

Central Administrative Tribunal
Principal Bench, Delhi.

REGN. NO. OA 1070 of 1986 Date of decision 11.5.1988

Shri Amar Singh Applicant

Vs.

Union of India Respondents

PRESENT

Shri R.L. Sethi ... Advocate for the applicant.

Shri B.R. Prashar ... Advocate 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 the impugned orders dated 30.11.1985 passed by the ^{Deputy} Police Commissioner, Delhi, retiring the applicant. ^{Police}

2. The case of the applicant is that he was recruited to Delhi Police as constable on 7.11.1947. He was a non-matriculate and was enlisted on the basis of a medical examination without providing any certificate as proof of age. In 1955, the then Senior Superintendent of Police, Delhi, called upon all Police constabulary to give their educational/age certificates for completion of service records. The applicant then produced a School Leaving Certificate issued by the Principal, Ramjas Higher Secondary School, Delhi, dated 11.1.1955 indicating that he had studied upto class 9th and that his date of birth was 3.1.1930. As, according to the School Leaving Certificate, the applicant's age at the time of enlistment worked out to 17 years, 10 months and 4 days, being less than 18 years he could not have been recruited to Delhi Police, departmental proceedings were instituted against him that he had made a false statement about his age before the Medical Officer in order to

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get himself recruited. The S.P., CID,(Crime Branch) conducted an enquiry and held him guilty and issued a punishment order dated 5th July, 1957. He was awarded the punishment of severe censure. The punishing authority also ordered that the date of birth and the other relevant entries on Page 1 of the Character Roll should also be corrected in accordance with the School Leaving Certificate of the applicant. According to the School Leaving Certificate he should have attained the age of superannuation on 31.1.88, but he received a retirement order on 19.4.84 retiring him on the basis of his date of birth recorded as 7.11.1927 which itself was based on his medical examination at the time of recruitment. The applicant represented to the authorities that in view of the clear directions contained in the enquiry-cum-appointing authority's report dated 5.1.1957, his date of birth should be corrected as 3.1.1930 as given in the School Leaving Certificate and that the impugned order retiring the applicant on 30.11.1985 should be set aside.

3. The applicant has pleaded that since the question of his age had been thoroughly investigated by the competent authority during 1955-57 and directions had been issued to correct the Character Roll in accordance with the School Leaving Certificate and as the respondents were under obligation to correct the Character Roll and other relevant records in accordance with the directions given by the Enquiry Officer, he cannot be made to suffer because of the omission of the officers concerned under the respondents to make the necessary correction regarding the date of birth. The applicant has already undergone punishment imposed in 1957 by the respondents. He has relied on the accepted principle of law that guilt/misconduct+punishment=innocence and, therefore, he cannot be punished twice. His representation to the authorities was rejected on the ground that the recorded date of birth cannot be changed as the case does not fulfil the conditions laid down in note 5 below F.R. 56.

4. The respondents in their reply have stated that the

applicant was appointed as a constable on 7.11.1947 and at that time he did not produce any educational certificate and his date of birth was calculated on the basis of the medical certificate. The applicant had declared his age as 20 years before the Assistant Civil Surgeon, Delhi, and the Police Surgeon also assessed his age as 20 years on the day of his medical examination and the date of birth was recorded as 7.11.1947. According to the statement dated 3.3.1949 appended at page 33 of his character roll, he had stated that he passed the IX class examination from Ramjas High School and that he left the school on 17.7.45 and that the School Leaving Certificate was not in his possession. His date of birth was recorded as 7.11.1927 according to his own statement and the certificate issued by the Civil Surgeon, Delhi Police, Delhi. This fact has been signed by the applicant on 7.11.1947 (page 1 of his character roll). He submitted his School Leaving Certificate in January, 1955 ^{that he} showing/ was reading in class IX and remained on the roll of the school from 1.5.1946 to 31.7.1946, a period of only three months, including summer vacations. Since his date of birth was recorded in the educational certificate was different to ^{that} ~~that~~ ^{my} one declared by him at the time of his enlistment in Delhi Police, he was dealt with departmentally and finally awarded the punishment of censure by S.P. (Crime). Orders were passed by the S.P. (Crime) for correcting the date of birth but the date of birth was not corrected as the date of birth can be changed only by the Head of the Department and the S.P.(Crime) was not ^{the} ~~competent~~ ^{authority} to do so. He had given a wrong statement that he had passed class IX and that he left the school in July, 1945. He had stated that he did not collect the requisite School Leaving Certificate from the School, but he produced the School Leaving Certificate issued on 11.1.1955 showing that he was a student of class IX. As per his own statement, the applicant was 20 years of age at the time of his recruitment. Had he given his age according to the School Leaving Certificate, he would not have been recruited to Delhi Police, being under age. Having given contradictory statements regarding his educational qualification and date of birth, he cannot be allowed to take advantage of it at a later date for delaying his retirement. The applicant is informed of the above.

The applicant was informed that the Head of the Department was the competent authority to decide correction in the date of birth and the same was not done and he was rightly retired on superannuation pension on 30.11.1985 according to F.R. 56.

5. The applicant has relied on a simple dictum of law that misconduct + punishment ~~=~~ innocence and as the S.P.(Crime) who had done the enquiry and issued the punishment had already ordered that his date of birth should be corrected according to the School Leaving Certificate, it is not open to the respondents to question that order at this stage. The punishment could be given only by the appointing authority and, therefore, the order of retirement, retiring him on the basis of his date of birth as 7.11.1927 is wrong and illegal.

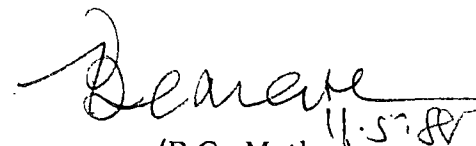
6. It is quite evident that the date of birth recorded in the service record of the applicant was based on his own statement given voluntarily at the time of recruitment and on the basis of a medical examination. If it is accepted that he had given a wrong statement about his age, the only reason can be that he knew that he was under age at that time and inflated his age in order to get enlisted in the Delhi Police Force. A punishment of severe censure can be given for giving a wrong certificate, including a wrong statement, about his educational qualification and even though the S.P. (Crime) had ordered the correction of his date of birth which may amount to a reward in actual practice, rather than a punishment, the date of birth was not in fact correct^{ed} and the origi-
nal date of birth as given originally by the applicant remained in C.R.

7. The learned counsel for the applicant said that the competent authority in the case of constables is Superintendent of Police and in this case, the S.P. while disposing of the criminal proceedings had awarded the punishment of severe censure and also ordered that the date of birth should be corrected. Rule 12.1 of the Punjab Police Rules lays down that the S.P. is the proper authority to whom the power of appointment has been delegated. He also cited Rule 9.17 of the Punjab Police Rules 1934 which

prescribed that early in October each year, the Superintendent of Police shall examine the age register and pass orders regarding the superannuation of lower subordinates. Appendix 11.36 in Chapter XI of the same Rules show that the age register of upper and lower subordinates is a permanent record which has to be maintained by the Superintendent of Police. Since the orders had been passed by the S.P. for changing the date of birth, there was no further action to be taken as far as the applicant is concerned and if the procedure required the approval of the I.G.P. or any other authority, it is not the fault of the applicant, ~~IF THE~~ S.P. or the clerk concerned failed to take further action, ~~The~~ applicant cannot be penalised for the lapse of someone else. He had received a copy of the orders passed by the S.P. which changed the date of birth according to the School Leaving Certificate and this had become final.

8. The learned counsel for the respondents pointed out Rule 9.7 of the Punjab Police Rules applicable to the Union Territory of Delhi which prescribes that the date of birth shown in the character roll or the corresponding record can be altered only with the sanction of the Inspector General of Police on the production of proof to his satisfaction. In this case although it is S.P. who ordered the correction to be made, the case was not put up before the I.G.P. It cannot be presumed that the IGP would have endorsed the action of the S.P. Since the competent authority, namely, the I.G.P. had not approved the change of the date of birth, the date already recorded would stand. FR 56 also lays down that the date of birth declared by the Government servants and accepted by the appellate authority should not be subject to alteration except with the sanction of the Ministry or the Department or the Administrator of a Union Territory under which the Government servant is serving. As such, the S.P. may be the appointing authority in respect of the police constables, he is not authorised to alter the date of birth without the approval of the I.G. Police.

9. The question to decide in this case is whether on the basis of the orders passed by the SP in 1957, the date of birth of the applicant could be treated as altered and corrected or whether these orders cannot be effective as these were not passed by the competent authority under the Punjab Police Rules. Normally, the School Leaving Certificate should have been relied upon for accepting the correct date of birth, but when the applicant deliberately showed a wrong date of birth to enter the Police Force, he cannot take advantage of the fact that he has already been punished by the award of censure and at a later date should be allowed to take advantage of the false statement given at the time of enlistment and allowed to continue in service for an extended period of over two years. When the very foundation of his claim is based on a false statement amounting to fraud, no relief can be given to him at this stage. The contention that the applicant cannot be punished doubly, firstly by award of a censure and then retirement on the basis of a wrong date of birth cannot be accepted as he is being retired on the basis of the date of birth given by him and which continued on record till the time of his retirement. The position would have been different had the competent authority, namely, the I.G. Police accepted the alteration in the date of birth, but since the date of birth was not actually altered by the competent authority, for whatever reason, it is held that the applicant was retired correctly on 30.11.1985. As such, the application is dismissed. No orders to costs.


(B.C. Mathur)
Vice-Chairman