birth as recorded in words.

7. The applicant has also filed a copy of the certificate (Annexure 'H') which shows that Pradhan, Gram Sabha Gurna, P.O. Daulaghat, District Almora, on 20.4.85 has certified the date of birth of the applicant, according to Part 1 Register, as 18-2-1928. On the same document, there is a certificate from Patwari, Khauri, dated 14.5.85 and countersigned by Tehsildar, Almora, on 16.5.85, which shows that the date of birth, according to Part 2 of the Register, is 18-2-1928. It is clear that these are certificates and not a certified copy as defined in Section 90 of the Indian Evidence Act, 1872 and, as such, it is not admissible in evidence. Further, the certificate of Pradhan is based on

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Part 1 of the Register while the certificate of the Patwari is based on Part 2 of the Register. A certified extract of the relevant entry in the public document / record has not been filed. The certificate has been obtained only after the applicant was retired on 26.3.1985. As already mentioned above, Part 1 of the Service record, marked as Annexure R-1, shows that the date of birth was recorded as per declaration. If such a certificate existed or could have been obtained, it should have been produced at the time of recruitment. Therefore, no reliance can be placed on the document at Annexure 'H'.

8. The learned counsel for the applicant urged that the respondents are estopped from treating the date of birth of the applicant as 18-2-1923 in view of the provisions of Section 115 of the Indian Evidence Act, 1872. In our view, such a plea is not tenable in the facts and circumstances of this case. The applicant cannot be said to have been misled in regard to his actual date of birth, as the entries in Part 1 of the Service record were attested and reattested by the applicant himself. We are fortified in our view by the judgement of the Supreme Court in K.S. SRINIVASAN Vs. UNION OF INDIA (AIR 1958 S.C. 419) and the judgement of the C.A.T., Additional Bench, Madras in the case of M. NARAYANAN & OTHERS Vs. UNION OF INDIA (A.T.R. 1986 CAT 130).

9. We are not impressed by the plea of the applicant that in the absence of any opportunity to show cause, the impugned order of retirement is violative of the principles of natural justice. It was held by the Jodhpur Bench of the C.A.T. in SHRI GURBAX SINGH Vs. UNION OF INDIA AND OTHERS (A.T.R. 1988 (1) CAT 217) that for correcting accidental error, the principles of natural justice need not be complied with. In the case before us, the initial record prior to its partial tampering, shows the correct date of birth of the applicant as 18-2-1923 (Eighteenth February Nineteen hundred and twentythree). There is no basis before us to take the

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date of birth of the applicant as 18-2-1928. It is true that there is nothing to show that the applicant himself tampered with the entry in figures, but the only person who could have benefited by such a tampering can be none other than the applicant himself. The court of inquiry ordered in September, 1985, i.e., after the retirement of the applicant, was concerned with finding as to how the tampering took place and it was not an inquiry against the applicant; he was called to appear before the court of inquiry to make his statement, which he did not do. Thus, the averments in regard to the proceedings of the court of inquiry are really not relevant. In this case, in our view, a mistake occurred in carrying over the entry in regard to the date of birth from Part 1 to Part 2 of the service record and that too only in figures, which, as we have stated above, is undoubtedly tampered. This mistake was detected during the audit of the service book in March, 1985 when the respondents retired the applicant by means of correction of the mistake. In fact, if the correct date of the applicant is taken to be 18.2.1923, as it is to be in the facts and circumstances of the case, the applicant availed of unintended benefit of remaining in service beyond his age of superannuation for the period from 1.3.1983 to 26.3.1985. Such a mistake could be corrected by the respondents without giving any notice to the applicant.

10. In view of the above discussion, the application is devoid of any merit and is accordingly dismissed. Parties to bear their own costs.

P.C. Jain
(P.C. JAIN)
MEMBER(A)

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN.

*Pronounced by me in the open court
to-day.*

P.C. Jain
15/5/90